The Ontario Securities Commission

OSC Bulletin

June 12, 2025

Volume 48, Issue 23

(2025), 48 OSCB

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

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

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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

43300746

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Printed in the United States by Thomson Reuters.

ISSN 0226-9325

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Table of Contents

A. Capital Markets Tribunal

A.1
Notices of Hearing

A.1.1 Ontario Securities Commission and Andrew DeFrancesco – ss. 127(1), 127(4.0.3)

FILE NO.: 2025-10

ONTARIO SECURITIES COMMISSION

(Applicant)

AND

ANDREW DEFRANCESCO

(Respondent)

NOTICE OF HEARING
Subsections 127(1) and 127(4.0.3) of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the orders requested in the application filed by the Commission on June 3, 2025.

REPRESENTATION

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

FAILURE TO PARTICIPATE

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 6th day of June, 2025.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

ONTARIO SECURITIES COMMISSION

Applicant

AND

ANDREW DEFRANCESCO

Respondent

APPLICATION FOR ENFORCEMENT PROCEEDING
(Subsections 127(1) and 127(4.0.3) of the *Securities Act*, RSO 1990 c S.5)

A. OVERVIEW

1. The Ontario Securities Commission (the **Commission**) seeks an order in the public interest against Andrew DeFrancesco (**DeFrancesco**) reciprocating an order made by the U.S District Court of the Southern District of New York (the **District Court**). The District Court's order is based on a complaint (the **Complaint**) filed by the U.S. Securities and Exchange Commission (the **SEC**).

2. The Complaint alleged that DeFrancesco engaged in serious misconduct relating to Cool Holdings, Inc. (**Cool**), including by making materially false and misleading statements in SEC filings and in a promotional campaign as part of a "pump and dump" scheme. In carrying out this scheme, DeFrancesco used a network of private entities – including Ontario corporations – to covertly amass shares and conceal his trading activities in Cool. The false and misleading statements in the promotional campaign caused Cool's share price to increase significantly, following which DeFrancesco sold 1.6 million Cool shares for proceeds of over US$8 million.

3. In June 2023, DeFrancesco agreed to a District Court order (the **Final Judgment**) imposing several sanctions against him, including a permanent prohibition on acting as a director or officer of a certain class of issuers, which are akin to reporting issuers in Ontario. DeFrancesco consented to the Final Judgment without admitting or denying the allegations in the Complaint.

4. The Tribunal has jurisdiction to make orders in the public interest under s. 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), including reciprocating foreign orders where the person has agreed with a securities regulatory authority outside Canada to be subject to sanctions, conditions, restrictions or requirements under s. 127(4.0.3) of the Act.

5. It is in the public interest to reciprocate the Final Judgment by permanently prohibiting DeFrancesco from acting as a director or officer of a reporting issuer in Ontario. The requested order is consistent with the Final Judgment and is necessary to prevent potential future misconduct that may harm Ontario's investors and capital markets.

B. GROUNDS

The Complaint

6. In January 2023, the SEC filed a Complaint alleging that DeFrancesco orchestrated a fraudulent scheme to deceive the investing public about Cool by making materially false and misleading statements.

7. The Complaint includes the following allegations:

   a. In March 2018, DeFrancesco (and others) created Cool through a reverse merger. Following the merger, Cool became a U.S. corporation with its principal place of business in Florida. Its common stock traded on the Nasdaq;

   b. Cool described itself as a retailer and wholesaler of consumer electronics, which owned stores that sold Apple and Apple-approved products and accessories;

   c. DeFrancesco was Chairman of the Board of Directors of Cool from March 2018 to December 2018;

   d. DeFrancesco created a network of entities that he used to conceal his ownership and trading in Cool (the **Nominee Entities**). Although the Nominee Entities were notionally owned and controlled by family members, DeFrancesco controlled the Nominee Entities and made all their business, investment, and trading decisions;

   e. Four of the Nominee Entities that DeFrancesco used to facilitate his conduct were incorporated in Ontario, Canada;

f. DeFrancesco used the Nominee Entities to covertly amass substantial holdings in Cool. By September 2018, DeFrancesco's holdings (through the Nominee Entities) represented more than 32% of Cool's outstanding shares. He concealed his ownership of Cool shares by, among other things, failing to make required disclosures to the SEC;

g. From March to September 2018, Cool made several materially false and misleading statements and omissions in SEC filings, including misleading projections and statements about profitability. The false and misleading statements and omissions were incorporated by reference into Cool's registration statement, which was signed by DeFrancesco;

h. In September 2018, DeFrancesco orchestrated a fraudulent "pump and dump" scheme, which involved publishing a series of promotional articles that he secretly funded. The articles contained false and misleading statements, including baseless assertions, inflated projections, false data points, false revenue projections, and other misleading statements about Cool's profitability;

i. As a result of the fraudulent promotional campaign, Cool's share price and trading volume increased significantly. Its closing price nearly quadrupled and its trading volume increased 50-fold;

j. After the articles were published, DeFrancesco sold approximately 1.6 million shares of Cool for proceeds of over US$8 million. He sold these shares through the Nominee Entities;

k. From November 2018 to May 2019, Cool continued to repeat the false and misleading statements and omissions in its SEC filings, including statements relating to its projected growth and profitability;

l. In June 2022, Cool filed for bankruptcy.

The Final Judgment

8. The Complaint alleged that DeFrancesco violated several sections of the U.S. Securities and Exchange Act (**Exchange Act**) and the U.S. Securities Act of 1933 (**U.S. Securities Act**).

9. In June 2023, the SEC sought approval of a proposed final consent judgment against DeFrancesco. The District Court accepted the proposed consent judgment and ordered sanctions, conditions, restrictions, and requirements as against DeFrancesco. Specifically, the Final Judgment required that DeFrancesco be:

   a. permanently restrained and enjoined from violating Sections 5 and 17(a) of the Securities Act and Sections 10(b), 13(d) and 16(a) of the Exchange Act and Rules 10b-5, 13d-1(a) and 16a-3 thereunder;

   b. prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act, pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act;

   c. ordered to pay disgorgement in the amount of US$1,034,051.52 plus prejudgment interest in the amount of US$242,018.97; and

   d. ordered to pay a civil penalty in the amount of US$1,737,224.52.

10. DeFrancesco voluntarily consented to the Final Judgment without admitting or denying the allegations in the Complaint. As part of his consent, he expressly acknowledged that the Final Judgment may have collateral consequences, including under the rules and regulations of self-regulatory organizations, licensing boards and other regulatory organizations.

Jurisdiction of the Tribunal

11. The Tribunal has jurisdiction to make orders in the public interest under s. 127(1) of the Act, including reciprocating foreign orders where a person or company has agreed with a securities regulatory authority outside Canada to be subject to sanctions, conditions, restrictions or requirements under s. 127(4.0.3). Section 127(4.0.4) expressly allows the Tribunal to make an order under section 127(4.0.3) even if the circumstances predated s. 127(4.0.3).

12. The SEC is a securities regulatory authority outside Canada as defined in the Act. The SEC investigated DeFrancesco and filed a detailed Complaint, which formed the basis of the Final Judgment. DeFrancesco consented to the Final Judgment, which imposed several sanctions, restrictions, and requirements on him. As such, DeFrancesco agreed with the SEC to be subject to sanctions, conditions, restrictions and requirements within the meaning of s. 127(4.0.3).

13. Although a nexus to Ontario is not required, four of the Nominee Entities were Ontario corporations.

14. The Final Judgment includes a prohibition on acting as a director or officer of an issuer that has a class of securities registered under s. 12 of the Exchange Act or that is required to file reports under s. 15(d) of the Exchange Act. These issuers are analogous to reporting issuers under the Act.

15. It is in the public interest to make the requested order. DeFrancesco poses a risk to Ontario investors. The requested order is necessary to protect the public interest and safeguard the integrity of Ontario's capital markets.

C. ORDERS SOUGHT

16. The Commission requests that the Tribunal make the following order:

    a. DeFrancesco resigns any positions he holds as a director or officer of any reporting issuer, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

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

    c. such other orders as the Tribunal considers appropriate.

DATED this 3rd day of June, 2025

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Stacey Reisman
Litigation Counsel
Enforcement Division

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A.2
Other Notices

A.2.1 Oasis World Trading Inc. et al.

FOR IMMEDIATE RELEASE
June 4, 2025

OASIS WORLD TRADING INC.,
ZHEN (STEVEN) PANG, AND
RIKESH MODI,
File No. 2023-38

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

A copy of the Order dated June 4, 2025 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Ontario Securities Commission and Andrew DeFrancesco

FOR IMMEDIATE RELEASE
June 6, 2025

ONTARIO SECURITIES COMMISSION AND
ANDREW DEFRANCESCO,
File No. 2025-10

TORONTO – The Tribunal issued a Notice of Hearing on June 6, 2025, in the above-named matter.

A copy of the Notice of Hearing dated June 6, 2025, and Application for Enforcement Proceeding dated June 3, 2025, are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3
Orders

A.3.1 Oasis World Trading Inc. et al.

IN THE MATTER OF
OASIS WORLD TRADING INC.,
ZHEN (STEVEN) PANG, AND
RIKESH MODI

File No. 2023-38

Adjudicators: Mary Condon (chair of the panel)
Andrea Burke
Sandra Blake

June 4, 2025

ORDER

WHEREAS on June 2, 2025, the Capital Markets Tribunal held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, and considered a request from the respondents to set a schedule for the hearing of a motion to stay this proceeding against them (**Stay Motion**) and vacate existing merits hearing dates in this proceeding;

ON HEARING the submissions of the representatives of the Ontario Securities Commission and of the respondents, and on reading further correspondence from the parties following the hearing;

IT IS ORDERED, for reasons to follow, that:

1. the respondents shall serve and file their Stay Motion, and accompanying motion record, by 4:30 p.m. on June 6, 2025;

2. the Commission shall serve and file any responding motion record, by 4:30 p.m. on June 13, 2025;

3. the respondents shall serve and file written submissions by 4:30 p.m. on June 20, 2025;

4. the Commission shall serve and file written responding submissions by 4:30 p.m. on June 27, 2025;

5. the Stay Motion shall be heard on July 4, 2025, at 9:00 a.m., by videoconference, or as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and

6. the merits hearing dates of June 5, 6, 9, 10 and 11, 2025, are vacated.

“Mary Condon”

“Andrea Burke”

“Sandra Blake”

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B. Ontario Securities Commission

B.1
Notices

B.1.1 OSC Notice of Publication – OSC Rule 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; Companion Policy 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; Companion Policy 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs – Modernize the Process to Distribute Disgorged Amounts to Harmed Investors

OSC NOTICE OF PUBLICATION

OSC RULE 11-502
DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

COMPANION POLICY 11-502
DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

OSC RULE 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

COMPANION POLICY 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

MODERNIZE THE PROCESS TO DISTRIBUTE DISGORGED AMOUNTS TO HARMED INVESTORS

June 12, 2025

Introduction

The Ontario Securities Commission (the **OSC** or the **Commission**) is publishing in final form the following materials:

- OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**);
- Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CP**);
- OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CFA Rule**); and
- Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CFA CP**).

Collectively, the Rule and the CFA Rule are referred to as the **Rules**, and the CP and the CFA CP are referred to as the **Companion Policies** in this Notice.

The Rules and Companion Policies are available on the Commission's website at www.osc.ca.

Background, Substance and Purpose

On November 2, 2023, the Government introduced Bill 146, *Building a Stronger Ontario Together Act (Budget Measures), 2023*[1] (**Bill 146**). Bill 146 included legislative amendments to the *Securities Act* (Ontario)[2] (the **OSA**), the *Commodity Futures Act* (Ontario)[3] (the **CFA**), and the *Securities Commission Act, 2021*[4] (the **SCA**). These amendments establish a new statutory framework governing the distribution of money received by the Commission under disgorgement orders[5] to investors who incurred direct financial losses as a result of the contravention of Ontario securities law or Ontario commodity futures law giving rise to the payment. Bill 146 received Royal Assent on December 4, 2023, but the amendments related to this new statutory distribution framework will come into force at a later date to be named by proclamation of the Lieutenant Governor. The new statutory distribution framework will apply to disgorgement orders issued on or after the date the legislative amendments come into force. It is anticipated that the Rules and the Companion Policies will come into force at the same time as the legislative amendments.

The new statutory distribution framework provides that regulations (which may take the form of an OSC rule or a regulation made by the Lieutenant Governor in Council) will address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to eligible investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The OSC published the Proposed Rules and Proposed Companion Policies for comment on July 11, 2024 (the **Proposals**) to address these matters.

Summary of Written Comments Received by the OSC

During the comment period, we received submissions from 8 commenters. We have considered the comments received and thank all commenters for their input. The names of commenters and a summary of their comments, together with our responses, are contained in Annex A of this Notice.

Copies of the comment letters were posted at www.osc.ca.

Summary of Changes

In developing the Rules and the Companion Policies, we carefully reviewed the comments we received on the Proposals. Overall, all commenters expressed support for the proposal to modernize the framework for making disgorged funds available for distribution to harmed investors and recommended changes to certain aspects of the Proposals prior to finalization. We found some of the comments recommending changes persuasive and revised the Proposals accordingly. We also made other drafting changes which are intended to clarify the interpretations of the new requirements. As these changes are not material, we are not publishing the Rules and Companion Policies for a further comment period.

Key changes to the Proposals are summarized below. The changes to the Proposals and our reasons for making them are discussed in more detail in Annex A of this Notice.

Titles of the Rules and Companion Policies

- We have updated the titles of the Rules and Companion Policies to reflect that their subject matter includes both the distribution of disgorged amounts received by the Commission and the payment of related administrative costs.

1 1st Sess, 43rd Leg, Ontario, 2023 (assented to 4 December 2023).
2 R.S.O. 1990, c. S.5.
3 R.S.O. 1990, c. C.20.
4 S.O. 2021, c. 8, Sched. 9.
5 Disgorgement orders may be made by the Capital Markets Tribunal (**Tribunal**) under paragraph 10 of subsection 127(1) of the OSA and paragraph 10 of subsection 60(1) of the CFA, or by the Superior Court of Justice under paragraph 15 of subsection 128(3) of the OSA and paragraph 11 of subsection 60.2(3) of the CFA.

Definition of Eligible Applicant

- We have added guidance in the Companion Policies to clarify that in circumstances where an investor is unable to participate in the claims process directly due to illness or incapacity, a person such as a trustee, executor or other legal representative may file a claim on behalf of the investor. The definition of an eligible applicant includes a "person" or "company", and a "person"[6] is defined under the OSA and CFA to include a trustee, executor or other legal representative.

Requirement to Distribute

- We have added a new exception under subsection 2 (1) of the Rules to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired, or an appeal of the decision has been filed, and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted. This clarification is necessary given that a decision of the Tribunal takes effect immediately despite the fact that an appeal is taken, unless the Tribunal or the Divisional Court grants a stay until disposition of the appeal.[7]

- We have added guidance to the Companion Policies to clarify that in circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will promote cost-efficient distributions by allowing for a single distribution of all disgorged amounts received in relation to the same contravention.

- We have revised the wording in subsections 2 (2) through (4) of the Rules to clarify the intention that the factors described in subsection 2 (1) of the Rules, being "the costs of administering the distribution", the "value of the amount received under the disgorgement order" and "the number of potential eligible applicants," will be applied to the particular facts of the case in determining whether to proceed with a distribution of amounts received rather than applying a specific monetary threshold.

- Subsection 2 (2) of the Rules has been revised to clarify that where the Commission receives only part of an amount owing under a disgorgement order, the Commission must hold the amount for potential future distribution to eligible applicants up to 3 years from the date of the final disposition of the disgorgement order. As noted in the Companion Policies, during this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

    - the status of any ongoing collection efforts,

    - the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and

    - the anticipated costs of carrying out one or more distributions.

Publication of Disgorgement Amounts and Notice of Claims Process

- Subsection 4 (1) of the Rules has been revised to include a requirement for the Commission to also issue a press release when the notice of claims process is posted on the OSC's website.

- Further, in an effort to provide timely and effective notice to harmed investors when a distribution takes place, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. Investors will also be able to update their contact information if it changes. A reference to this new system has been added to the Companion Policies.

[6] OSA, s. 1 (1); CFA, s. 1 (1).
[7] OSA, s. 10 (2); CFA, s. 6 (2).

Claim Determinations

- We have revised the guidance in the Companion Policies relating to section 10 of the Rule to remove the reference to Commission staff's role in administering the claims process, as the Commission's operational processes may evolve over time.

Opportunity to provide additional supporting documentation

- To provide certainty to the Commission and applicants regarding the deadline for submitting additional supporting documentation, subsection 11 (1) of the Rules has been revised to clarify that the applicant has "35 days from the date of the notice" informing them of the Commission's intention to deny all or part of their claim to provide any additional supporting documentation that would substantiate their claim (instead of "30 days from the date the notice was delivered" to the applicant). Subsection 11 (3) describing when a notice is deemed to be delivered has been deleted.

Residual Funds

- We have added guidance in the Companion Policies to clarify that payments will generally be deposited directly into the approved applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. The Companion Policies further clarify that cheques may be issued in exceptional circumstances.

Coming-Into-Force

The Rules and other required materials were delivered to the Minister of Finance on or about June 12, 2025. The Minister may approve or reject the Rules or return them for further consideration. If the Minister approves the Rules or does not take any further action by August 26, 2025, the Rules will come into force on the later of: (a) August 26, 2025, and (b) the day on which sections 6, 7 and 10 of Schedule 1, sections 8, 9, and subsections 11(2) and (5) of Schedule 10, and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

Contents of Annexes

The following annexes form part of this Notice:

- Annex A – List of Commenters and Summary of Comments and Responses
- Annex B – OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex C – Blackline showing changes to OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex D – Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex E – Blackline showing changes to Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex F – OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex G – Blackline showing changes to OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex H – Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex I – Blackline showing changes to Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*

Questions

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ANNEX A

LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES

This Annex provides the list of commenters and summarizes the written public comments we received with respect to the July 11, 2024, publication for comments of Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement* Orders, Proposed OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders* (together "Rules"*)* and related Companion Policies, and our responses to those comments.

I. List of Commenters

We received submissions from eight commenters listed below:

1. Investment Industry Association of Canada
2. The Canadian Advocacy Council of CFA Societies Canada
3. James Sinclair (OSC Investor Advisory Panel)
4. Katie Walmsley and Warren M. Rudick (Portfolio Management Association of Canada)
5. Jean-Paul Bureaud (FAIR Canada)
6. Brigitte Catellier, Rita Yang, Raagavi Ramenthiran, Yubo Wang (The Osgoode Investor Protection Clinic)
7. Harvey S. Naglie
8. Ken Kivenko (Kenmar Associates)

For ease of reference, these submissions and our responses are categorized by common themes.

II. Summary of Comments and Responses

This summary of comments and responses contains the following sections:

A. Summary of General Support

B. Summary of Specific Comments

   1. Application of Rules to disgorged amounts received under settlement agreements
   2. Handling of disgorged funds and interest
   3. Application of payments received where disgorgement and administrative penalties have been ordered against a respondent
   4. Exception to the requirement to distribute for small amounts
   5. Use of court-appointed administrators
   6. Notice of claims process
   7. Claims process for rules-based distributions carried out by the OSC
   8. OSC's use of other sanction and settlement funds
   9. Investor resources and forms
   10. Manner of payments to approved applicants
   11. Publication, periodic reviews and reporting
   12. Placement of the distribution function within the OSC

C. Summary of Out-of-Scope Comments

A. Summary of General Support

Overall, all commenters expressed support for the proposal to modernize the framework for making disgorged funds available for distribution to harmed investors and commended the Commission for developing and implementing the framework in Ontario.

OSC Response

We thank the commenters for their support.

B. Summary of Specific Comments

1. Application of Rules to disgorged amounts received under settlement agreements

One commenter noted that it is not clear whether the definition of "disgorgement order" includes disgorgement orders that are made as part of approved settlement agreements.

OSC Response

The definition of "disgorgement order" in the Rules includes orders made by the Tribunal under paragraph 10 of subsection 127 (1) of the *Securities Act* or paragraph 10 of subsection 60 (1) of the *Commodity Futures Act*. This would capture any such order made by the Capital Markets Tribunal (Tribunal) in the context of approving a settlement agreement.

2. Handling of disgorged funds and interest

One commenter suggested that disgorged funds should be labelled for easy identification and should accrue interest with interest payable to harmed investors.

OSC Response

Funds received under disgorgement orders issued on or after the coming into force of the new distribution framework will be held in a separate interest-bearing account. Interest attributable to amounts received under a particular disgorgement order will be included for distribution with the disgorged amounts.

3. Application of payments received where disgorgement and administrative penalties have been ordered against a respondent

One commenter noted that, in cases where the Tribunal has ordered an administrative penalty and disgorgement, and the OSC receives a payment towards the administrative penalty, OSC staff should consider the payment of the administrative penalty as disgorgement and return the funds to harmed investors.

OSC Response

We agree with the substance of this comment. If the Tribunal has ordered an administrative penalty, disgorgement and/or costs against a respondent, the Commission's practice is to apply any amount received in respect of the orders first to amounts owing under the disgorgement order.

4. Exception to the requirement to distribute for small amounts

Two commenters suggested that the OSC should establish guidelines setting out how it will determine that a distribution is not required because the amount received is too small to justify the costs of a distribution. One commenter suggested that the OSC should publish a notice along with reasons for not conducting a distribution, provide notice to otherwise eligible applicants and publish the minimum threshold (set at a high level) on the website. Another commenter suggested disclosing each decision, together with reasons, on the OSC website and annual reports.

OSC Response

Consistent with the *Civil Remedies Act, 2021* and SEC distribution frameworks, subsection 2 (1) of the Rules provide that the Commission may decline to proceed with a distribution in a given case if, in its opinion, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants.

We have revised the wording in subsections 2 (2) through (4) of the Rules by removing the reference to a "threshold for distribution." The purpose of this revision is to clarify the intention that the factors described in subsection 2 (1) of the Rules will be applied to the particular facts of the case in determining whether to proceed with a distribution of amounts received rather than applying a specific monetary threshold. Although the Commission has not established a minimum threshold amount that must be

received before a distribution will be commenced, in general, it is anticipated that the Commission would not proceed with a distribution if the estimated costs of the distribution would exceed the amount available for distribution.

As part of the OSC's distribution framework, the OSC website will include a dedicated page relating to distributions that will be updated on a quarterly basis to reflect amounts received under each disgorgement order as well as the status of any distributions of disgorged amounts. If a determination is made not to proceed with a distribution of amounts received by the OSC in a given case based on the above factors, this determination will be reflected on the OSC's website. However, to ensure that OSC resources allocated to the distribution program are efficiently used and appropriately focused on carrying out distributions that are feasible, direct notice of amounts that are considered too small to distribute will not be provided to the potential class of otherwise eligible applicants, as there would be costs associated with identifying any such persons and companies and delivering notice to them. We are not aware of any such requirement to provide either direct or general notice of amounts considered too small to distribute under the other similar distribution frameworks noted above.

5. Use of court-appointed administrators

Two commenters suggested using court-appointed administrators only when necessary given cost considerations. One commenter noted that it is unclear why the OSC would take a different approach to that of the British Columbia Securities Commission that carries out most distributions in-house. The commenter further suggested establishing clear criteria for seeking the appointment of an administrator, creating a request for proposal/fee quotes process to select administrators and ensuring accountability from administrators through regular, detailed reporting.

OSC Response

Based on a review of historical data, building and resourcing a significant, fixed internal claims administration capacity with the necessary infrastructure and specialized expertise that could handle distribution files of varied scale and complexity is not practical at this time.

As noted in the Commission's Regulatory Impact Analysis published on July 11, 2024, a review of the 10-year data of cases where disgorgement was ordered by the Tribunal and received by the Commission reflects that there could be an average of approximately two distributions per year, with the number of distributions in any given year ranging from zero to seven. This suggests that a significant fixed internal claims administration capacity, if established, would not be an efficient use of resources, as these resources could go unused in some years and may be insufficient to deliver timely distributions in other years.

Accordingly, the Commission has adopted an approach that will rely primarily on the specialized expertise and resources of third-party court-appointed administrators to carry out distributions. As set out in the Companion Policies, distributions will generally be carried out directly by the Commission only where the Commission is satisfied that the potential pool of applicants can be readily identified and are small in number and their financial losses can be readily quantified. The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution, as the specialized expertise of a third-party administrator may be necessary to address issues associated with distributing funds to recipients outside of Canada.

Vendors retained by the Commission to perform claims administration services are selected on a competitive basis following the OSC's procurement policies. Once appointed to carry out a distribution, the administrator is subject to the oversight of the court, including any specific reporting obligations that may be imposed by the court relating to costs.

6. Notice of claims process

Six commenters suggested broader dissemination of claims notices to ensure that investors are made aware of the claims process. Commenters noted that investors may not be aware of or check the OSC's website regularly and as a result, may not participate in the claims process. Specifically:

- two commenters suggested including a requirement in the Rules to provide direct notice to known applicants, if available;
- one commenter suggested including a requirement for the OSC and/or administrator to make reasonable efforts to ascertain the last known addresses of harmed investors;
- one commenter suggested strengthening the Rules by including a requirement to publish a press release and disseminate the notice through social media channels in every case. Other commenters suggested using different communications channels such as the OSC's email alerts, newspapers, billboards, radio or television broadcasts;
- one commenter suggested that notices and press releases should be translated, if needed and should be designed to reach remote communities;

- some commenters agreed that the OSC should work with investor advocacy organizations to amplify the notice and suggested other organizations such as legal clinics and through education and outreach initiatives;

- one commenter recommended that where a respondent is registered under the *Securities Act*, the registrant be required to inform all known investors of the disgorgement order. Where the respondent is no longer registered under the *Securities Act*, the Commission should use its investigative powers under section 11 to inquire into the affairs of the person or company and provide direct notice to all known investors of the disgorgement order and claims process.

OSC Response

We agree that the Commission should consider using various channels to provide notice to investors based on the facts of the case.

The Rules require that where a distribution is required, notice of the claims process must be posted on the Commission's website and must set out the period within which an eligible applicant may apply. We have revised the Rules to include a requirement for the Commission to also issue a press release when the notice of claims process is posted on the OSC's website. These requirements apply to distributions carried out directly by the OSC using the rules-based process and to distributions carried out by a court-appointed administrator. Further, as set out in the Companion Policies, the Commission may amplify the website posting through additional channels such as social media channels and investor advocacy organizations.

In addition, we have revised the Companion Policies to add a reference to an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. Investors will also be able to update their contact information if it changes.

Where the distribution is being carried out directly by the Commission, the Commission will attempt to send the notice to the last known address (including electronic address), if available, of any known potential eligible applicants who inputted their information into this system.

Where the distribution is being carried out by a court-appointed administrator, additional notice requirements, such as a requirement to attempt to directly notify any known potential eligible applicants or post the distribution notice in one or more newspapers or other venues, may be specified in the claims process order made by the court.

All investors affected by the misconduct found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

We also agree with the comment that, in some cases, it may be appropriate to translate notices to reach different linguistic communities. The Commission has followed this practice in past distributions of disgorged funds. For example, in one distribution of disgorged funds, which was carried out by a court-appointed receiver, most of the harmed investors identified in the course of the Commission's investigation resided in several Middle Eastern countries. The receiver's notice and claims forms were translated into Arabic in this case.[1] In addition, the Commission engaged the assistance of securities regulators in these countries to post the receiver's notice on their websites. In another distribution of disgorged funds, which was carried out by the Ministry of the Attorney General (MAG) using the distribution framework under the *Civil Remedies Act, 2001*, the Commission obtained an order from the Tribunal to permit the sharing of information with MAG to facilitate MAG providing notice of the claims process relating to the disgorged funds through the same Hindi language radio station through which harmed investors had been solicited to invest.[2]

7. Claims process for Rules-based distributions carried out by the OSC

a. Use of confirmation of claims process

Three commenters suggested using a simplified confirmation of claims process when the OSC has information about harmed investors. One commenter suggested that in a situation where both the OSC and the investor do not have sufficient information to substantiate the claim, the OSC should consider whether this requirement could or should be waived in exceptional circumstances.

OSC Response

To ensure fairness across all applicants, claims must be substantiated by evidence. However, to make the process easy for investors, we agree that the Commission should use a simplified confirmation of claims process where possible. As noted in the Companion Policies, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement

1 Receiver appointed by Ontario Superior Court of Justice: Distribution of proceeds recovered by the OSC to GITC investors
2 https://www.capitalmarketstribunal.ca/en/proceedings/welcome-place-inc-re-1/reasons-and-decision-matter-welcome-place-inc-et-al

order. In these cases, the Commission may conduct a simplified confirmation of claims process, where the claim form invites those investors to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted by the investor,
- decline to make a claim, or
- make a claim for a different amount, supported by the submission of documentation evidencing the different amount claimed by the investor.

b. Late claims and claims deadline

One commenter suggested that the Commission should accept claims after the final day for filing a claim in exceptional circumstances such as when an applicant is severely ill, hospitalized or incapacitated. Another commenter suggested that the final day for filing a claim should be no less than 90 days and a minimum of 120 days if direct notice is not provided to the harmed investors.

OSC Response

The Rules contemplate that each distribution will have a deadline for filing a claim, which will be specified in the notice of claims process. To provide certainty for both the Commission and applicants, claims filed after the final date for filing a claim will not be considered. In circumstances where an investor is unable to participate in the claims process due to illness or incapacity, the investor's legal representative may file a claim on behalf of the investor. We have revised the Companion Policies to clarify that a legal representative, trustee or executor is considered a "person" under the definition of "eligible applicant" and may therefore submit a claim on behalf of an investor applicant.[3]

The Rules contemplate that applicants will have at least 90 days from the date of the notice to make a claim. However, the Commission may establish a longer claims period depending on the facts of the case. As noted in the Companion Policies, while the minimum period of 90 days may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if potential applicants are from a vulnerable group, are located outside of Canada, or where there is limited or no contact information for certain investors.

c. Opportunity to be heard

One commenter suggested including an opportunity to be heard process before denying a claim to allow for a transparent and fair process.

OSC Response

In developing the claims process under the Rules, the Commission considered approaches used in different distribution frameworks. Consistent with the Ontario *Civil Remedies Act, 2001* distribution framework, the Rules do not provide applicants with an "opportunity to be heard" before their claim is denied. Instead, under section 11 of the Rules, applicants are afforded an opportunity to file additional supporting documentation before the Commission denies all or part of a claim.[4] This provision is intended to provide an applicant with an opportunity to supply any missing information to the Commission before the Commission makes a final determination about the claim but does not provide the applicant with a right to a hearing. This approach is guided by the goal of ensuring that the process is both fair to individual applicants and remains efficient for all applicants, as payments will not generally be made to approved applicants until all claims have been determined in relation to a particular disgorgement order. To provide certainty to the Commission and applicants regarding the deadline for submitting additional supporting documentation, section 11 of the Rules has been revised to clarify that the applicant has 35 days from the date of the notice informing them of the Commission's intention to deny all or part of their claim to provide any additional supporting documentation that would substantiate their claim.

Under the *Securities Act* and the *Commodity Futures Act*, decisions of the Commission may be varied, revoked or appealed.

d. Investor supports

Three commenters suggested the following supports should be provided as part of the claims process:

- accepting claims information by phone in special circumstances;

[3] The definition of "person" in the *Securities Act* and the *Commodity Futures Act* includes, among other things, a "trust, trustee, executor, administrator, or other legal representative".

[4] The *Civil Remedies Act, 2001* distribution framework does not provide for an opportunity to provide additional supporting documentation before a claim is denied.

- designing a user-friendly system with streamlined navigation, clear instructions, plain language and support options that reduce reliance on costly legal assistance;
- setting up a toll-free helpline that investors can call if they need assistance in completing the forms or have questions about the process.

OSC Response

We thank the commenters for their suggestions. We will consider them as we operationalize the statutory framework. The OSC is committed to making the claims process user-friendly and to meeting the needs of persons with disabilities. In addition to developing plain language resources to assist investors, investor applicants will be able to contact OSC distribution staff by email and phone with questions about the claims process or to request accommodations.

8. OSC's use of other sanctions and settlement funds

a. Pro rata distribution

One commenter suggested that instead of distributing funds on a pro rata basis where the disgorged amount is insufficient to satisfy the full amount of all approved claims, the Commission could consider supplementing any shortfall from other sanctions and settlement money held by the Commission.

OSC Response

The content of the Rules is confined to matters addressed in the legislative framework for distributing amounts received under disgorgement orders. This legislative framework contemplates that other sanctions and settlement money held by the Commission may be used to pay for administrative costs of distributing disgorged amounts instead of deducting these costs from the disgorged amount. This approach will allow for more of the disgorged amounts that are subject to the distribution requirement to go back into the hands of harmed investors.

b. Administrative costs

Three commenters made the following comments with respect to minimizing distributions costs and maximizing the amounts to be distributed:

- Establish clear guidelines that define "reasonable costs" including specific criteria for assessing the appropriateness of such expenses;
- Disclose a breakdown of costs incurred, including external advice expenses; develop uniform standard for calculating costs and provide periodic reporting;
- Pay for administrative costs from other fines and settlement payments, other sanction and settlement funds held by the Commission, or accrued interest, without depleting disgorged funds available for distribution**.**

OSC Response

The framework for payment of administrative costs aims to minimize the amount of administrative costs being paid out of the disgorged amount being distributed by allowing for the payment of some or all of these costs from other sanction and settlement funds held by the Commission.

Where the distribution is carried out directly by the Commission in accordance with Part 5 of the Rules, administrative costs that are eligible for payment are confined to the reasonable costs of obtaining external advice relating to the distribution.

Where the distribution is carried out by a court-appointed administrator, administrative costs that are eligible for payment include the reasonable costs incurred by the administrator in carrying out the distribution.

Importantly, steps taken by the court-appointed administrator to distribute the disgorged amount in a given a case will be guided by the claims process order approved by the court. Further, it is anticipated that any costs that are proposed to be paid from the disgorged amount would be subject to the oversight of the court.

It is anticipated that administrative costs will vary across distribution files depending on the facts of the case and will be influenced by factors such as:

- the number and location of applicants,
- any special requirements of the applicants, such as language requirements,

- any specific expertise that may be required to conduct the distribution, such as the development of one or more potential models to quantify losses in a complex case,
- the manner in which notice to potential investors is carried out,
- the volume and complexity of the claims that must be reviewed, and
- whether there are disputed claims.

To promote cost-efficient distributions, where appropriate, the Commission will distribute amounts received under disgorgement orders arising from the same contravention in a single distribution. To reflect this practice, we have added guidance in the Companion Policies relating to subsection 2 (1) of the Rules to clarify that in circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents.

Any administrative costs paid from the disgorged amount will be disclosed in the report to be published for each completed distribution in accordance with the requirements set out in section 16 of the Rules.

c. Undistributed amounts

One commenter suggested that the OSC be required to allocate undistributed disgorged amounts towards the payment of administrative costs of future distributions or other investor protection initiatives. Another commenter suggested that undistributed amounts should be held together with other sanction and settlement funds and not used to subsidize OSC operations.

OSC Response

The legislation requires the OSC to deal with undistributed amounts in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the SCA). Accordingly, undistributed amounts will be held together with other sanctions and settlement funds and these funds may then be allocated for potential use in accordance with subsection 19 (2) of the SCA.

In addition to current purposes for which funds may be allocated, when the new distribution framework comes into force, subsection 19 (2) of the SCA will contain a new subclause that will also allow the Commission to allocate these funds:

> "for use to pay administrative costs in relation to the distribution of disgorged amounts…."

Currently, subsection 19 (2) allows the Commission to allocate the funds:

(i) to or for the benefit of third parties,

(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, or

(iii) for any other purpose specified in the regulations.

The regulations[5] specify that the Commission may allocate money under subsection 19 (2) of the SCA for the following additional purposes:

- For use by the Commission to enhance its capabilities in information technology, data acquisition and data analytics in order to address regulatory matters relating to investor protection, the reduction of systemic risk or the integrity of the capital markets. For example, the enhancements may consist of the development, purchase, installation or deployment of software or hardware or the implementation of special projects relating to data integration, risk modelling or cyber security.

  Ongoing operating costs of the Commission are not included in this purpose.

- For use by the Commission to fund activities of the Commission's Office of Economic Growth and Innovation that are aimed at fostering innovation, capital formation and competition in Ontario's capital markets.

[5] Ontario Regulation 28/24.

9. Investor resources and forms

a. Plain language materials

Two commenters supported the OSC's commitment to developing plain language resources to assist investors to better understand the new statutory distribution framework and process to apply for payments. Commenters also suggested using plain language to draft notices and other communications and instructions to submit claims. One commenter emphasized the need to publish educational materials to educate investors about the process in order to manage expectations.

b. Guidance on eligibility criteria

One commenter suggested that clear guidance is needed on the eligibility criteria particularly the difference between lost opportunity damages and direct financial losses, and how losses will be assessed. Another commenter suggested explaining these concepts through educational materials.

c. Updates to claims application

One commenter suggested explaining in the claim form in clear, plain language with examples what constitutes a material change and when investors should report a material change.

d. Claim denial

One commenter suggested that the claim form should clearly explain the claim denial process.

e. Simplified website navigation

One commenter suggested simplifying website navigation so that investors can easily locate the information relating to distributions.

OSC Response

We thank the commenters for their comments and suggestions and will consider them as we develop the investor resources and forms and related website functionality.

10. Manner of payments to approved applicants

One commenter suggested making payments to investors by cheque or electronic transfer.

OSC Response

Payments will generally be deposited directly into the approved applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While cheques may be issued in exceptional circumstances, if a cheque is not cashed after 180 days following its issuance, in accordance with section 13 of the Rules, the funds belong to the Commission and must be dealt with in accordance with subsection 19 (2) of the SCA. The Companion Policies contemplate that the Commission will undertake reasonable efforts to contact payees who have not cashed a cheque within 90 days.

11. Publication, Periodic Reviews and Reporting

Four commenters suggested that the OSC report on:

- respondents who have failed to pay disgorgement orders together with information about collections and distributions,
- information about cases where collections efforts are unsuccessful, including reasons,
- the methodology used to carry out distributions,
- information about how the statutory framework is working, including challenges and successes,
- information on program outcomes, similar to the U.K. Financial Conduct Authority's reporting.

One commenter recommended that notices of collection and distributions across all Canadian securities regulators be aggregated and published on a centralized website.

Another commenter suggested that the OSC conduct periodic reviews of completed claims processes to determine if costs should be funded from disgorged amounts or whether other sources of income should be allocated to pay for distribution costs.

OSC Response

We thank the commenters for their comments and suggestions.

Once the new distribution framework is in place, a dedicated area of the OSC's website will house information relating to the new distribution framework. This section will identify matters where disgorgement has been ordered, amounts received under those orders and amounts that remain unpaid.[6] This section will also include investor resources, notices of any active distributions and reporting on completed distributions. Under section 16 of the Rules, the OSC is required to report on each completed distribution no later than 60 days after the funds have been fully distributed.

The OSC will also monitor the implementation of the new distribution program and consider how to increase transparency around the program's outcomes.

12. Placement of the distribution function within the OSC

One commenter suggested that the collections of unpaid monetary sanctions and distribution of disgorged funds should be carried out by staff organizationally independent of enforcement. Another commenter noted that in 2020, the U.S. Securities & Exchange Commission created a dedicated Office of Bankruptcy, Collections, Distributions, and Receiverships in the Division of Enforcement and suggested that the OSC consider taking a similar approach.

OSC Response

We thank the commenters for their comments and suggestions and will consider them as we operationalize the distribution framework.

C. Summary of Out of Scope Comments

We received some comments on topics that are outside the scope of this rulemaking initiative, including:

- defining "ill-gotten gains"
- improving collections, including through legislative amendments
- publishing a methodology for calculating disgorgement
- prioritizing investor compensation over fines in enforcement proceedings
- extending the distribution framework to include administrative penalties
- sponsoring a securities class actions database
- giving binding authority to the Ombudsman for Banking Services and Investments

OSC Response

We note the comments but have not provided specific responses to comments outside the scope of this rulemaking initiative.

[6] In addition, the OSC separately maintains on its website a list of individuals or companies with unpaid administrative penalties, disgorgement orders and costs, which is updated on a quarterly basis: https://www.osc.ca/en/enforcement/osc-sanctions/individuals-or-companies-unpaid-osc-sanctions

ANNEX B

OSC RULE 11-502
DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Rule:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 128.1 (4) of the *Securities Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 127 (1) or paragraph 15 of subsection 128 (3) of the *Securities Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 128.1 (2) of the *Securities Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

(a) the money has been received under a disgorgement order arising from a contravention of section 76 of the *Securities Act*;

(b) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;

(c) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to justify making a distribution.

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to justify making a distribution and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) occurs on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, other than a disgorgement order arising from a contravention of section 76 of the *Securities Act*, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this Rule.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 128.1 (3) of the *Securities Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding in which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this Rule will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 128.1(4) of the *Securities Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 35 days from the date of the notice.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address provided in the applicant's claim form.

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back the disputed claim amount and make payments, including partial payments, to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 128.1 (14) of the *Securities Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of section 8, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 128.1 (9) and (12) of the *Securities Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 128.1 of the *Securities Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 128.1 (9) or (12) of the *Securities Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount or the value of the approved claim amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

PART 8
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

(a) August 26, 2025;

(b) the day on which sections 8, 9 and subsections 11 (2) and (5) of Schedule 10 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX C

~~PROPOSED~~ OSC RULE 11-502
DISTRIBUTION OF AMOUNTS ~~PAID TO~~RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this ~~Instrument~~Rule:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 128.1 (4) of the *Securities Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 127 (1) or paragraph 15 of subsection 128 (3) of the *Securities Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 128.1 (2) of the *Securities Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

(a) the money has been received under a disgorgement order arising from a contravention of section 76 of the *Securities Act*;

(b) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants~~.~~;

(c) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants ~~until the earlier of~~ for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

~~(a) 3 years from the date of the final disposition of the disgorgement order, and~~

~~(b) the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in paragraph (b) of subsection (1).~~

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to ~~satisfy the threshold for~~justify making a distribution ~~described in paragraph (b) of subsection (1).~~.

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to ~~satisfy the threshold for~~justify making a distribution ~~described in paragraph (b) of subsection (1)~~ and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) ~~begins~~occurs on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, other than a disgorgement order arising from a contravention of section 76 of the *Securities Act*, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this ~~Instrument~~Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this ~~Instrument~~Rule.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 128.1 (3) of the *Securities Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. ~~(1)~~ If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding ~~under~~in which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this ~~Instrument~~Rule will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this ~~Instrument~~Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 128.1(4) of the *Securities Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within ~~30~~35 days from the date of the notice ~~was delivered~~.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address~~,~~ provided in the applicant's claim form.

~~**(3)** The notice in subsection (1) is deemed to have been delivered~~

~~(a) by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and~~

~~electronically or digitally, on the day of delivery.~~

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount and make payments, including partial ~~installment~~ payments, to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 128.1 (14) of the *Securities Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of ~~sub~~section 8 ~~(1)~~, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 128.1 (9) and (12) of the *Securities Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 128.1 of the *Securities Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this ~~Instrument~~Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 128.1 (9) or (12) of the *Securities Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same ~~proceedings~~proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount~~,~~ or the value of the approved claim ~~amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that~~ amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

PART 8
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

(a) August 26, 2025;

(b) the day on which sections 8, 9 and subsections 11 (2) and (5) of Schedule 10 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX D

COMPANION POLICY 11-502
DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Securities Act* (Ontario) (the **OSA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario securities law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the OSA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 128.1 of the OSA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets and confidence in capital markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario securities law.

When a person or company is alleged to have contravened Ontario securities law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario securities law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The purpose of a disgorgement order is not to compensate investors. Instead, disgorgement orders have been made to prevent a wrong-doer from benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the OSA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The OSA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the OSA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as eligible applicants. The definition of an eligible applicant includes any person[iv] or company[v] that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of "person"[vi] in the OSA includes, among other things, a "trust, trustee, executor, administrator, or other legal representative." In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),

- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,

- financial losses relating to the loss of an opportunity,

- interest on any financial loss, and

- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the disgorgement was ordered in relation to a contravention of the prohibition against "insider trading and tipping" under section 76 of the OSA;

- the amount received is too small to justify the costs of distributing it;

- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within the first two exceptions will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[vii] The third exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,

- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date the disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario securities law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,

- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and

- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

Section 3 - Publication of money received under disgorgement orders

Except in the case of money received in relation to the insider trading and tipping prohibitions under section 76 of the OSA, for each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;

- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and

- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through social media channels and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;

- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Content of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
    - the applicant's direct financial losses and the amount claimed;
    - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
    - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
    - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
    - the applicant's involvement in the misconduct, if any;
    - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 35 days from the date of the notice to file the additional supporting documentation.

Section 12 – No payment until all claims are determined

Subsection 12 (1) of the Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial payments, to the remaining eligible applicants. In these cases, the Commission will hold back the disputed claim amount.

Section 13 - Residual funds

Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA[viii]. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.[ix]

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While

cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not cashed their cheques within 90 days following the issuance of the cheque.

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The OSA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[x] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[xi].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and

- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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[i] The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario securities law is found in paragraph 10 of subsection 127 (1) of the OSA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law is found in paragraph 15 of subsection 128 (3) of the OSA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 122 of the OSA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

[ii] The legislative framework for distributing money disgorged to the Commission is found in section 128.1 of the OSA.

[iii] Subsections 128.1 (4) and (10) of the OSA set out the two methods of distribution.

[iv] Under the OSA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

[v] Under the OSA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

[vi] Please refer to endnote iv.

[vii] Subsection 128.1 (15) of the OSA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,
(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the OSA, or
(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

[viii] Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

[ix] See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

[x] Subsection 128.1 (9) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

[xi] Subsection 128.1 (12) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

ANNEX E

~~PROPOSED~~ COMPANION POLICY 11-502
DISTRIBUTION OF AMOUNTS ~~PAID TO~~RECEIVED BY THE OSC UNDER
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-502 *Distribution of Amounts ~~Paid to~~Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Securities Act* (Ontario) (the **OSA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario securities law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the OSA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 128.1 of the OSA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets and confidence in capital markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario securities law.

When a person or company is alleged to have contravened Ontario securities law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario securities law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its ~~prosecutorial~~ discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The ~~primary~~ purpose of a disgorgement order is not to compensate investors~~, but~~. Instead, disgorgement orders have been made to prevent a wrong-doer from ~~keeping amounts they obtained as a result of the~~ benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the OSA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The OSA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the OSA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as "eligible applicants". The definition of an eligible applicant includes any person[iv] or company[v] that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of "person"[vi] in the OSA includes, among other things, a "trust, trustee, executor, administrator, or other legal representative." In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor~~).~~ by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),

- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,

- financial losses relating to the loss of an opportunity,

- interest on any financial loss, and

- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the disgorgement was ordered in relation to a contravention of the prohibition against "insider trading and tipping" under section 76 of the OSA;

- the amount received is too small to justify the costs of distributing it~~.~~ ;

- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within ~~these~~the first two exceptions will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[vii] The third exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,

- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date ~~of~~ the ~~final disposition of the~~disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was ~~resolved~~exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario securities law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants ~~until the earlier of~~for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order ~~and the date that~~ if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been ~~resolved~~exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that ~~meets the threshold for~~justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,

- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and

- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for~~justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for~~justify carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission~~.~~ on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

Section 3 - Publication of money received under disgorgement orders

Except in the case of money received in relation to the insider trading and tipping prohibitions under section 76 of the OSA, for each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding ~~under~~in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;

- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and

- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, ~~including~~accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through ~~press releases,~~ social media channels~~,~~ and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will ~~also~~ attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants~~.~~ who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;

- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Content of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding ~~under~~in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. ~~The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.~~

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;

- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have ~~30~~35 days from the date of the notice ~~was delivered~~ to file the additional supporting documentation.

Section 12 – No payment until all claims are determined

Subsection 12 (1) of the ~~Proposed~~ Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial ~~installment~~ payments, to the remaining eligible applicants. In these cases, the Commission will hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount.

Section 13 - Residual funds

~~In practice~~

Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA[viii]. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.[ix]

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not ~~deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA*.~~cashed their cheques within 90 days following the issuance of the cheque.

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The OSA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[xi] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[xii].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and
- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount ~~if that amount has been determined by the Commission or the administrator.~~.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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[i] The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario securities law is found in paragraph 10 of subsection 127 (1) of the OSA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law is found in paragraph 15 of subsection 128 (3) of the OSA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 122 of the OSA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

[ii] The legislative framework for distributing money disgorged to the Commission is found in section 128.1 of the OSA.

[iii] Subsections 128.1 (4) and (10) of the OSA set out the two methods of distribution.

[iv] Under the OSA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

[v] Under the OSA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

[vi] Please refer to endnote iv.

[vii] Subsection 128.1 (15) of the OSA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,
(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the OSA, or
(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

[viii] Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

[ix] See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

~~* Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.~~

xi Subsection 128.1 (9) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

xii Subsection 128.1 (12) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

ANNEX F

OSC RULE 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Rule:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 60.2.1(4) of the *Commodity Futures Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 60 (1) or paragraph 11 of subsection 60.2 (3) of the *Commodity Futures Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 60.2.1 (2) of the *Commodity Futures Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

(a) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;

(b) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to justify making a distribution.

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to justify making a distribution and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) occurs on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this Rule.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 60.2.1 (3) of the *Commodity Futures Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding in which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this Rule will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 60.2.1 (4) of the *Commodity Futures Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 35 days from the date of the notice.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address provided in the applicant's claim form.

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back the disputed claim amount and make payments, including partial payments, to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 60.2.1 (14) of the *Commodity Futures Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of section 8, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 60.2.1 (9) and (12) of the *Commodity Futures Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 60.2.1 of the *Commodity Futures Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 60.2.1 (9) or (12) of the *Commodity Futures Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount or the value of the approved claim amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

PART 8
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

(a) August 26, 2025;

(b) the day on which sections 6, 7 and 10 of Schedule 1 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX G

~~PROPOSED~~ OSC RULE 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS ~~PAID TO~~RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this ~~Instrument~~Rule:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 60.2.1(4) of the *Commodity Futures Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 60 (1) or paragraph 11 of subsection 60.2 (3) of the *Commodity Futures Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 60.2.1 (2) of the *Commodity Futures Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

(a) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants~~.~~;

(b) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants ~~until the earlier of~~ for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

~~(a) 3 years from the date of the final disposition of the disgorgement order, and~~

~~(b) the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in subsection (1).~~

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to ~~satisfy the threshold for~~justify making a distribution ~~described in subsection (1)~~.

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to ~~satisfy the threshold for~~justify making a distribution ~~described in subsection (1)~~ and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) ~~begins~~occurs on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this ~~Instrument~~Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this ~~Instrument~~Rule.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 60.2.1 (3) of the *Commodity Futures Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. ~~(1)~~ If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding ~~under~~in which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this ~~Instrument~~Rule will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this ~~Instrument~~Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 60.2.1 (4) of the *Commodity Futures Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within ~~30~~35 days from the date of the notice ~~was delivered~~.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address~~,~~ provided in the applicant's claim form.

~~**(3)** The notice in subsection (1) is deemed to have been delivered~~

~~(a) by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and~~

~~electronically or digitally, on the day of delivery.~~

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount and make payments, including partial ~~installment~~ payments, to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 60.2.1 (14) of the *Commodity Futures Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of ~~sub~~section 8 ~~(1)~~, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 60.2.1 (9) and (12) of the *Commodity Futures Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 60.2.1 of the *Commodity Futures Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this ~~Instrument~~Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 60.2.1 (9) or (12) of the *Commodity Futures Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same ~~proceedings~~proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such

administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount, or the value of the approved claim ~~amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that~~ amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

PART 8
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

(a) August 26, 2025;

(b) the day on which sections 6, 7 and 10 of Schedule 1 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX H

COMPANION POLICY 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Commodity Futures Act* (Ontario) (the **CFA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario commodity futures law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the CFA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 60.2.1 of the CFA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive commodity futures markets and confidence in those markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario commodity futures law.

When a person or company is alleged to have contravened Ontario commodity futures law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario commodity futures law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The purpose of a disgorgement order is not to compensate investors. Instead, disgorgement orders have been made to prevent a wrong-doer from benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the CFA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The CFA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the CFA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as eligible applicants. The definition of an eligible applicant includes any person[iv] or company[v] that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of "person"[vi] in the CFA includes, among other things, a "trust, trustee, executor, administrator, or other legal representative." In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),

- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,

- financial losses relating to the loss of an opportunity,

- interest on any financial loss, and

- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the amount received is too small to justify the costs of distributing it;

- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within the first exception will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[vii] The second exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,

- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date the disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario commodity futures law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

Section 3 - Publication of money received under disgorgement orders

For each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through social media channels and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Content of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
    - the applicant's direct financial losses and the amount claimed;
    - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
    - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
    - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
    - the applicant's involvement in the misconduct, if any;
    - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 35 days from the date of the notice to file the additional supporting documentation.

Section 12 – No payment until all claims are determined

Subsection 12 (1) of the Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial payments, to the remaining eligible applicants. In these cases, the Commission will hold back the disputed claim amount.

Section 13 - Residual funds

Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA[viii]. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.[ix]

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While

cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not cashed their cheques within 90 days following the issuance of the cheque.

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The CFA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[x] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[xi].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and

- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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[i] The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario commodity futures law is found in paragraph 10 of subsection 60 (1) of the CFA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law is found in paragraph 11 of subsection 60.2 (3) of the CFA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 55 of the CFA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

[ii] The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.

[iii] Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.

[iv] Under the CFA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

[v] Under the CFA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

[vi] Please refer to endnote iv.

[vii] Subsection 60.2.1 (15) of the CFA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,
(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 60.2.1 (9) or (12) of the CFA, or
(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

[viii] Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

[ix] See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

[x] Subsection 60.2.1 (9) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

[xi] Subsection 60.2.1 (12) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

ANNEX I

~~PROPOSED~~ COMPANION POLICY 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS ~~PAID TO~~RECEIVED BY
THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts ~~Paid to~~Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Commodity Futures Act* (Ontario) (the **CFA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario commodity futures law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the CFA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 60.2.1 of the CFA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive commodity futures markets and confidence in those markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario commodity futures law.

When a person or company is alleged to have contravened Ontario commodity futures law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario commodity futures law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its ~~prosecutorial~~ discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The ~~primary~~ purpose of a disgorgement order is not to compensate investors~~, but~~. Instead, disgorgement orders have been made to prevent a wrong-doer from ~~keeping amounts they obtained as a result of the~~ benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the CFA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The CFA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the CFA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as "eligible applicants". The definition of an eligible applicant includes any person[iv] or company[v] that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of "person"[vi] in the CFA includes, among other things, a "trust, trustee, executor, administrator, or other legal representative." In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor~~).~~ by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),

- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,

- financial losses relating to the loss of an opportunity,

- interest on any financial loss, and

- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the amount received is too small to justify the costs of distributing it;

- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within ~~this~~the first exception will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[vii] The second exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,

- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date ~~of~~ the ~~final disposition of the~~disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was ~~resolved~~exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario commodity futures law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants ~~until the earlier of~~ for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order ~~and the date that~~ if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been ~~resolved~~exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that ~~meets the threshold for~~justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for~~justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for~~justify carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission~~.~~ on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

Section 3 - Publication of money received under disgorgement orders

For each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding ~~under~~in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, ~~including~~accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through ~~press releases,~~ social media channels~~,~~ and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will ~~also~~ attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants~~.~~ who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Content of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding ~~under~~in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. ~~The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.~~

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have ~~30~~35 days from the date of the notice ~~was delivered~~ to file the additional supporting documentation.

Section 12 – No payment until all claims are determined

Subsection 12 (1) of the ~~Proposed~~ Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial ~~installment~~ payments, to the remaining eligible applicants. In these cases, the Commission will hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount.

Section 13 - Residual funds

~~In practice~~Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA[viii]. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.[ix]

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While

cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not ~~deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA*.~~cashed their cheques within 90 days following the issuance of the cheque.

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The CFA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[xi] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[xii].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and

- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount ~~if that amount has been determined by the Commission or the administrator.~~.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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[i] The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario commodity futures law is found in paragraph 10 of subsection 60 (1) of the CFA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law is found in paragraph 11 of subsection 60.2 (3) of the CFA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 55 of the CFA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

[ii] The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.

[iii] Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.

[iv] Under the CFA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

[v] Under the CFA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

[vi] Please refer to endnote iv.

[vii] Subsection 60.2.1 (15) of the CFA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,
(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 60.2.1 (9) or (12) of the CFA, or
(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

[viii] Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

[ix] See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

~~* Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.~~

[xi] Subsection 60.2.1 (9) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

[xii] Subsection 60.2.1 (12) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

B.1.2 OSC Staff Notice 33-758 2025 – Examination Priorities for the Registration, Inspections and Examinations Division

OSC STAFF NOTICE 33-758
2025 EXAMINATION PRIORITIES FOR THE REGISTRATION, INSPECTIONS AND EXAMINATIONS DIVISION

Introduction

The Registration, Inspections and Examinations Division (**RIE**) of the Ontario Securities Commission (**OSC**) is responsible for the ongoing supervision of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. RIE's focus remains on operating a robust, yet balanced, gateway for Ontario's capital markets, and providing efficient and effective compliance oversight of our market participants.

On May 3, 2024, the OSC published its 2024-2030 Strategic Plan (**Strategic Plan**[1]), that builds on the work that has been done in recent years to modernize and strengthen the organization. To promote the Strategic Plan, RIE is publishing its 2025 examination priorities, which are informed by the six goals of the Strategic Plan, as well as risk identification from different sources, including consultation with other divisions within the OSC, prior years' examinations, market events and interactions, and open dialogue with market participants, advisory committees, industry groups and other regulators, both Canadian and international.

RIE's 2025 examination priorities is not an exhaustive compilation of the initiatives that RIE will be focused on in fulfilling its important responsibilities. RIE will be proactive in its response to new and emerging risks, evolving products and service offerings, market events and investor concerns, which may impact its 2025 examination priorities.

RIE will continue examining high impact firms and high-risk firms, as determined by the data collected from the risk assessment questionnaire (**RAQ**). The RAQ is used to gather information about the business operations, practices and procedures of firms registered with the OSC and is used to apply a risk ranking to a firm. The information collected is used to support our oversight activities and evidence-based decision making, which allows us to allocate resources more effectively and efficiently. Firms may also be selected for an examination for reasons including: a focused examination on a particular topic of interest or issue; if RIE receives complaints about a firm; or if RIE receives a referral from another OSC division or regulator.

RIE will continue to conduct pre-registration examinations of firms seeking to become registered with the OSC. RIE will also review participation fee filings and excess working capital filings to ensure that firms are paying their required fees and that they are meeting their capital obligations.

In the upcoming year, RIE will expand its examination mandate to include other regulated entities, such as exchanges, designated rating organizations and clearing agencies, in close coordination with the OSC's Corporate Finance and Trading and Markets Divisions.

Additionally, RIE's expanded examination mandate will include direct examinations of Canadian Investment Regulatory Organization (**CIRO**) member firms. Following the delegation of certain powers and duties to CIRO (the **Delegation Order**[2]) effective March 5, 2025, the OSC implemented an enhanced framework of ongoing oversight of the delegated powers and duties and intends to perform risk-based direct compliance examinations of CIRO member firms. These reviews may take on one of several different forms, including co-reviews with CIRO, thematic sweeps, such as those described below, by line of business, desk reviews or comprehensive assessments. We will be coordinating with CIRO to avoid duplication in scheduling where possible to lessen potential burden.

Examination initiatives

Artificial Intelligence (AI)

RIE will examine the prevalence of AI within registrants' operations. Registrants are rapidly designing, developing, and deploying AI systems in ways that may affect their compliance with business conduct rules. RIE will examine how registrants are responding to the Canadian Securities Administrators (**CSA**) Staff Notice and Consultation 11-348 *Applicability of Canadian Securities Laws and the use of Artificial Intelligence Systems in Capital Markets* to provide reasonable assurance that the firm and each individual acting on its behalf comply with securities legislation.

Cybersecurity

RIE will examine policies and procedures that registrants have in place to protect against and respond to cybersecurity incidents, and protect records, assets and investor information. The cybersecurity risks associated with registrant businesses are continuously evolving, as are the prudent business practices that registered firms are expected to establish. We anticipate these examinations may identify areas of cybersecurity risks and we expect to provide our market participants with further guidance in this area.

Financial Institution Sales Practices Examination

In collaboration with CIRO, RIE will continue its examination into the sales practices within Canadian bank branches. The review commenced following a public report of potential investor harm due to alleged high-pressure sales practices for

[1] https://www.osc.ca/sites/default/files/2024-05/pub_20240503_OSC-strategic-plan.pdf
[2] https://www.osc.ca/en/securities-law/orders-rulings-decisions/canadian-investment-regulatory-organization-s215-osa-s20-cfa

mutual funds at some Canadian banks. The purpose of the review is to build an understanding of the sales culture, environment and sales practices within banks branches to be able to identify and assess the scale of any potential issues and determine whether further work is needed.

The Exempt Market

In collaboration with the OSC's Corporate Finance Division, RIE will examine exempt market dealers that distribute securities in reliance on the offering memorandum exemption in section 2.9 of National Instrument 45-106 *Prospectus Exemptions*. The examination will consider the know-your-product practices of registrants when distributing securities of issuers that are in default of their reporting obligations under the offering memorandum exemption.

Firms will be selected for these reviews by our data driven approach and market research. To the extent that we gather intelligence that suggests that this subject matter may not be applicable to the registrant, they will not be selected. However, outreach may be required in order to inform our planning processes and apply our resources as effectively as possible.

How to prepare for an examination

RIE directs you to the following useful resources available through the OSC website, that will assist in preparing for an examination:

- OSC compliance reviews

  https://www.osc.ca/en/industry/registration-and-compliance/ongoing-requirements/osc-compliance-reviews

- Navigating an OSC compliance review

  https://www.osc.ca/en/industry/registration-and-compliance/ongoing-requirements/osc-compliance-reviews/navigating-osc-compliance-review

In addition, RIE will continue to provide resources to registrants, market participants and stakeholders, such as the Registrant Outreach programs[3] and the Topical Guide for Registrants, to promote strong, proactive compliance practices that foster confidence in the capital markets and promote increased investor protection. As part of the OSC's new operating structure, RIE will work closely with our Investment Management, Corporate Finance, Trading and Markets and Enforcement Divisions to advance the OSC's mandate by predominantly focusing on inspections, targeted sweeps, and examinations to support a timely and agile response to emerging issues. RIE's renewed focus will proactively promote compliance through more frequent external communications to prevent and course correct problematic practices through analysis of data, market trends and input from other regulatory divisions to identify areas of heightened risk. For more details of RIE's operations, we encourage you to review RIE's most recent *Summary Report for Dealers, Advisers and Investment Fund Managers*[4,5].

Questions

If you have any questions regarding Staff Notice 33-758, please refer them to any of the following:

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[3] https://www.osc.ca/en/industry/registration-and-compliance/registrant-outreach-program
[4] https://www.osc.ca/en/securities-law/instruments-rules-policies/3/33-756/osc-staff-notice-33-756-registration-inspections-and-examinations-division-summary-report-dealers
[5] Since the publication of last year's RIE's Summary Report for Dealers, Advisers and Investment Fund Managers, the OSC appointed Matthew Onyeaju, LL.M, FRM, CAMS, as the Senior Vice President, RIE.

B.1.3 Notice of Ministerial Approval of OSC Rule 81-510 Dealer Rebates of Trailing Commissions

NOTICE OF MINISTERIAL APPROVAL OF
OSC RULE 81-510 *DEALER REBATES OF TRAILING COMMISSIONS*

Ministerial Approval

On January 28, 2025, the Ontario Securities Commission made OSC Rule 81-510 *Dealer Rebates of Trailing Commissions* (the Rule) in Ontario.

The Rule was published on April 3, 2025 in the Bulletin. See (2025), 48 OSCB 3011.

On May 9, 2025, the Minister of Finance approved the Rule.

The text of the Rule is published in Chapter B.5 of this Bulletin.

Effective Date

The Rule has an effective date of May 31, 2025.

B.2
Orders

B.2.1 16080022 Canada Inc.

Headnote

Policy Statement 11-206 respecting Process for Cease to be a Reporting Issuer Applications – Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Revocation of failure-to-file cease trade order and a revocation of reporting issuer status – Transaction under Companies' Creditors Arrangement Act – sale and investment solicitation process approved by the Court – a share purchase agreement concluded – revocation of reporting issuer status and failure-to-file cease trade order granted.

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, CQLR, c. V-1.1, ss. 69, 265 and 318.
Securities Act, R.S.O. 1990, c.S.5, as am., s. 1(10)(a)(ii).

[Original text in French]

April 28, 2025

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
16080022 CANADA INC.
(the Filer)

ORDER

Background

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

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

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

b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon Alberta and British Columbia;

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2025/0200

B.3
Reasons and Decisions

B.3.1 Global X Investments Canada Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exchange traded alternative mutual funds granted exemption from the concentration restriction in subsection 2.1(1.1) of NI 81-102 to permit each fund to enter into purchase and/or specified derivatives transactions to obtain daily investment results that endeavour to correspond to 300% of the daily performance of an index, or 300% of the inverse of the daily performance of an index, in accordance with, and as limited by, its investment objective, subject to conditions.

Applicable Legislative Provisions

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

May 20, 2025

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
GLOBAL X INVESTMENTS CANADA INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of BetaPro S&P 500 3x Daily Bull ETF (**TSPX**), BetaPro S&P 500 -3x Daily Bear ETF (**SSPX**), BetaPro Nasdaq-100 3x Daily Bull ETF (**TQQQ**) and BetaPro Nasdaq-100 -3x Daily Bear ETF (**SQQQ**), each an alternative mutual fund managed by the Filer or an affiliate of the Filer (each, an **Existing Fund** and, collectively, the **Existing Funds**), and any other alternative funds that are or will be managed by the Filer or an affiliate of the Filer, and that have investment objectives to seek daily investment results, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to 300% of the daily performance of an Index, or 300% of the inverse of the daily performance of an Index (the **Future Funds**, and together with the Existing Funds, the **Funds**) for a decision (the **Exemption Sought**) under the securities legislation of the principal regulator (the **Legislation**) relieving the Funds from subsection 2.1(1.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), in order to permit the Funds to purchase securities of an issuer, enter into a specified derivatives transaction or purchase an index participation unit even though, immediately after the transaction, more than 20% of the net asset value (**NAV**) of the Funds would be invested, directly or indirectly, in securities of any issuer (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Canada, with its head office located in Toronto, Ontario.

2. The Filer will be the promoter, trustee and manager of the Funds and is registered as a portfolio manager in Alberta, British Columbia, Ontario and Québec, an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan, a commodity trading manager and a commodity trading adviser in Ontario and an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

3. The Filer or an affiliate or associate of the Filer is, or will be, the investment fund manager of the Funds.

The Funds

4. Each of the Funds will be an exchange traded mutual fund structured as a separate class of shares of Global X Canada ETF Corp., a mutual fund corporation established under the federal laws of Canada. Each Fund will launch with a single series.

5. Each Fund will be a separate investment fund having specific investment objectives and is specifically referable to a separate portfolio of investments.

6. Each Fund will also be an "alternative mutual fund", as such term is defined in NI 81-102.

7. The securities of each Fund will be offered pursuant to a long form prospectus (the **Prospectus**) and ETF Facts prepared and filed for each Fund in accordance with National Instrument 41-101 *General Prospectus Requirements* with the securities regulatory authority in each of the Jurisdictions.

8. Each Fund will be a reporting issuer under the laws of the Jurisdictions and subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.

9. Each Fund will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

10. The securities of each of the Funds will (subject to satisfying the Toronto Stock Exchange's (the **TSX**) original listing requirements) be listed on the TSX or such other designated exchange in Canada.

11. The investment objective of each Existing Fund is set out in the table below:

Fund	Investment Objective
BetaPro 3x S&P 500 Daily Leveraged Bull Alternative ETF	TSPX seeks **daily investment results**, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to three times (300%) the daily performance of an index that is designed to measure the performance of the large-cap market segment of the U.S. equity market (currently, the S&P 500® Index).
BetaPro -3x S&P 500 Daily Leveraged Bear Alternative ETF	SSPX seeks **daily investment results**, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to three times (300%) the inverse (opposite) of the daily performance of an index that is designed to measure the performance of the large-cap market segment of the U.S. equity market (currently, the S&P 500® Index).
BetaPro 3x Nasdaq-100 Daily Leveraged Bull Alternative ETF	TQQQ seeks **daily investment results**, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to three times (300%) the daily performance of an index that includes 100 of the largest domestic and international nonfinancial companies listed on the Nasdaq stock market (currently, the Nasdaq-100® Index).

Fund	Investment Objective
BetaPro -3x Nasdaq-100 Daily Leveraged Bear Alternative ETF	SQQQ seeks **daily investment results**, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to three times (300%) the inverse (opposite) of the daily performance of an index that includes 100 of the largest domestic and international nonfinancial companies listed on the Nasdaq stock market (currently, the Nasdaq-100® Index).

The S&P 500 Index, the Nasdaq-100 Index, and any permitted index for which a Fund has an investment objective to seek daily investment results that endeavour to correspond to three times, or three times the inverse of the daily performance of that index, are each referred to herein as an **Index**.

12. Each Fund will use leverage in order to seek to achieve its investment objective.

13. In order to ensure that a shareholder's risk is limited to the capital invested, and to achieve the target leverage ratio, each Fund will be rebalanced on each day that the principal exchange for the securities to which the Fund is exposed is open for trading, even if it is a day on which the TSX or Canadian banks are closed (**Daily Rebalancing**).

14. The Daily Rebalancing of the Fund portfolio is not expected to have a material impact on the concentration levels of the constituent securities in the portfolio of any Fund.

15. Each Fund will seek to achieve its investment objective by borrowing cash to invest in and hold a proportionate share of, or a sampling of the constituent securities of an Index in order to track approximately 3.0 times the performance of that Index or 3.0 times the inverse of the performance of that Index.

16. The investment objective and investment strategy of the Funds, as well as the risk factors associated therewith, including concentration risk and use of leverage, will be disclosed in the Prospectus of the Funds, as may be amended from time to time.

17. Since 2000, based on constituents' weights on quarterly rebalances, the maximum weighting of any single issuer in the S&P 500 Index represented 7.66% of the Index. On a leveraged basis of 300%, this maximum weighting would represent up to approximately 22.98% of the NAV of each of TSPX and SSPX.

18. Since 2003, the maximum weighting of any single issuer in the Nasdaq-100 Index represented 21.29% of the Index. On a leveraged basis of 300%, this maximum weighting would represent up to approximately 63.88% of the NAV of each of TQQQ and SQQQ.

19. The constituent issuers of the S&P 500 Index and the Nasdaq-100 Index are among the largest public issuers globally, having a market capitalization as of April 30, 2025 ranging from approximately USD $5.75 billion to approximately USD $3.19 trillion in the case of the S&P 500 Index, and USD$13.98 billion to approximately USD$3.19 trillion in the case of the Nasdaq-100 Index.

20. Given the composition of each Index and the proposed composition of each of the Funds' portfolios, it would be impossible for a Fund to achieve its investment objectives and pursue its investment strategies without obtaining the Exemption Sought.

21. The securities of the Funds will be highly liquid securities, as designated brokers act as intermediaries between investors and the Funds, standing in the market with bid and ask prices for the securities of the Funds to maintain a liquid market for the securities of the Funds. The majority of trading in securities of the Funds will occur in the secondary market.

22. In respect of the Funds, their strategies to acquire securities of an applicable constituent issuer of an Index will be transparent, passive and fully disclosed to investors. The Funds will not invest in securities other than the constituent securities of the applicable Index. Consequently, shareholders of the Funds will be fully aware of the risks involved with an investment in the securities of the Funds.

23. The Exemption Sought is sought to permit the Funds to purchase securities of the constituent issuers or enter into specified derivatives transactions in connection therewith such that, immediately after the transaction, more than 20 percent of its net assets would be invested in the equity securities of one constituent issuer for the purposes of determining compliance with subsection 2.1(1.1) of NI 81-102 (the **Proposed Transactions**).

24. In addition, the Funds have been structured as "alternative mutual funds" for purposes of NI 81-102, which is associated with investment funds that already permit higher levels of concentration under section 2.1 of NI 81-102.

25. Neither the Filer nor the Funds are in default of any of its obligations under securities legislation in any of the Jurisdictions.

Decision

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

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

(a) the Proposed Transactions and investments in the constituent issuers of the applicable Index are in accordance with each Fund's investment objectives and investment strategies to seek daily investment results, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to 300% of the daily performance of an Index, or 300% of the inverse of the daily performance of an Index;

(b) each Fund's Prospectus and investment strategies disclose that the Fund will obtain exposure to the constituent issuers of the applicable Index based on its investment objectives and Daily Rebalancing as described in paragraph 13 above; and

(c) each Fund includes in its Prospectus: (i) disclosure regarding the Exemption Sought under the heading “Exemptions and Approvals”; and (ii) a risk factor regarding the concentration of the Fund's investments in the constituent issuers of an Index and the risks associated therewith.

“Darren McKall”
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2025/0317
SEDAR+ File #: 06284680

B.3.2 LongPoint Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exchange traded alternative mutual funds granted exemption from the concentration restriction in subsection 2.1(1.1) of NI 81-102 to permit each fund to enter into purchase and/or specified derivatives transactions to obtain daily investment results that endeavour to correspond to 300% of the daily performance of an index, or 300% of the inverse of the daily performance of an index, in accordance with, and as limited by, its investment objective, subject to conditions.

Applicable Legislative Provisions

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

May 20, 2025

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
LONGPOINT ASSET MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each investment fund listed in Schedule A hereto (the **Initial ETFs**), and any future alternative mutual funds similarly structured that seek to provide daily investment results that endeavour to correspond, before fees and expenses, to up to three times (3X) or three times the inverse (-3X), as applicable, the daily percentage change of the price of an Index (defined below) (the **Future ETFs**, and together with the Initial ETFs, the **ETFs**) for a decision under the securities legislation of the Jurisdiction exempting each ETF from subsection 2.1(1.1) (the **Concentration Restriction**) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each ETF, in accordance with its fundamental investment objective, to purchase a security of an issuer (or enter into a specified derivative transaction or purchase an index participation unit) where, immediately after the transaction, more than 20% of the net asset value of the ETF will be invested in securities of any one issuer (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada and the Jurisdiction (together with the Jurisdiction, the **Canadian Jurisdictions**).

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and NI 81-102 have the same meaning when used herein unless otherwise defined herein. In addition:

Absolute Leverage means, with respect to an ETF, the aggregate notional absolute value of the securities and/or financial derivative positions as a ratio of the total assets held by the ETF.

Aggregate Portfolio Exposure means the aggregate market exposure of an investment fund to securities, whether through direct ownership of such securities or exposure to changes in the value of such securities through the use of specified derivatives or short selling.

Constituent Securities means the securities included in an Index.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer to perform certain duties in relation to the ETF, including the posting of a liquid two-way market for the trading of the ETF Securities on an Exchange or another Marketplace.

ETF Security means an exchange-traded unit or share of an ETF.

Exchange means the Toronto Stock Exchange or CBOE Canada Inc., as applicable.

Index means the Solactive Equal Weight Canada Banks Index, the Solactive Canadian Gold Miners Index or a market index that is administered by an organization that is not affiliated with any of the Filer, the ETF, its portfolio adviser or its principal distributor.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

Prospectus means the prospectus of each ETF.

Securityholder means a beneficial or registered holders of ETF Securities.

All references herein to sections and subsections are to the provisions of NI 81-102 unless specifically identified otherwise.

Representations

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

The Filer

1. The Filer is a corporation formed and organized under the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is currently registered as a portfolio manager, commodity trading manager and exempt market dealer in Ontario and as an investment fund manager in Ontario, Québec and Newfoundland and Labrador.

3. The Filer will be the investment fund manager and portfolio manager of each ETF.

4. The Filer is not a reporting issuer in any Canadian Jurisdiction and is not in default of securities legislation in any of the Canadian Jurisdictions.

The ETFs

5. Each ETF will be a separate open-ended corporate class of LongPoint ETF Corp., a mutual fund corporation to be established under the federal laws of Canada. Each corporate class will be a separate investment fund with specific investment objectives and a separate portfolio of investments.

6. Each ETF will be a reporting issuer in the Canadian Jurisdiction(s) in which it offers ETF Securities that will be distributed.

7. Each ETF will be an open-ended alternative mutual fund (as defined in NI 81-102).

8. The ETFs will be subject to NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

9. The Filer will file a final long form prospectus in respect of each ETF which will be prepared and filed in accordance with NI 41-101 or National Instrument 81-101 - *Mutual Fund Prospectus Disclosure*, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

10. The ETF Securities will be (subject to satisfying the original listing requirements of the applicable Exchange) listed on an Exchange.

11. Designated Brokers will act as intermediaries between investors and the ETFs, performing a market-making function, including by standing in the market with bid and ask prices for the ETF Securities to maintain a liquid market for the ETF Securities. The majority of trading in ETF Securities will occur in the secondary market.

12. The fundamental investment objective of each ETF will be to seek to provide daily investment results that endeavour to correspond, before fees and expenses, to up to three times (3X) or three times the inverse, as applicable, the daily percentage change of the price of an Index.

13. Each ETF will employ Absolute Leverage that will not exceed three times the net asset value of that ETF. Use of leverage by an ETF will be in accordance with NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities. In order to ensure that a Securityholder's risk is limited to the capital invested, each ETF's Absolute Leverage will be rebalanced daily and when the Absolute Leverage breaches certain bands. Specifically, each ETF's Absolute Leverage will be rebalanced back to 300% of the ETF's net asset value within one business day if the ETF's leverage ratio moves 5% below above its daily target Absolute Leverage of 300% or if it is above 300% Absolute Leverage (i.e., if the Absolute Leverage is less than 295% or if the Absolute Leverage is greater than 300%).

14. In order to achieve its investment objective, each ETF may invest in Constituent Securities, index participation units and/or other financial instruments, including specified derivatives. Each ETF may also gain exposure to Constituent Securities through investment in Canadian Depository Receipts which are linked to Constituent Securities.

15. The Indexes for each Initial ETF will be as follows:

ETF	Index	Description of Constituent Securities
MegaLong (3X) NASDAQ-100® Daily Leveraged Alternative ETF	NASDAQ 100® Index	The NASDAQ-100® Index is a stock market index made up of equity securities issued by 100 of the largest non-financial companies listed on the NASDAQ stock exchange.
MegaLong (3X) S&P 500® Daily Leveraged Alternative ETF	S&P 500® Index	The S&P 500® Index is a stock market index made up of equity securities issued by 500 of the leading industries in leading industries of the U.S. economy. The S&P 500® Index is also the U.S. component of the S&P 500 Global 1200.
MegaLong (3X) US Semiconductors Daily Leveraged Alternative ETF	Solactive US Semiconductor 30 Capped Index	The Solactive US Semiconductor 30 Capped Index is a stock market index made up of U.S. listed companies that design, manufacture and distribute semiconductor products.
MegaLong (3X) 20+ Year US Treasury Daily Leveraged Alternative ETF	Solactive US 20+ Year Treasury Bond Index	The Solactive US 20+ Year Treasury Bond Index is based on the 20+ year maturity point on the U.S. Treasury curve.
MegaLong (3X) Canadian Banks Daily Leveraged Alternative ETF	Solactive Equal Weight Canada Banks Index	The Solactive Equal Weight Canada Banks Index is an equal weight index of Canada's six largest Canadian-domiciled commercial banks.
MegaLong (3X) Canadian Gold Miners Daily Leveraged Alternative ETF	Solactive Canadian Gold Miners Index	The Solactive Canadian Gold Miners Index is intended to track the price movements in shares of Canadian companies which are mainly active in the gold mining industry.
MegaShort (-3X) NASDAQ-100® Daily Leveraged Alternative ETF	NASDAQ 100® Index	The NASDAQ-100® Index is a stock market index made up of equity securities issued by 100 of the largest non-financial companies listed on the NASDAQ stock exchange.
MegaShort (-3X) S&P 500® Daily Leveraged Alternative ETF	S&P 500® Index	The S&P 500® Index is a stock market index made up of equity securities issued by 500 of the leading industries in leading industries of the U.S. economy. The S&P 500® Index is also the U.S. component of the S&P 500 Global 1200.
MegaShort (-3X) US Semiconductors Daily Leveraged Alternative ETF	Solactive US Semiconductor 30 Capped Index	The Solactive US Semiconductor 30 Capped Index is a stock market index made up of U.S. listed companies that design, manufacture and distribute semiconductor products.
MegaShort (-3X) 20+ Year US Treasury Daily Leveraged Alternative ETF	Solactive US 20+ Year Treasury Bond Index	The Solactive US 20+ Year Treasury Bond Index is based on the 20+ year maturity point on the U.S. Treasury curve.

ETF	Index	Description of Constituent Securities
MegaShort (-3X) Canadian Gold Miners Daily Leveraged Alternative ETF	Solactive Canadian Gold Miners Index	The Solactive Canadian Gold Miners Index is intended to track the price movements in shares of Canadian companies which are mainly active in the gold mining industry.

16. The distribution of ETF Securities will be conducted without the knowledge or consent of the issuers of the Constituent Securities and the Filer will, as a general matter, not have direct knowledge or access to material information regarding the issuers of the Constituent Securities other than publicly available information.

Reasons for Exemption Sought

17. In accordance with its investment objective, each ETF will employ Absolute Leverage that will effectively triple its investment exposure to its Index.

18. According to subsections 2.1(3) and 2.1(4), where an ETF obtains exposure to its Index by entering into a specified derivative or by purchasing an index participation unit, the ETF will be considered to hold directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit unless the security represents less than 10% of the index that is the underlying interest of the specified derivative, or of the securities held by the issuer of the index participation unit.

19. A Constituent Security may constitute 10% or more of its Index, in which case subsection 2.1(4) will not apply. In these circumstances, the ETF will be considered to hold directly such Constituent Security and, by the application of its Absolute Leverage, such investment will represent more than 30% of the net asset value of the ETF.

20. Currently, each Constituent Security in the Solactive Equal Weight Canada Banks Index to be used by MegaLong (3X) Canadian Banks ETF and some of the Constituent Securities in the Solactive Canadian Gold Miners Index to be used by MegaLong (3X) Canadian Gold Miners ETF and MegaShort (-3X) Canadian Gold Miners ETF represent more than 10% of their Index as described below:

Solactive Equal Weight Canada Banks Index	Current % of Index
Bank of Montreal	19.2%
Canadian Imperial Bank of Commerce	16.7%
Bank of Nova Scotia, The	16.3%
Toronto-Dominion Bank	16.0%
Royal Bank of Canada	15.9%
National Bank of Canada	15.8%

Solactive Canadian Gold Miners Index	Current % of Index
Agnico Eagle Mines Ltd	26.3%
Barrick Gold Corp	21.7%
Kinross Gold Corp	10.2%
Alamos Gold Inc	6.6%
Pan American Silver Corp	6.3%

21. Where the Filer considers it in the best interests of the ETF to do so, the ETF may purchase Constituent Securities directly using borrowed cash. In those circumstances, subsection 2.1(4) will not apply to the investment. Where the Constituent Security constitutes more than 6.67% of its Index and the ETF holds the Constituent Security directly, by the application of its Absolute Leverage, such investment will represent more than 20% of the net asset value of the ETF.

22. The ETFs cannot rely on the exception in subsection 2.1(5) because they may not qualify as “index mutual funds”. Specifically, (a) the ETF will seek to leverage the returns of its Index, rather than replicate the returns of its Index on a 1:1 basis, and (b) the ETFs are not expected to include the word “index” in their names.

23. The policy rationale for alternative mutual funds permits them to hold investment portfolios that are less diversified than the investment portfolios of non-alternative mutual funds. An alternative mutual fund may, for example, invest in only five issuers where each issuer represents 20% of the investment portfolio of the alternative mutual fund. The investment portfolios of the ETFs will comply with this policy rationale since no investment by an ETF in a Constituent Security will constitute more than 20% of the ETF’s total investment portfolio.

24. The policy rationale for alternative mutual funds also permits them to leverage their returns by up to three times. The investment portfolios of the ETFs will comply with this policy rationale since each ETF will utilize not more than 300% Absolute Leverage.

25. The wording for subsection 2.1(1.1) applicable to alternative mutual funds was derived from the wording of subsection 2.1(1) applicable to non-alternative mutual funds. The latter uses, as its denominator, the net asset value of the non-alternative mutual fund because the Aggregate Portfolio Exposure of a non-alternative mutual fund generally matches its net asset value due to restrictions in NI 81-102 which preclude a non-alternative mutual fund from using leverage. However, subsection 2.1(1.1) does not take into account that the Aggregate Portfolio Exposure of an alternative mutual fund typically is greater than its net asset value due to the use of leverage.

26. Except as described below, each ETF will comply with a requirement that each of its investments in Constituent Securities of an issuer will not exceed 20% of its Aggregate Portfolio Exposure.

27. Similar to index mutual funds, each ETF will have a passively-managed investment portfolio where the composition of its investment portfolio will be determined by the composition of an Index rather than discretionary investment management. Like index mutual funds, each ETF will have investment exposure to an issuer exceeding the limits contemplated by section 2.1 only where such issuer is a large constituent element of its Index.

28. Similar to an index mutual fund, each ETF will have a fundamental investment objective that requires it to invest in the Constituent Securities of its Index in substantially the same proportion as those Constituent Securities are reflected in the Index, or otherwise invest in a manner that causes the performance of the ETF to be derived from the performance of its Index.

29. Index mutual funds are permitted to have excess exposure to an issuer in order to meet their investment objectives of tracking a pre-determined Index. Each ETF should be permitted to exceed its 20% exposure limit where necessary to replicate, on a leveraged basis, the returns of its Index.

30. The ETFs will meet a need for those investors seeking three times investment exposure in a pre-determined Index.

31. Investors will be aware that each ETF utilizes three times leverage through the inclusion of “3X” or “-3X” in its name.

32. Investors will be aware of the Index of each ETF as the Index, together with a brief description of the Index, will be included in the ETF’s prospectus and website disclosure. In addition, the fundamental investment objective of the ETF includes the name of its Index, and this information is included in its ETF facts.

33. Investors will expect the returns of each ETF to be derived from its Index, even though those returns (a) will be leveraged three times (positively or inversely), and (b) may include the returns of a constituent issuer constituting more than 10% of the Index.

34. The Prospectus of each ETF will include enhanced disclosure of the features of its investment approach that differentiate it from other alternative mutual funds that do not rely on the Exemption Sought. In particular, the prospectus will disclose:

    (a) the name of each ETF using the convention reflected in the Exemption Sought for the ETFs;

    (b) the investment objective and investment strategy of each ETF as well as the risk factors associated therewith, including concentration risk;

    (c) the fact that the ETF has obtained the Exemption Sought to permit the purchase of, or exposure to, the Constituent Securities on the terms described herein; and

    (d) that the ETF’s investment in, or exposure to, the Constituent Securities will be passively-managed.

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 in respect of each ETF provided that:

1. the Prospectus of the ETF includes enhanced disclosure of the features of its investment approach that differentiate it from other alternative mutual funds that do not rely on the Exemption Sought. In particular, the Prospectus discloses:

    (a) the name of the ETF and includes “3X” or “-3X”, as appropriate;

(b) the investment objective and investment strategy of the ETF as well as the risk factors associated therewith, including concentration risk;

(c) the fact that the ETF has obtained the Exemption Sought to permit the purchase of, or exposure to, the Constituent Securities of its Index on the terms described herein; and

(d) that the ETF's investment in, or exposure to, the Constituent Securities of its Index is passively-managed.

"Darren McKall"
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2025/0166
SEDAR+ File #: 6257440

Schedule A

ETFs

MegaLong (3X) NASDAQ-100® Daily Leveraged Alternative ETF

MegaLong (3X) S&P 500® Daily Leveraged Alternative ETF

MegaLong (3X) US Semiconductors Daily Leveraged Alternative ETF

MegaLong (3X) 20+ Year US Treasury Daily Leveraged Alternative ETF

MegaLong (3X) Canadian Banks Daily Leveraged Alternative ETF

MegaLong (3X) Canadian Gold Miners Daily Leveraged Alternative ETF

MegaShort (-3X) NASDAQ-100® Daily Leveraged Alternative ETF

MegaShort (-3X) S&P 500® Daily Leveraged Alternative ETF

MegaShort (-3X) US Semiconductors Daily Leveraged Alternative ETF

MegaShort (-3X) 20+ Year US Treasury Daily Leveraged Alternative ETF

MegaShort (-3X) Canadian Gold Miners Daily Leveraged Alternative ETF

B.3.3 Fidelity Investments Canada ULC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s. 3.2.01 of NI 81-101 to deliver a fund facts document to investors who purchase mutual fund securities of series pursuant to a one-time automatic switch – subject to conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01 and 6.1.

June 4, 2025

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
FIDELITY INVESTMENTS CANADA ULC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to exempt the Filer from the requirement in section 3.2.01 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) to deliver to a purchaser the most recently filed fund facts document (**Fund Facts**) for the applicable series of securities of a mutual fund before it accepts an instruction from the purchaser for the purchase of such security (the **Fund Facts Delivery Requirement**) in respect of the existing and future investment funds subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) managed by the Filer or an affiliate or successor of the Filer (each, a **Fund**, and collectively, the **Funds**), in respect of a purchase of securities made pursuant to a one-time Automatic Switch (as defined below) (the **Requested Relief**).

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

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

(b) the Filer has provided notice that section 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 (together with Ontario, the **Canadian Jurisdictions**).

Interpretation

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

Representations

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

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

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

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

4. Each Fund is, or will be, an open-ended mutual fund trust created under the laws of the Province of Ontario or an open-end mutual fund that is, or will be, a class of shares of a mutual fund corporation.

5. The Filer is, or will be, the investment fund manager and trustee of the Funds established as mutual fund trusts and is, or will be, the investment fund manager of the Funds that are classes of shares of a mutual fund corporation.

6. The Funds are not in default of any of the requirements of securities legislation in any of the Canadian Jurisdictions.

7. Securities of the Funds managed by the Filer are primarily sold to the public through other registered dealers.

8. Securities of the Funds managed by the Filer are also distributed on a limited basis to Permitted Clients, as defined below, pursuant to the terms and conditions of the Filer's mutual fund dealer registration (the **Family Plan**). The capitalized terms used below have the meaning given to such terms in the Filer's mutual fund dealer registration pursuant to a decision that was previously granted by the Ontario Securities Commission on March 14, 2002, as subsequently varied in a decision dated December 23, 2002 and as further varied in a decision dated November 19, 2009.

   "**Permitted Client**", for the Registrant, means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:

   (i) an Executive or Employee of the Registrant;

   (ii) a Related Party of an Executive or Employee of the Registrant;

   (iii) a Related Party of the spouse of an Executive or Employee of the Registrant;

   (iv) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant;

   (v) an Executive or Employee of a Service Provider of the Registrant;

   (vi) a Related Party of an Executive or Employee of a Service Provider of the Registrant; or

   (vii) a Related Party of the spouse of an Executive or Employee of a Service Provider of the Registrant.

9. Family Plan trades executed by the Filer are initiated by Permitted Clients that hold securities of the Funds in a Family Plan account (**Family Plan Account Holders**). Family Plan accounts are not managed accounts.

10. The Family Plan is currently structured such that Family Plan Account Holders may only purchase series B, S5, and S8 securities of the Funds. To reduce their management and administration fees, the Filer provides fee reductions through distributions and/or rebates, which are paid by the Funds or Fidelity, as applicable, and automatically reinvested in additional securities of the relevant series of the Funds.

11. To better align the services Family Plan Account Holders receive with the management and administration fees paid for fee-based type of clients, the Filer proposes a one-time automatic switch of Family Plan Account Holders' existing holdings from series B, S5 and S8 securities of the Funds to series F, F5, and F8 securities of the same Funds, without each Family Plan Account Holder having to initiate the trade (the **Automatic Switch**), and to allow prospective Family Plan investors to purchase series F, F5 and F8 securities of the Funds instead of series B, S5 and S8 securities of the Funds. Permitting the Filer to perform the Automatic Switch will ensure that all assets for Family Plan Account Holders are maintained within a consistent series offering, streamlining administrative efforts for Family Plan Account Holders, prospective Family Plan investors and the Filer.

12. The Automatic Switch will maintain the Family Plan Account Holder's securities in the same Funds with same underlying pool of assets, investment objectives, strategies, and valuation procedures, preserving all existing rights as securityholders. There will be no sales charges, switch fees, or other fees incurred due to the Automatic Switch. Additionally, the switch between series of the same Fund will not result in any adverse tax consequences for Family Plan Account Holders.

13. The only material difference to the Family Plan Account Holder between series B, S5 and S8 securities to series F, F5 and F8 securities is that series F, F5 and F8 securities of the Funds have lower management and administration fees than series B, S5 and S8 securities, and would result in the same or lower fees for Family Plan Account Holders (after fee distributions and/or rebates).

14. The Automatic Switch results in a redemption of series B, S5 or S8 securities immediately followed by a purchase of series F, F5 or F8 securities, respectively. Accordingly, each Automatic Switch will be a distribution that triggers the Fund Facts Delivery Requirement for the Filer.

15. The Automatic Switch is administrative in nature only and is the practical way to achieve the required result of giving Family Plan Account Holders the benefit of the same or lower management and administration fees with little disruption.

16. Pursuant to the Fund Facts Delivery Requirement, the Filer is required to deliver the most recently filed Fund Facts of a series of a Fund to a purchaser before it accepts an instruction for the purchase of securities of that series of a Fund.

17. The Filer proposes not to deliver the Fund Facts to Family Plan Account Holders in connection with the purchase of securities made pursuant to the Automatic Switch for the following reasons:

    a) Upon the Automatic Switch, a Family Plan Account Holder's investment will remain in securities of the same Fund with the same underlying pool of assets, the same investment objectives and investment strategies and the same valuation procedures. The Family Plan Account Holder would derive little benefit from receiving a further Fund Facts document about the relevant Fund.

    b) At no time will a Family Plan Account Holder pay combined management and administration fees at a rate higher than the rate of the combined management and administration fees of the securities for which they initially subscribed.

    c) In advance of the implementation date of the Automatic Switch, the Filer will provide notice to Family Plan Account Holders about the details of the Automatic Switch.

18. There would be little benefit for each Family Plan Account Holder to receive a Fund Facts in connection with the Automatic Switch.

19. The Requested Relief is limited in nature due to the one-time implementation of the Automatic Switch.

20. In the absence of the Requested Relief, the Filer may not carry out the Automatic Switch without complying with the Fund Facts Delivery Requirement.

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:

1. The Filer sends to Family Plan Account Holders in series B, S5 and S8 securities 60 days in advance of the Automatic Switch a notice advising of the Automatic Switch to series F, F5 and F8 securities, as applicable, and that:

    a. other than a difference in management and administration fees, there will be no other material difference between series B, S5 and S8 compared to series F, F5 and F8;

    b. they will not receive the Fund Facts upon the Automatic Switch, but that:

        i. they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address or email address;

        ii. the most recently filed Fund Facts will be sent or delivered to them at no cost;

        iii. the most recently filed Fund Facts may be found either on the SEDAR+ website or on the Filer's website; and

        iv. they will not have the right to withdraw from an agreement of purchase and sale in respect of a purchase of series F, F5 and F8 securities made pursuant to the Automatic Switch, but they will have the right of action for damages or recission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the series F, F5 and F8 securities, as applicable, contains a misrepresentation, whether or not they request the Fund Facts.

2. Following the Automatic Switch, the combined management and administration fees of the series F, F5 and F8 securities, as applicable, will be lower than the combined management and administration fees of the series B, S5 and S8 securities, as applicable, of the same Fund.

3. No sales charges, switch fees, short term trading fees or other fees will be payable in respect of an Automatic Switch.

"Darren McKall"
Associate Vice President, Investment Management Division
Ontario Securities Commission

Application File #: 2025/0078
SEDAR+ File #: 6240612

B.3.4 Ovintiv Inc.

Headnote

MI 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 62-104 Take-Over Bids and Issuer Bids – relief from the formal issuer bid requirements in NI 62-104 – issuer conducting a normal course issuer bid through the facilities of the TSX and NYSE – relief granted, provided that purchases are subject to a maximum aggregate limit mirroring the TSX NCIB rules.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

Citation: *Re Ovintiv Inc.*, 2025 ABASC 83

June 5, 2025

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

AND

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

AND

IN THE MATTER OF
OVINTIV INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements contained in the Legislation relating to issuer bids (the **Issuer Bid Requirements**) shall not apply to purchases of the Filer's common shares (the **Common Shares**) made by the Filer through the facilities of the New York Stock Exchange (the **NYSE**) and other United States-based trading systems (such trading systems, together with NYSE, the **U.S. Markets**) pursuant to the Current Bid (as defined below) and any subsequent normal course issuer bid by the Filer (such bids, the Filer NCIBs, and such exemption, the **Exemption Sought**).

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is incorporated under the laws of the State of Delaware, with its head office in Denver, Colorado. The Alberta Securities Commission was selected as principal regulator because the primary corporate offices of the Filer and its Canadian subsidiaries are located in the Province of Alberta.

2. The Filer and its subsidiaries carry on the business formerly conducted by Encana Corporation (**Encana**). The Filer migrated out of Canada and became a Delaware corporation, domiciled in the United States, following a series of reorganization transactions (the **Reorganization**) that resulted in the Filer acquiring all of the issued and outstanding common shares of Encana to become the ultimate parent company of Encana and its subsidiaries.

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

4. The Filer is a U.S. issuer, and as such, is eligible to use the multijurisdictional disclosure system established by National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**). The Filer is also an SEC foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.

5. The Common Shares are registered under the 1934 Act. The Filer is subject to and is in compliance with all requirements applicable to it

imposed by the SEC, the 1933 Act, the 1934 Act, the United States *Sarbanes-Oxley Act of 2002* and the rules of the NYSE.

6. The Filer's authorized capital stock consists of 750,000,000 Common Shares with par value $0.01 per share, and 25,000,000 shares of preferred stock, with par value $0.01 per share (**Preferred Shares**). As of May 5, 2025, there were 259,815,014 Common Shares and no Preferred Shares outstanding.

7. The Common Shares are listed on the NYSE and the Toronto Stock Exchange (the **TSX**).

8. On September 26, 2024, the Filer announced that the TSX had authorized it to make normal course issuer bid purchases of its shares through the facilities of the TSX and U.S. Markets (the **2024 Bid**) pursuant to and subject to the requirements of the by-laws, regulations and policies of the TSX relating to normal course issuer bids (the **TSX NCIB Rules**).

9. On September 26, 2024, the Filer announced that the TSX had accepted the Filer's notice of intention to implement a normal course issuer bid (the **Current Notice**) for the 12-month period ending October 2, 2025, to purchase up to 25,920,545 Common Shares, representing 10% of the Filer's public float of Common Shares (the **Current Bid**). The Current Notice specifies that purchases under the Current Bid will be made through the facilities of both the TSX and the U.S. Markets.

10. Issuer bid purchases made in the normal course through the facilities of the TSX are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**, and such exemption, the **Designated Exchange Exemption**). The Designated Exchange Exemption provides that an issuer bid made in the normal course through the facilities of a designated exchange is exempt from the Issuer Bid Requirements if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange. The TSX is a designated exchange for the purposes of the Designated Exchange Exemption.

11. The TSX NCIB Rules are set out in sections 628 to 629.3 of Part VI of the TSX Company Manual. They permit a listed issuer to acquire, over a 12-month period commencing on the date specified in a Notice of Intention to Make a Normal Course Issuer Bid (a **Notice**), up to the greater of (a) 10% of the public float on the date of acceptance of the Notice, or (b) 5% of such class of securities issued and outstanding on the date of acceptance of the Notice by the TSX.

12. Other than purchases made pursuant to Proposed Bids (as defined below) in reliance on this decision, purchases under issuer bids made in the normal course through U.S. Markets and alternative trading systems in Canada are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (**Other Published Markets Exemption**). The Other Published Markets Exemption provides that an issuer bid made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer, and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.

13. Purchases made pursuant to the Current Bid over the U.S. Markets are not exempt under the Designated Exchange Exemption, as the U.S. Markets are not recognized as "designated exchanges" for the purpose of the Designated Exchange Exemption.

14. As a result, purchases made pursuant to the Current Bid on the U.S Markets cannot exceed 5% of the issued and outstanding Common Shares of the Filer.

15. As at April 30, 2025, the Filer has purchased an aggregate of 1,234,753 Common Shares under the Current Bid, all of which Common Shares were purchased on the NYSE. As at April 30, 2025, the Filer has not purchased any Common Shares on the TSX or any other published markets in Canada other than the TSX under the Current Bid. Accordingly, the Filer has purchased approximately 0.48% of its issued and outstanding Common Shares at the commencement of the Current Bid in reliance on the Other Published Markets Exemption.

16. The Filer's trading volumes on the U.S. Markets are significantly greater than its trading volumes on the TSX and other Canadian trading systems (such trading systems, together with the TSX, the **Canadian Markets**).

17. For the twelve months ended December 31, 2024, an aggregate of 823,974,659 Common Shares were traded over the Canadian Markets and the U.S. Markets, with trading volumes having occurred as follows:

    (a) 31,662,574 Common Shares (or approximately 3.8% of total aggregate trading) over the facilities of the TSX;

    (b) 20,161,322 Common Shares (or approximately 2.4% of total aggregate

trading) over the Canadian Markets other than the TSX; and

(c) 772,150,763 Common Shares (or approximately 93.7% of total aggregate trading) over U.S. Markets.

18. As at April 30, 2025, for the period subsequent to December 31, 2024, an aggregate of 306,015,334 were traded over the Canadian Markets and the U.S. Markets, with trading volumes having occurred as follows:

(a) 16,123,004 Common Shares (or approximately 5.27% of total aggregate trading) over the facilities of the TSX;

(b) 12,205,511 Common Shares (or approximately 3.99% of total aggregate trading) over the Canadian Markets other than the TSX; and

(c) 277,686,819 Common Shares (or approximately 90.74% of total aggregate trading) over U.S. Markets.

19. As a much higher volume of Common Shares currently trades over the U.S. Markets relative to the TSX, the Filer wishes to have the ability to make repurchases in connection with the Current Bid and any normal course issuer bids that may be implemented by the Filer over the U.S. Markets (collectively, the **Proposed Bids**) in excess of the maximum allowable in reliance on the Other Published Markets Exemption.

20. The Proposed Bids will be effected in accordance with the safe harbour provided by Rule 10b-18 under the 1934 Act and any applicable by-laws, rules, regulations or policies of the U.S. published market through which the purchases are carried out (collectively the **Applicable U.S. Rules**).

21. The Applicable U.S. Rules require that all purchases made by the Filer through the U.S. Markets:

(a) be made through only one broker or dealer in any one day;

(b) generally, not be the opening trade on the NYSE or within the last 10 minutes of market close on the NYSE if its average daily trading volume is at least US$1 million and its public float value is at least US$150 million, or within the last 30 minutes of market close on the NYSE if its average daily trading volume or public float is below such thresholds;

(c) not be made at prices that exceed the highest published independent bid or last reported independent transaction price on the NYSE (whichever is higher); and

(d) be in an amount that does not exceed, in any single day, 25% of the average daily trading volume on the U.S. Markets (with certain limited exceptions for block purchases).

22. Purchases of Common Shares by the Filer of up to 10% of the public float on U.S. Markets are permitted under the Applicable U.S. Rules.

23. There is no aggregate limit on the number of Common Shares that may be purchased by the Filer through the facilities of the U.S. Markets which are purchased in compliance with Applicable U.S. Rules.

24. The Filer believes that the Proposed Bids are in the best interests of the Filer.

25. The purchase of Common Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.

26. No other exemptions exist under the Legislation that would permit the Filer to continue to make purchases pursuant to the Proposed Bids through the U.S. Markets on an exempt basis once the Filer has purchased, within a 12-month period, 5% of the outstanding Common Shares in reliance on the Other Published Markets Exemption.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

(a) The Filer remains a U.S. issuer and an SEC foreign issuer;

(b) the Proposed Bids are permitted under the Applicable U.S. Rules, and are established and conducted in accordance and compliance with the Applicable U.S. Rules;

(c) the Filer discloses, in each Notice accepted by the TSX in respect of a Filer NCIB under which a Proposed Bid may be made, that purchases under such Filer NCIB will also be effected through the U.S. Markets;

(d) the Exemption Sought applies only to the acquisition of Common Shares by the Filer pursuant to a Proposed Bid commenced within 36 months of the date of this decision;

(e) purchases of Common Shares under a Proposed Bid in reliance on this decision shall only be made in compliance with Part

6 (Order Protection) of National Instrument 23-101 *Trading Rules*;

(f) the Filer sets out the Exemption Sought and conditions applicable thereto in its first quarterly report following the Exemption Sought being granted and thereafter, prior to purchasing Common Shares under a Proposed Bid in reliance on this decision (other than purchases made in respect of the Current Bid), in a press release issued and filed by the Filer;

(g) the Filer does not acquire Common Shares in reliance on the Other Published Markets Exemption if the aggregate number of Common Shares purchased by the Filer and any person or company acting jointly or in concert with the Filer in reliance on this decision and the Other Published Markets Exemption within any period of 12 months exceeds 5% of the outstanding Common Shares on the first day of such 12-month period; and

(h) the aggregate number of Common Shares purchased pursuant to a Proposed Bid in reliance on this decision, the Designated Exchange Exemption and the Other Published Markets Exemption does not exceed, over the 12-month period specified in the Notice in respect of the relevant Proposed Bid, 10% of the public float as specified in such Notice.

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

B.3.5 BMO Asset Management Inc. and BMO AAA CLO ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.5(2)(a), (a.1) and (c) of National Instrument 81-102 Investment Funds to permit investment funds to invest up to 10% of their net asset value, in aggregate, in securities of underlying ETFs that are subject to the U.S. Investment Company Act of 1940 – U.S. underlying ETFs are not IPUs, are not reporting issuers in a Canadian jurisdiction and are not subject to NI 81-102 – Relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(a.1), 2.5(2)(c), and 19.1.

June 4, 2025

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
BMO ASSET MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
BMO AAA CLO ETF
(the Existing Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing Fund and such other mutual funds or alternative mutual funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (collectively, the **Funds**, and each, a **Fund**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

(a) exempting each Fund from the following provisions of NI 81-102 to permit the Funds to invest in securities of existing and future exchange-traded funds that are not index

participation units (**IPUs**, and each, an **IPU**) and whose securities are, or will be, listed for trading on a stock exchange in the United States (the **Underlying ETFs**, and each, an **Underlying ETF**):

(i) paragraphs 2.5(2)(a) and (a.1) to permit each Fund to purchase and/or hold securities of an Underlying ETF even though the Underlying ETF is not subject to NI 81-102; and

(ii) paragraph 2.5(2)(c) to permit each Fund to purchase and/or hold securities of a Underlying ETF even though the Underlying ETF is not a reporting issuer in any province of territory of Canada

(collectively, the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in MI 11-102, NI 81-102, National Instrument 14-101 *Definitions* and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning if used in this decision, unless otherwise defined.

Investment Company Act means the United States Investment Company Act of 1940.

Representations

The Filer

1. The Filer is a corporation organized under the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered under the securities legislation: (i) in each of the provinces and territories as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer and (ii) in Ontario, Newfoundland and Labrador and Quebec as an investment fund manager. The Filer is also registered in Ontario as a commodity trading manager and in Quebec as a derivatives portfolio manager.

3. The Filer or an affiliate or successor of the Filer is, or will be, the manager of the Funds.

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

The Funds

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

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

7. Each Fund is, or will be, a reporting issuer in the Canadian Jurisdictions.

8. Each Fund is, or will be, subject to NI 81-107.

9. The Funds may, from time to time, wish to invest in Underlying ETFs.

10. The Existing Fund is not in default of applicable securities legislation in any Canadian Jurisdiction.

The Underlying ETFs

11. The securities of an Underlying ETF will not meet the definition of an IPU in NI 81-102 because the purpose of such Underlying ETF will not be to:

(a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index; or

(b) invest in a manner that causes the Underlying ETF to replicate the performance of that index.

12. The securities of an Underlying ETF are, or will be, listed on a recognized exchange in the United States and the market for them is, or will be, liquid because it is, or will be, supported by designated brokers. As a result, the Filer expects a Fund to be able to dispose of such securities through market facilities in order to raise cash, including to fund the redemption requests of its securityholders.

13. An Underlying ETF may be managed by the Filer or an affiliate or associate of the Filer, or by a third party investment fund manager.

14. An investment in an Underlying ETF by a Fund will otherwise comply with section 2.5 of NI 81-102, including that:

(a) no Underlying ETF will hold more than 10% of its net asset value (NAV) in securities of another investment fund unless the Underlying ETF (a) is a clone fund, as defined in NI 81-102, or (b) in

accordance with NI 81-102, purchases or holds securities (i) of a money market fund, as defined in NI 81-102, or (ii) that are IPUs issued by an investment fund; and

(b) no Fund will pay management or incentive fees which to a reasonable person would duplicate a fee payable by an Underlying ETF for the same service.

15. Each Underlying ETF is, or will be, a publicly-offered mutual fund subject to the Investment Company Act.

16. Absent the Exemption Sought, an investment by a Fund in an Underlying ETF would:

(a) be prohibited by paragraph 2.5(2)(a) or paragraph 2.5(2)(a.1) of NI 81-102 because such Underlying ETF may not be subject to NI 81-102;

(b) be prohibited by paragraph 2.5(2)(c) of NI 81-102 because such Underlying ETF may not be a reporting issuer in any Canadian Jurisdiction; and

(c) not qualify for the exception in paragraph 2.5(3)(a) of NI 81-102 because the securities of the Underlying ETF are not IPUs.

17. The Filer submits that having the option to allocate a limited portion of a Fund's assets to one or more Underlying ETFs will increase diversification opportunities and may improve the Fund's overall risk/reward profile.

18. An investment in an Underlying ETF by a Fund is an efficient and cost effective alternative to obtaining exposure to securities held by the Underlying ETF rather than purchasing those securities directly by the Fund.

19. An investment in an Underlying ETF by a Fund should pose limited investment risk to the Fund because each Underlying ETF will be subject to the Investment Company Act, subject to any exemption therefrom that is or may in the future be granted by the applicable securities regulatory authorities.

20. The requirements and industry standards relating to reporting, fund governance and investment restrictions in the United States applicable to Underlying ETFs are comparable to those under applicable securities laws in the Canadian Jurisdictions.

Decision

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

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

(a) the investment by a Fund in securities of an Underlying ETF is in accordance with the investment objective of the Fund;

(b) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the NAV of the Fund, in aggregate, taken at market value at the time of the purchase, would consist of securities of Underlying ETFs;

(c) securities of each Underlying ETF are listed on a recognized exchange in the United States;

(d) each Underlying ETF is, immediately before the purchase by a Fund of securities of that Underlying ETF, an investment company subject to the Investment Company Act in good standing with the United States Securities and Exchange Commission; and

(e) the prospectus of each Fund discloses, or will disclose in the next renewal of its prospectus following the date of this decision, in the investment strategy section, the fact that the Fund has obtained the Exemption Sought to permit investments in Underlying ETFs on the terms described in this decision.

"Darren McKall"
Associate Vice President
Investment Management Division
Ontario Securities Commission

Application File #: 2025/0314
SEDAR+ File #: 6283401

B.3.6 Desjardins Global Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

[English version – this version is provided as a courtesy and is not the official version in Québec]

June 2, 2025

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

AND

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

AND

IN THE MATTER OF
DESJARDINS GLOBAL ASSET MANAGEMENT INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the following requirements with respect to clients invested in accordance with Model Portfolios (as defined below):

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

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

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

(iii) ensure that the Filer has sufficient information regarding the client's investment needs, objectives, financial circumstances and risk profile, among other information, to enable the Filer to meet its suitability determination obligations under the Legislation (the Suitability Determination Requirement) (as described below); and

(iv) keep the information described above current.

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

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

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

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

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

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

d. the client's contact information; and

(ii) keep the information described above current.

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

(c) the requirement (the **Suitability Determination Requirement**) in the Legislation that the Filer, before it opens an account for a client, purchases, sells, deposits, exchanges or transfers securities for a client's account, takes any other investment action for a client, makes a recommendation or exercises discretion to take any such action, determine, on a reasonable basis, that such action is suitable for the client and puts the client's interest first (the **Suitability Determination Exemption**); and

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

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

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in every jurisdiction in Canada other than the Jurisdictions (the **Other Jurisdictions** and, together with Québec and Ontario, the **Canadian Jurisdictions**); and

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

Interpretation

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

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Québec), with its head office located in Montréal, Québec.

2. The Filer is registered as a portfolio manager and as an exempt market dealer in the Jurisdictions. The Filer is also registered as an investment fund manager in Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador. In addition, the Filer is registered as an adviser in Manitoba, a commodity trading manager in Ontario and as a derivatives portfolio manager in Québec.

3. As described in more detail below, the Filer, in its role as portfolio manager, will create and manage model portfolios (the **Services**), comprising investment funds managed by Desjardins Investments Inc. (**DII**), an affiliate of DII or third-party unaffiliated investment fund managers (collectively, the **Funds**).

4. Each of the Funds is, or will be, an open-ended mutual fund, including an exchange-traded fund (**ETF**), established under the laws of a Canadian Jurisdiction.

5. Each of the Funds is, or will be, a reporting issuer in all of the Canadian Jurisdictions and will be subject to the provisions of National Instrument 81-102 *Investment Funds*.

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

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

The Services

8. Pursuant to a written agreement (the **Services Agreement**) between the Filer and the applicable dealer, the Filer will provide the Services, to be made available to clients of investment dealers and mutual fund dealers (the **Dealers**), that participate in the Dealers' model portfolio programs (each, a **Program**).

9. Each Dealer is, or will be: (a) registered in the applicable Canadian Jurisdictions as a dealer in the category of mutual fund dealer, and a member of the Canadian Investment Regulatory Organization (**CIRO**); or (b) registered in the applicable Canadian Jurisdictions as a dealer in the category of investment dealer, and a member of CIRO. The Dealers will include dealers that are affiliated with the Filer.

10. The Programs will allow Dealers to recommend to clients model portfolios of Funds (each, a **Model Portfolio**), that are created and maintained by the Filer pursuant to the Services.

11. As part of the Services, the Filer will manage each Model Portfolio to ensure it remains in compliance with its stated investment objective and investment guidelines at all times (the **Investment Guidelines**) and will determine from time to time whether any changes to the composition of the Model Portfolio would be appropriate.

12. The Filer will design the asset mix and select securities for the Model Portfolios, as well as direct trades that reflect changes in the Model Portfolios made from time to time and that will be effected by the Dealers in client accounts. Each Model Portfolio will comprise a selection of Funds and will have its own unique allocation of Funds that are exposed to different asset classes (the **Asset Classes**).

13. Exposure to the different Asset Classes in a Model Portfolio will be achieved using the Funds. Each Model Portfolio will have a percentage target weight within one or more Asset Classes (the **Target Weight**), which may, due to changes in the market value of the Funds within the Model Portfolio, increase or decrease within an upper and lower range (the **Permitted Range**).

14. As part of the Services, provided that the Dealer, except in exceptional market circumstances, is given at least 60 days' advance written notice (the **Written Notice**) and the Model Portfolio remains consistent with its Investment Guidelines at all times, the Filer may, from time to time, use its discretion to make decisions regarding certain changes to the Permitted Ranges (the **Weighting Changes**). Where the Filer updates a Model Portfolio to reflect a Weighting Change, the Dealer will execute appropriate trades (**Weighting Change Trades**) within a reasonable time to reflect such updates in client accounts.

15. The Written Notice will describe the proposed Weighting Change and will provide sufficient detail for the Dealer to determine whether the Model Portfolios, after the implementation of the proposed change, would continue to be appropriate for its clients. The Written Notice will specify that if the Dealer does not provide an objection to the proposed Weighting Change by a specified date, such non-objection will be deemed to be consent for the changes on the effective date.

16. As part of the Services, provided that the Model Portfolio remains consistent with its Investment Guidelines at all times, the Filer may also, from time to time, use its discretion to make decisions regarding certain changes to the Target Weight of the Funds in the Model Portfolio or the holdings of a Model Portfolio within the Permitted Ranges (the **Model Re-allocation**).

17. When, due to changes in the relative market value of the Funds included in a Model Portfolio, the Model Portfolio exceeds the Permitted Range, the Filer will update the Model Portfolio so that it is returned to a relative weight that is within the Permitted Range, and the Filer may also use its discretion from time to time to rebalance holdings in the Funds in the Model Portfolios within the Permitted Ranges (an **Account Rebalance**).

18. Where the Filer updates a Model Portfolio to reflect a Model Re-Allocation or an Account Rebalance, the Dealer will execute appropriate trades (a **Rebalancing Trade**) within a reasonable time to reflect such updates in client accounts.

19. Any decision by the Filer to make a Rebalancing Trade will be effected within a reasonable time through the Dealer, an affiliate of the Dealer or another dealer registered in a category that permits the trade.

20. When effecting Rebalancing Trades and Weighting Change Trades, the Dealer will confirm receipt of the Filer's instructions and will provide written confirmation to the Filer that the trades have been effected in accordance with the Filer's instructions in the applicable client accounts.

21. The applicable Dealer will collect all of the required know-your-client (**KYC**) and trusted contact person (**TCP**) information (including information about the client's personal circumstances, financial circumstances, investment needs and objectives, investment knowledge, risk profile and investment time horizon required for a suitability determination) for each client who wishes to participate in the Program.

22. Prospective clients of the Dealer will complete a questionnaire and meet with a registered dealing representative of the Dealer (a **Registered Representative**) in order to determine which Model Portfolio will be suitable for the client and put the client's interest first. Based on the Registered Representative's suitability determination, a Model Portfolio recommendation will be made to the prospective client by the Registered Representative.

23. The client will discuss the recommended Model Portfolio and the Funds within the Model Portfolio with their Registered Representative. The Registered Representative will communicate with the client in accordance with the Dealer's usual processes and in accordance with securities legislation, which may include face-to-face meetings (in person or on-line) and/or via telephone or email or other written correspondence. However, the client ultimately chooses the Model Portfolio. The client has no ability to select Funds within a Model Portfolio.

24. A detailed investment policy statement or similar document (the **Investment Policy Statement**) will be created for the client by the Dealer. The Investment Policy Statement will reflect the Investment Guidelines of the Model Portfolio, the composition of the Model Portfolio and the Funds in the Model Portfolio, the Target Weights among the Asset Classes and the Permitted Range(s) of the Model Portfolio.

25. Once the client confirms the final Investment Policy Statement, the client will sign an acknowledgement form or similar document that describes the fees and provides for the payment of the fees to the Dealer, who will in turn pay fees to the Filer for the Services, and the terms of the Program (the **Client Agreement**), approving the final Investment Policy Statement and the Model Portfolio, and authorizing the Filer and the Dealer to implement and maintain the Model Portfolio.

26. In the Client Agreement, the client will authorize the Dealer (or an affiliate of the Dealer or another dealer registered in a category that permits the trade) to undertake Rebalancing Trades and Weighting Change Trades in accordance with the Model Portfolios and as directed by the Filer.

27. The Dealer will make trades in the Funds to invest the client in accordance with their chosen Model Portfolio.

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

29. Clients will have no direct contact with the Filer in connection with the Filer's management of the Model Portfolios. Clients will interact solely with the applicable Dealer and Registered Representative of the Dealer in connection with the Filer's management of the Model Portfolios and the Dealer's administration of the clients' accounts.

30. Each Dealer and their Registered Representatives will not market the Programs as managed account programs to their clients – their recommendation will be limited to recommending that a client participate in a Program, through which the client will invest in accordance with a Model Portfolio. Although the Filer develops the Model Portfolios, each Dealer and each Registered Representative must determine whether or not investing in the constituent Funds included in the Model Portfolio is suitable for that client and puts the client's interest first. The Filer is responsible for developing the Model Portfolios and managing them, but does not refer to any specific client's circumstances in doing so.

31. Each Dealer has the option of imposing a minimum investment amount for clients to participate in the Program, and the minimum investment amounts for different Dealers may vary.

32. A client may terminate their participation in a Program at any time by contacting their Dealer.

33. There will be no duplication of any fees or charges for the same services as a result of a client's decision to participate in the Program. No sales charges, redemption fees, switch fees or early trading fees will be charged in connection with any of the trades effected by the Dealer in connection with the Services.

34. All fees and expenses charged in respect of the Program will be described in the Client Agreement. The Dealer will pay fees to the Filer pursuant to an agreement between them. Any fees and expenses related to the Funds, including those managed by the Filer, will be described in the Fund prospectus and Fund Facts document or ETF Facts document, as applicable.

Client Agreement and Client Reporting

35. If the prospective client decides to proceed with participating in a Program and investing in accordance with a Model Portfolio, the Client Agreement is entered into between the client and the Dealer, which will set out, among other matters, the following:

    (a) Model Portfolio – The client will acknowledge the Filer's role in managing the Model Portfolios on a discretionary basis with a view to ensuring that the Model Portfolios are managed in accordance with the Investment Guidelines and within the Permitted Ranges indicated in the Client Agreement, which may be adjusted in the discretion of the Filer subject to the notice requirement set out in paragraph 14 above, and that the Filer is not responsible for taking into consideration the client's circumstances in the management of the Model Portfolios;

    (b) No changes to another Model Portfolio – In the event that a Dealer determines that an investment in a particular Model Portfolio is no longer suitable for a client or no longer puts the client's interest first, and that a different Model Portfolio would be more appropriate for the client, this will be communicated to the client by the Dealer, and the Registered Representative of the Dealer will undertake the analysis described in paragraphs 21 to 23 above and enter into a new Client Agreement before the client's investments are changed to reflect the new Model Portfolio;

    (c) KYC, TCP and suitability – The client will acknowledge that the Know Your Client Requirement, the Trusted Contact Person Requirement, and the Suitability Determination Requirement are not the responsibility of the Filer, but instead will be that of the Dealer who will gather and periodically update the KYC and TCP information concerning the client and determine, on at least an annual basis, that the selected Model Portfolio continues to be suitable for the client and puts the client's interest first;

    (d) Weighting Change Trades – Subject to the notice requirements set out in paragraph 14 above, the client will acknowledge that the Filer may use its discretion, from time to time, to make decisions regarding Weighting Changes for a Model Portfolio, and will authorize the Dealer to purchase and redeem securities of the Funds in the client's account to reflect such Weighting Changes to the Model Portfolio;

    (e) Rebalancing Trades – The client will acknowledge that the Filer may from time to time use its discretion to direct an Account Rebalance or a Model Re-allocation, which will be effected through the Dealer as Rebalancing Trades;

    (f) Fee Redemption Trades – The client will authorize the Dealer to redeem units of the Funds to pay fees owed by the client to the Dealer pursuant to the Client Agreement (the **Fee Redemption Trades**);

    (g) The Filer will agree, in its Services Agreement with each Dealer, to be responsible for ensuring that the Model Portfolios are managed in accordance with the Investment Guidelines agreed to with the Dealer and acknowledged by the client; and

    (h) No discretionary authority for the Dealers – The client will acknowledge that the Dealer will not have discretionary authority to participate in the management of the Model Portfolio or to direct Weighting Change Trades or Rebalancing Trades.

36. In addition to the Client Agreement, the client will also be provided by the Dealer:

    (a) with the final Investment Policy Statement prior to or concurrently with the execution of the Client Agreement which sets out the Investment Guidelines of the Model Portfolio, the composition of the Model Portfolio and the Funds in the Model Portfolio, the Target Weights, the Permitted Range(s), as well as the fees payable to the Dealer, who will in turn pay fees to the Filer; and

    (b) within two days of trades being implemented for the Model Portfolio, with the Fund Facts document and ETF Facts document, as applicable, as may be required by applicable securities laws, subject to any applicable exemption available to the Dealer, in respect of the Funds included in the Model Portfolio for a client. In the event that, as part of the Rebalancing Trades, a new replacement Fund is incorporated as part of the Model Portfolio, the client will similarly be provided with the Fund Facts or ETF Facts, as applicable, for the replacement Fund, as may be required by applicable securities laws, subject to any applicable exemption available to the Dealer.

37. The Dealer is responsible for arranging for the execution of the Client Agreement and related materials by the client.

38. Each Dealer will be responsible for providing clients with account statements, performance reports and any other reports or statements required by the Legislation.

39. Account opening documents relating to the Program will explain the different responsibilities of the Dealer and the Filer with respect to the client and the Model Portfolio. This will include disclosure that the Filer is responsible for managing the Model Portfolio without reference to the client's circumstances and only in accordance with the Model Portfolio selected by the client, and that the Dealer alone will have the responsibility to determine that the selected Model Portfolio is and remains suitable for the client and puts the client's interest first.

40. The Funds that will comprise each Model Portfolio will be held directly by each client in their own account with the Dealer and if the client has not already opened an account with the Dealer, the client will complete an account application.

41. Each Dealer will reflect all Weighting Change Trades, Rebalancing Trades or Fee Redemption Trades in the client's account.

42. Each Dealer will be responsible for providing clients in the Program with account statements in accordance with the requirements under the Legislation. Such statements of account will identify the assets participating in the Program and invested in accordance with the Model Portfolios.

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

44. Clients will be able to access their accounts in the manner each Dealer makes its accounts available for its clients.

45. An investment performance report will be sent to each client in the Program by the applicable Dealer on an annual basis.

46. The Dealer will also provide the client with an annual tax reporting package, as applicable.

Oversight and Monitoring

47. The following monitoring and oversight procedures will be carried out in connection with each client account in the Program:

    (a) An annual portfolio review will be conducted by the relevant Registered Representative to determine whether there have been any changes to the client's circumstances, including the client's personal and financial circumstances, investment needs and objectives, risk profile and investment time horizon, that would warrant the selection of another Model Portfolio; and

    (b) There will be ongoing oversight of each Model Portfolio by the Filer's advising representatives, to determine whether the composition of the Model Portfolio remains in compliance with its Investment Guidelines and the Filer's advising representatives will determine from time to time whether any changes to the composition of the Model Portfolio, such as changes to the Funds or Target Weights, would be appropriate.

Exemption Sought

48. Through the Filer's provision of the Services, and pursuant to, together, the Services Agreement between the Filer and the applicable Dealer and the Client Agreement between the Dealer and the client, (i) clients that participate in a Program have investment exposure to portfolio management decisions made by the Filer, and (ii) the Filer and the Dealer each deliver distinct ongoing registrable services for the benefit of the client, which together comprise the Program.

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

    (a) to gather and update the information contemplated by the Know Your Client Requirement and the Trusted Contact Person Requirement for each client in the Program;

    (b) to make a suitability determination for each client in the Program in respect of the applicable Model Portfolio(s) and ensure that each Rebalancing Trade and Weighting Change Trade is suitable for each client in the Program and puts the client's interest first in accordance with the Suitability Determination Requirement, rather than invested in accordance with the Investment Guidelines for the Model Portfolios; and

    (c) to deliver account statements and investment performance reports to clients who have invested in accordance with the Model Portfolios as required by the Statement Delivery Requirement.

50. The Dealers do not require an exemption from the adviser registration requirement under the Legislation as a result of their involvement with the Program, as they will not be engaged in providing discretionary management advice to clients in connection with the management of the Model Portfolios and will be effecting the Rebalancing Trades and Weighting Change Trades without exercising any discretion.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

(a) the Filer is, at the time of any client investment in the Program, Rebalancing Trade and Weighting Change Trade, registered under the Legislation as an adviser in the category of portfolio manager;

(b) each Rebalancing Trade and Weighting Change Trade is made in accordance with the Investment Guidelines of the selected Model Portfolio;

(c) each client in a Program is informed in writing;

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

a. the Filer will manage the Model Portfolios without reference to the client's circumstances and only in accordance with the terms of each Model Portfolio that is created and maintained by the Filer pursuant to the Services;

b. the Dealer will be solely responsible for gathering and periodically updating KYC and TCP information concerning the client and confirming, on at least an annual basis, that the selected Model Portfolio continues to be suitable for the client and puts the client's interest first;

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

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

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

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

(iii) the Dealer be responsible for gathering and periodically updating KYC and TCP information concerning the client and confirming, on at least an annual basis, that the selected Model Portfolio continues to be suitable for the client and puts the client's interest first;

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

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

(i) the Dealer has complied with its client reporting obligations under the rules of CIRO;

(ii) the Dealer has undertaken steps in accordance with its policies and procedures to provide reasonable assurance that account statements and investment performance reports delivered to clients are complete, accurate and delivered on a timely basis in a format that is compliant with the rules of CIRO;

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

provide a certificate to the Filer that the Dealer has effected all trades for clients in a Program in accordance with the selected Model Portfolios as directed by the Filer; and

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

***French version signed by**:*

“Hugo Lacroix”
Superintendent, Securities Markets and Distribution
Autorité des marchés financiers

SEDAR+ File #: 06146877

B.3.7 Kilgour Williams Capital Incorporated and The Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from subparagraph 13.5(2)(b)(iii) of NI 31-103 to permit inter-fund trades of private debt securities between Canadian pooled funds and offshore pooled funds managed by the same manager or an affiliate – Relief subject to conditions, including approval of inter-fund trades by independent review committee of Canadian pooled funds and valuation of private debt securities by independent valuation agent.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b)(iii) and 15.1.

June 5, 2025

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

AND

IN THE MATTER OF
KILGOUR WILLIAMS CAPITAL INCORPORATED
(the Filer)

AND

THE FUNDS
(as defined below)

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**) for an exemption from subparagraph 13.5(2)(b)(iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, to permit the Filer to carry out Inter-Fund Trades (as defined below) of Private Debt Securities (as defined below) between the Funds (as defined below) (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, Manitoba and Québec.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 31-103 have the same meaning in this decision unless otherwise defined. The following terms have the following meanings:

Existing Pooled Funds means KiWi Business Credit Fund L.P.; KiWi Business Credit Fund – Registered Eligible; KiWi Private Credit Fund L.P.; and KiWi Private Credit Fund – Registered Eligible, none of which is a reporting issuer;

Existing Offshore Funds means KiWi Alternative Income Master Fund a segregated account of Emerging Manager Platform (2) Ltd.; and KiWi Alternative Income US Feeder Fund, none of which is a reporting issuer;

Funds means, collectively, the Pooled Funds and the Offshore Funds;

Inter-Fund Trade means the purchase or sale of securities between Funds;

Offshore Funds means the Existing Offshore Funds and any future investment fund organized under the laws of a jurisdiction outside of Canada that is not a reporting issuer of which the Filer or an affiliate of the Filer acts as the portfolio manager; and

Pooled Funds means the Existing Pooled Funds and any future investment fund that is not a reporting issuer, of which the Filer or an affiliate of the Filer acts as investment fund manager and portfolio manager.

Representations

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

The Filer

1. The Filer is a corporation existing under the laws of the Province of Ontario with its head office in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in the provinces of Ontario, Newfoundland and Labrador, and Québec, and as a restricted portfolio manager in the provinces of Ontario, Québec, and Alberta and as an exempt market dealer in the provinces of Ontario, Québec, British Columbia, Alberta, Manitoba, and Newfoundland and Labrador.

3. The Filer's restricted portfolio manager registration is subject to, among other things, the condition that its activities are limited to advising funds comprised of commercial loan portfolios, commercial and consumer loan portfolios, mortgage loan portfolios, or asset backed securities portfolios where each investor in the funds is an "accredited investor" as defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), a "permitted client" as defined in NI 31-103, or a "Family, friend, or business associate" or "Founder, control person and family" as provided in NI 45-106.

4. The Filer is, or will be, the investment fund manager and/or portfolio manager of the Pooled Funds. The Filer, or an affiliate of the Filer, will be the portfolio manager of the Offshore Funds and will provide certain investment administrative services to the Offshore Funds.

5. The Filer or an affiliate is, or will be, a "responsible person" (as that term is defined in NI 31-103) acting as an adviser to each Fund.

6. The Filer and each existing Fund is not in default of securities legislation in the Jurisdiction.

The Pooled Funds

7. Each of the Pooled Funds is, or will be, an open-ended or closed-ended investment fund established as a limited partnership or a trust under the laws of a jurisdiction of Canada.

8. None of the Pooled Funds is, or will be, a reporting issuer in any jurisdiction of Canada.

9. The securities of the Pooled Funds are, or will be, distributed on a private placement basis pursuant to available prospectus exemptions.

The Offshore Funds

10. Each of the Offshore Funds is, or will be, an open-ended or closed-ended investment fund established as a segregated cell or account of a corporation, a corporation, a limited partnership or a trust under the laws of a jurisdiction located outside of Canada.

11. None of the Offshore Funds is, or will be, a reporting issuer in any of the jurisdictions of Canada.

12. The securities of the Offshore Funds are, or will be, distributed on a private placement basis to investors resident in one or more jurisdictions of Canada and/or investors resident outside of Canada on a basis which is exempt from the requirement to prepare and file prospectus in such jurisdictions.

Private Debt

13. Each Investment Policy Statement of the Existing Pooled Funds and Existing Offshore Funds limits the Fund's investments to marketplace originated secured loans to SME borrowers, investments in pooled investment vehicles which invest in marketplace originated loans, and cash and cash equivalents. The Filer, on behalf of the Existing Pooled Funds and the Existing Offshore Funds, acquires loans originated by online marketplace lending platforms which are not affiliated with the Filer or the Funds. The Filer or an affiliate may establish and/or manage similar Funds in the future which hold loans and other private debt securities.

14. Accordingly, to the extent consistent with the investment objective of a Pooled Fund or an Offshore Fund, the investment portfolio of a Pooled Fund or an Offshore Fund does or may include private debt securities and loans (or a portion of a loan) in respect of which the bid and ask price is not readily available given the limited number of investors/lenders and the limited amount of trading involved (**Private Debt Securities**).

Inter-Fund Trades

15. The Filer wishes to be permitted to cause any Fund to engage in Inter-Fund Trades in respect of Private Debt Securities for the following reasons:

    (a) The Filer wishes to consolidate the Private Debt Securities portfolios that are currently held in multiple existing Funds that have substantially similar investment objectives and policies but differing structures or jurisdictions of organization into a single Fund (the **Master Fund**) further to which each other Fund would access the returns of a portfolio of Private Debt Securities by holding interests in the Master Fund which held the consolidated portfolio. The Filer considers that a consolidated portfolio of Private Debt Securities should have greater inherent liquidity including access to bank financing, materially enhanced diversification, greater operational efficiency and therefore lower administrative and operating costs, stronger purchasing power, and will allow the Filer greater oversight;

    (b) The Filer may establish other Funds in the future that hold portfolios of Private Debt Securities and may similarly wish to consolidate those portfolios into the Master Fund.

16. The Filer is prohibited by subparagraph 13.5(2)(b)(iii) of NI 31-103 from causing the Funds to engage in Inter-Fund Trades of Private Debt Securities because the Filer or an affiliate, is or will be, a "responsible person" acting as an adviser who has access to, or participates in formulating, investment decisions made on behalf of each of the Funds.

17. Pursuant to section 6.1 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), a Fund is exempted from the restriction in paragraph 13.5(2)(b)(iii) of NI 31-103 and accordingly permitted to engage in Inter-Fund Trades of securities with another Fund that is an investment fund managed by the Filer or an affiliate of the Filer, if certain conditions are met, including that the bid and ask price of the security is readily available and that the transaction be executed at the "current market price of the security" (as defined in NI 81-107).

18. The Filer is unable to rely on the exemption in section 6.1 of NI 81-107 to effect the Inter-Fund Trades of Private Debt Securities between the Funds because:

    (a) the Private Debt Securities are not commonly traded in secondary markets, do not have an external pricing source, and accordingly do not have readily available bid and ask quotes; and

    (b) transactions involving Private Debt Securities cannot be executed at the "current market price of the security" (as defined in NI 81-107).

19. As such, absent the Exemption Sought, the Filer is prohibited by subparagraph 13.5(2)(b)(iii) of NI 31-103 from carrying out an Inter-Fund Trade of Private Debt Securities on behalf of a Fund.

Controls

20. Each Fund will only purchase Private Debt Securities pursuant to an Inter-Fund Trade that are consistent with, or necessary to meet the investment objectives of the Fund. Each Fund will only sell Private Debt Securities pursuant to an Inter-Fund Trade if the Filer has determined that disposing of such securities is appropriate for the Fund.

21. All decisions to purchase or sell Private Debt Securities pursuant to an Inter-Fund Trade will be made based on the judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds.

22. The Filer has, or will have, policies and procedures in place to address any potential conflicts of interest that may arise as a result of Inter-Fund Trades in respect of Private Debt Securities and the Filer will be able to appropriately deal with any such conflicts.

23. The Filer, on behalf of each Pooled Fund, has, or will have, established an independent review committee (the **IRC**) consistent with section 3.7 of NI 81-107. The IRC of each Pooled Fund is, or will be, expected to comply with the standard of care set out in section 3.9 of NI 81-107. As specified in its Charter, the IRC will perform tasks additional to its primary role of reviewing conflict of interest matters that are referred to it by the Filer in respect of the Pooled Funds. Such additional tasks will include, among others, reviewing conflicts of interest as they apply to the Offshore Funds.

24. The Filer will refer the Inter-Fund Trades in respect of Private Debt Securities involving a Fund to the IRC of such Fund.

25. Prior to any Fund making a purchase or sale of Private Debt Securities pursuant to an Inter-Fund Trade:

    (a) the IRC of the Fund will approve the transaction in accordance with section 5.2(2) of NI 81-107;

    (b) the Filer will comply with section 5.1 of NI 81-107;

    (c) the Filer and the IRC of the Fund will comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transaction; and

    (d) the value attributed to Private Debt Securities in connection with the Inter-Fund Trade will be determined by the Valuation Agent (as defined below) through the use of the Valuation Models (as defined below).

26. All Inter-Fund Trades will comply with paragraphs (e) and (g) of subsection 6.1(2) and with subsection 6.1(2.1) of NI 81-107.

Valuation

27. With respect to Private Debt Securities to be purchased or sold pursuant to an Inter-Fund Trade:

    (a) Market quotations are not publicly available for the value or prices of the Private Debt Securities. The Filer has, or will have, engaged an independent, third-party valuation agent on behalf of the Funds (the **Valuation Agent**). The Valuation Agent uses, or will use, valuation models and methodologies (the **Valuation Models**) specifically for Private Debt Securities to determine fair value. The Valuation Models' basic methodology is to create a Markov chain for each loan with distinct states and distinct probabilities of a transition from state to state at each cash flow. The Valuation Models are calibrated using statistical analyses of actual historical loan performance data. Price is calculated as the net present value, at prevailing interest rates, of the discounted probability-weighted future states. In practice, there is a valuation haircut for delinquent loans, with more severely delinquent loans receiving a greater reduction in price;

    (b) The fair value of each Private Debt Security is the deterministic result of a mathematical model administered by an unrelated third party. The Filer will not complete an Inter-Fund Trade unless and until a fair value determination is received from the Valuation Agent;

    (c) The Valuation Models used to determine the prices at which Private Debt Securities are purchased or sold by a Fund in connection with an Inter-Fund Trade are also used to calculate the net asset value for the purpose of the issue price or redemption price of units or shares of the Funds, as applicable;

    (d) A public accounting firm that is registered with the Canadian Public Accountability Board is, or will be, retained to act as auditor of each Fund (the **Auditor**) and will carry out an audit, in accordance with generally accepted auditing standards, of the annual financial statements of each Fund. The annual financial statements will be prepared in accordance with International Financial Reporting Standards. The Auditor will be independent of the Funds, the Filer and its affiliates, and the Valuation Agent.

Compensation

28. The Filer and its affiliates will receive no remuneration with respect to any purchase or sale of Private Debt Securities in connection with an Inter-Fund Trade.

Record Keeping

29. For each purchase or sale of Private Debt Securities, the Filer keeps, or will keep, written records for the applicable financial year of each Fund. These records do, or will, reflect details of the Private Debt Securities received or delivered by the applicable Fund and the value assigned to such Private Debt Securities during the period. These records are, or will be, retained for five years after the end of the applicable financial year of each Fund, the most recent two years in a reasonably accessible place.

Disclosure

30. The Filer will disclose in the offering documents of each Fund that Inter-Fund Trades of Private Debt Securities among the Funds may occur from time to time, and also disclose how the price of such Private Debt Securities is determined and the valuation procedure for such Private Debt Securities.

Decision

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

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

(a) the Inter-Fund Trade is consistent with the investment objectives of each Fund involved in the trade;

(b) the Filer refers an Inter-Fund Trade involving a Fund to the IRC of that Fund in the manner contemplated by section 5.1 of NI 81-107 and the Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the Inter-Fund Trade;

(c) the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;

(d) the Inter-Fund Trade complies with paragraphs (e) and (g) of subsection 6.1(2) and with subsection 6.1(2.1) of NI 81-107;

(e) the Inter-Fund Trade is executed at the fair value of the Private Debt Security, as determined by the third-party Valuation Agent utilizing the Valuation Models;

(f) prior to effecting its first Inter-Fund Trade of Private Debt Securities on behalf of the Funds in reliance on this decision, the Filer will:

  (i) for existing investors in the Funds, send a written notice disclosing:

    A. that the Funds may engage in Inter-Fund Trades of Private Debt Securities from time to time,

    B. how the price of such Private Debt Securities is determined,

    C. the valuation procedure for such Private Debt Securities,

    D. that the Filer is relying on this decision, and

    E. a summary of the conditions of this decision, and

  (ii) for new investors in the Funds, include the disclosure described in (i) in the offering documents of each Fund; and

(g) each Fund prepares financial statements on an annual basis, in accordance with Canadian generally accepted accounting principles applicable to publicly accountable enterprises that:

  (i) present the portfolio assets of the Funds, including the Private Debt Securities, at fair value, as defined in IFRS 13 *Fair Value Measurement*, as the same may be amended or replaced from time to time, and

  (ii) are audited by the Auditor in accordance with Canadian generally acceptable auditing standards.

“Darren McKall”
AVP, Investment Management Division
Ontario Securities Commission

Application File #: 2025/0269

B.3.8 U.S. Gold Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 The Multijurisdictional Disclosure System so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that any road shows, standard term sheets and marketing materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1)2.
National Instrument 71-101 The Multijurisdictional Disclosure System, s. 11.3.

June 2, 2025

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
U.S. GOLD 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 (the **Legislation**), pursuant to paragraph 74(1)2 of the *Securities Act* (Ontario), for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use Standard Term Sheets (as defined below) and Marketing Materials (as defined below), and (ii) conduct Road Shows (as defined below) in connection with future offerings under a Final Canadian MJDS Shelf Prospectus (as defined below), together with applicable supplements to be filed by the Filer in each of the provinces of Canada, other than the province of Québec (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 71-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation initially incorporated in the State of New Jersey and re-incorporated under the laws of the State of Nevada. The Filer's head office is located at 1910 E. Idaho St. Suite 102, Box 604, Elko, Nevada, 89801, United States of America

2. As of the date hereof, the Filer is a reporting issuer in each of the Jurisdictions and is not in default of its obligations as a reporting issuer under securities legislation of any such jurisdiction.

3. As of the date hereof, the Filer is an "SEC foreign issuer" and a "U.S. Issuer", as such terms are defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and NI 71-101, respectively.

4. The Filer has filed a registration statement on Form S-3 with the U.S. Securities and Exchange Commission on May 2, 2025 (the **Registration Statement**), which Registration Statement contains, among other things, a shelf prospectus (the **U.S. Shelf Prospectus**) and may register for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of shares of common stocks, shares of preferred stocks, warrants, and units (collectively, the **Securities**).

5. The Filer has also filed a final MJDS prospectus in each of the Jurisdictions pursuant to NI 71-101, which includes the final U.S. Shelf Prospectus (the final MJDS prospectus is referred to in this decision as the Final Canadian MJDS Shelf Prospectus) and will qualify the distribution in each of the Jurisdictions, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of Securities.

6. National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) sets out the requirements for a distribution under a (non-MJDS) shelf prospectus in Canada, including requirements for advertising and marketing activities; in particular, Part 9A of NI 44-102 entitled *Marketing In Connection with Shelf Distributions* permits the conduct of "road shows" and the use of "standard term sheets" and "marketing materials" (as such terms are defined in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**)) following the issuance of a receipt for a final base shelf prospectus provided that the approval, content, use and other applicable conditions and requirements of Part 9A are complied with. NI 71-101 does not contain provisions equivalent to those of Part 9A of NI 44-102.

7. In connection with marketing an offering in Canada under the Final Canadian MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer may wish to conduct road shows (**Road Shows**) and utilize one or more standard term sheets (**Standard Term Sheets**) and marketing materials (**Marketing Materials**), as such terms are defined in NI 41-101. Any such Road Shows, Standard Term Sheets and Marketing Materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

8. Canadian purchasers, if any, of securities offered under the Final Canadian MJDS Shelf Prospectus will only be able to purchase those securities through an investment dealer registered in the Jurisdiction of residence of the purchaser.

Decision

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

The decision of the principal regulator is that the Exemption Sought is granted, provided that the conditions and requirements set out in Part 9A of NI 44-102 for Standard Term Sheets, Marketing Materials and Road Shows are complied with for any future offering under the Final Canadian MJDS Shelf Prospectus in the manner in which those conditions and requirements would apply if the Final Canadian MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

"Leslie Milroy"
Associate Vice President, Corporate Finance Division
Ontario Securities Commission

OSC File #: 2025/0318

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
Ayr Wellness Inc	June 5, 2025	
Li-Cycle Holdings Corp.	June 5, 2025	
Montfort Capital Corp.	June 5, 2025	
Jack Nathan Medical Corp.	June 6, 2025	

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	
Perk Labs Inc.	April 4, 2024	
Rivalry Corp.	May 1, 2025	
Pond Technologies Holdings Inc.	May 1, 2025	

Company Name	Date of Order	Date of Lapse
Frontenac Mortgage Investment Corporation	May 9, 2025	

B.5
Rules and Policies

B.5.1 OSC Rule 81-510 Dealer Rebates of Trailing Commissions

OSC RULE 81-510
DEALER REBATES OF TRAILING COMMISSIONS

PART 1 – DEFINITIONS, INTERPRETATION AND APPLICATION

1.1 Definitions – In this Instrument,

"client" means a client of an OEO dealer;

"client transfer" means a client-initiated transfer of trailing commission paying mutual fund securities to an OEO dealer;

"dealer rebate" means a rebate to a client by an OEO dealer, equal to the amount of the trailing commissions paid by the manager to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the trailing commission paying mutual fund security in the OEO dealer account;

"DSC redemption fee" means a redemption fee payable by a client to a manager upon the redemption of mutual fund securities purchased under a deferred sales charge option;

"grace period" means a period of up to 45 days from the date of a client transfer;

"like-to-like switch" means a switch, initiated by a manager or an OEO dealer, of a mutual fund security held in an OEO dealer account from a trailing commission paying class or series to a non-trailing commission paying class or series of the same mutual fund, where the only difference is a lower management fee for the non-trailing commission paying class or series, and where there are no tax consequences for effecting such a switch;

"like-to-similar switch" means a switch, initiated by a manager or an OEO dealer, of a mutual fund security held in an OEO dealer account from a trailing commission paying class or series to a non-trailing commission paying class or series of the same mutual fund, where the only differences are a lower management fee for the non-trailing commission paying class or series, and a difference in distribution policy and/or currency, and where there are no tax consequences for effecting such a switch;

"management fee rebate" means a rebate to a client by a manager, equal to the amount of the trailing commissions that would otherwise be paid by the manager to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the trailing commission paying mutual fund security in an OEO dealer account;

"OEO dealer" means a participating dealer that is not required to make a suitability determination, including a participating dealer offering order execution only accounts;

"OEO trailing commission ban" means the prohibitions in subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices*; and

"prior holding" means trailing commission paying mutual fund securities that were purchased by a client of an OEO dealer prior to June 1, 2022, and for which a like-to-like switch, a like-to similar switch and a management fee rebate are not available or cannot reasonably be executed.

1.2 Interpretation – Terms defined in the *Securities Act* (Ontario), Multilateral Instrument 11-102 *Passport System*, National Instrument 14-101 *Definitions*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 81-102 *Investment Funds* and National Instrument 81-105 *Mutual Fund Sales Practices* have the same meaning in this Instrument.

1.3 Application – This Instrument applies to

(a) a distribution of securities of a mutual fund that offers or has offered securities under a prospectus or simplified prospectus for so long as the mutual fund remains a reporting issuer, including prior holdings, and

(b) a person or company in respect of activities pertaining to a mutual fund referred to in paragraph (a).

PART 2 – DEALER REBATES OF TRAILING COMMISSIONS

2.1 **Prior Holdings** – Subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices* do not apply to dealer rebates provided in connection with prior holdings if the requirements of this Instrument are complied with.

2.2 **Grace Period for Client Transfers** – Subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices* do not apply to a client transfer for the grace period if

(a) the client transfer is processed in the following manner:

(i) a manager will identify whether a like-to-like switch is available, or if no like-to-like switch is available, whether a like-to-similar switch is available, or whether a management fee rebate should be used;

(ii) if a manager has identified a like-to-like switch or a like-to-similar switch, the OEO dealer will execute the like-to-like switch or the like-to-similar switch;

(iii) if a manager has identified that a management fee rebate can be used, the manager will provide a management fee rebate;

(iv) if a like-to-like switch and a like-to-similar switch are not available and a management fee rebate is not used, or if a like-to-like switch or a like-to-similar switch is available and a management fee rebate is not used but the trailing commission paying mutual fund securities remain subject to a DSC redemption fee, the OEO dealer will provide a dealer rebate;

(b) once the client transfer has been executed, but within the grace period, the OEO dealer must assess whether a like-to-like switch or a like-to-similar switch, if available, has been properly processed, failing which the OEO dealer will take action to ensure the relevant switch is properly processed;

(c) the OEO dealer provides a dealer rebate to the client for any trailing commissions paid by a manager to the OEO dealer during the grace period.

2.3 **Client Transfers** – Subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices* do not apply to dealer rebates provided in connection with client transfers after the grace period if a management fee rebate is not used, and either of the following apply:

(a) a like-to-like switch is not available and a like-to-similar switch is not available;

(b) the trailing commission paying mutual fund securities remain subject to a DSC redemption fee.

2.4 **Payment** – Any OEO dealer providing dealer rebates for prior holdings pursuant to section 2.1 of this Instrument or for client transfers pursuant to sections 2.2 and 2.3 of this Instrument must pay a dealer rebate to its impacted clients in an amount equal to the amount of the trailing commissions received from the manager on at least a quarterly basis.

2.5 **Closed Accounts** – If a client closed an account prior to the payment of a dealer rebate in connection with a prior holding or a client transfer and the OEO dealer cannot locate the client, then the OEO dealer must do all of the following:

(a) donate the dealer rebate to a registered charity within 12 months of receipt of the trailing commissions by the OEO dealer, where permitted by applicable laws;

(b) keep a record of the amount and dates of donations to a registered charity in respect of such prior holdings and client transfers, and the name and charity registration number of each registered charity that received such donations;

(c) upon request, provide the records in paragraph (b) above to the Investment Management Division by email at IMDivision@osc.gov.on.ca.

2.6 **Forced Redemptions** – (1) For prior holdings, an OEO dealer or a manager must not redeem a client's mutual fund securities for which trailing commissions are paid without client consent or instruction, in order for an OEO dealer or a manager to comply with subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices*.

(2) For client transfers, an OEO dealer or a manager must not redeem a client's mutual fund securities for which trailing commissions are paid without client consent or instruction, or charge a DSC redemption fee, in order for an OEO dealer or a manager to comply with subsections 2.2(3) and 3.2(4) of National Instrument 81-105 *Mutual Fund Sales Practices*.

2.7 **Fees** – (1) For prior holdings, an OEO dealer must not charge any fees to clients in connection with dealer rebates initiated by an OEO dealer.

(2) For client transfers, an OEO dealer or a manager must not charge any fees to clients in connection with like-to-like switches, like-to-similar switches, management fee rebates or dealer rebates initiated by an OEO dealer or a manager, as applicable.

PART 3 – COMMUNICATIONS

3.1 **Communications for Client Transfers** – (1) OEO dealers must provide clients making client transfers with written notice of all of the following information on the form for client transfers or on a document provided during the process to onboard new accounts:

(a) how client transfers are processed in accordance with paragraph 2.2(a) of this Instrument and an explanation of how the client transfer process may impact the client;

(b) an explanation that the client transfer process in paragraph 2.2(a) of this Instrument is due to OEO trailing commission ban, which took effect on June 1, 2022;

(c) a brief explanation that the OEO trailing commission ban means that trailing commission paying mutual fund securities should not be transferred to OEO dealer accounts;

(d) an explanation that if no like-to-like switch or like-to-similar switch is available and no management fee rebate is used, or if such a like-to-like switch or a like-to-similar switch is available but the trailing commission paying mutual fund securities remain subject to a DSC redemption fee, the OEO dealer will provide a dealer rebate;

(e) an explanation that any like-to-like switch or a like-to-similar switch will be reflected in the client's next account statement and the client will receive a trade confirmation promptly following any like-to-like switch or like-to-similar switch;

(f) the client's trade confirmation, account statement or transaction history will name the class or series of the non-trailing commission paying mutual fund that is held by the client after the like-to-like switch or like-to-similar switch, and any dealer rebate;

(g) an explanation of how to obtain further information about their mutual fund securities, including how to obtain a copy of the fund facts document for the relevant class or series held by the client after a like-to-like switch or a like-to-similar switch, and that the fund facts document will not be delivered unless requested;

(h) a statement about the dealer rebate, how the dealer rebate is calculated, the frequency of payment of the dealer rebate, and that the client's account statement will identify any dealer rebate payment the client received;

(i) a statement that client transfers that are subject to a dealer rebate will have access to information on the OEO dealer's website;

(j) the OEO dealer contact and resource information for the client to obtain further information.

(2) OEO dealers must make available to clients on their website all of the following information about dealer rebates:

(a) a client transfer is subject to a dealer rebate if a like-to-like switch and a like-to-similar switch are not available, and a management fee rebate is not used;

(b) an explanation about why a dealer rebate is provided, how the dealer rebate is calculated, the frequency of payment of the dealer rebate, and that the client's account statement will identify any dealer rebate payment the client received;

(c) the OEO dealer contact information for the client to obtain further information.

3.2 **Inquiries** – (1) Any OEO dealer providing dealer rebates pursuant to sections 2.1, 2.2 and 2.3 of this Instrument must address clients' questions with respect to the implementation of the OEO trailing commission ban, including like-to-like switches, like-to-similar switches and dealer rebates for prior holdings and client transfers.

(2) Any manager facilitating like-to-like switches, like-to-similar switches and management fee rebates for client transfers pursuant to sections 2.1 and 2.3 of this Instrument must address clients' questions with respect to the implementation of the OEO trailing commission ban, including like-to-like switches, like-to-similar switches and management fee rebates for prior holdings and client transfers.

PART 4 – RECORDS

4.1 **Records** – (1) Any OEO dealer relying on section 2.1 of this Instrument to provide dealer rebates for prior holdings must keep a record of the actions taken for each prior holding.

(2) Any OEO dealer relying on section 2.2 of this Instrument to process client transfers must keep a record of the actions taken for each client transfer.

(3) Any OEO dealer providing dealer rebates for client transfers must keep a record of the dealer rebates provided for each client transfer.

(4) Any manager paying trailing commissions to OEO dealers for dealer rebates for client transfers must keep a record of the actions taken for each client transfer.

4.2 **Reporting** – (1) Upon request, an OEO dealer must provide any of the records required to be kept under subsections 4.1(1), 4.1(2) and 4.1(3) of this Instrument to the Investment Funds Division at the Ontario Securities Commission by email at IMDivision@osc.gov.on.ca.

(2) Upon request, a manager must provide any of the records required to be kept under subsection 4.1(4) of this Instrument to the Investment Funds Division at the Ontario Securities Commission by email at IMDivision@osc.gov.on.ca.

PART 5 – EXEMPTION

5.1 **Exemption** – The Director may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 – EFFECTIVE DATE

6.1 **Effective Date** – This Instrument comes into force on the earlier of 15 days after Ministerial approval or June 17, 2025.

B.6
Request for Comments

B.6.1 CSA Notice and Request for Comment – Proposed Repeal and Replacement of National Instrument 43-101 Standards of Disclosure for Mineral Projects

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED REPEAL AND REPLACEMENT OF NATIONAL INSTRUMENT 43-101 *STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS*

June 12, 2025

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing to repeal and replace the current National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Instrument**) and Form 43-101F1 *Technical Report* (the **Form**) with a streamlined instrument and form. We are also proposing to rescind and replace the current Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Companion Policy**) with a new companion policy. The Modernized Disclosure Requirements, as defined below, are intended to modernize and streamline Canada's mining disclosure regime and continue to protect investors, without imposing an undue regulatory burden on market participants.

We are publishing for a 120-day comment period:

- proposed National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Proposed NI 43-101**) and Form 43-101F1 *Technical Report* (the **Proposed Form**), including a repeal of the Instrument and the Form;
- proposed Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Proposed Companion Policy**) to become effective to coincide with the adoption of Proposed NI 43-101;
- proposed consequential amendments to existing instruments and forms:
    - National Instrument 44-101 *Short Form Prospectus Distributions*;
    - National Instrument 44-102 *Shelf Distributions*;
    - Form 45-106F3 *Offering Memorandum for Qualifying Issuers* of National Instrument 45-106 *Prospectus Exemptions*;
    - Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*;
    - Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*; and
- proposed change to Companion Policy 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*

(collectively, the **Modernized Disclosure Requirements**).

The public comment period will end on October 10, 2025.

The text of the Modernized Disclosure Requirements is contained in Annexes A through I of this Notice and will also be available on websites of CSA jurisdictions, including:

- www.lautorite.qc.ca
- www.asc.ca
- www.bcsc.bc.ca
- nssc.novascotia.ca
- www.fcnb.ca
- www.osc.ca
- www.fcaa.gov.sk.ca
- www.mbsecurities.ca

Substance and Purpose

Canada plays a leading role in mining capital formation. Canada's mining disclosure regime is recognized internationally as the standard for mineral project disclosure. The Modernized Disclosure Requirements will allow the CSA to continue to protect investors and preserve Canada's leading role in facilitating efficient capital formation for mining issuers.

The Modernized Disclosure Requirements aim to update and enhance Canada's mining disclosure regime to address evolving disclosure practices and policy considerations identified by CSA staff, and to reflect changes in the industry and investor expectations. As further discussed below in the Summary of the Modernized Disclosure Requirements section, the Modernized Disclosure Requirements are designed to:

- remove or replace certain definitions that have become outdated;
- modernize and streamline certain requirements to reflect current industry practice;
- remove certain requirements that have become outdated;
- provide clarification and guidance on certain definitions and requirements; and
- make other minor drafting changes to clarify disclosure requirements.

Background

Since the last amendments in 2011, the CSA have continually monitored the mineral disclosure requirements in the Instrument, and gathered data evidencing deficiencies identified through continuous disclosure reviews, prospectus reviews and targeted issue-oriented reviews.

In April 2022, the CSA published Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (the **Consultation Paper**), seeking information to inform potential amendments to Canada's mining disclosure regime. 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.

Summary of the Modernized Disclosure Requirements

The Modernized Disclosure Requirements are meant to address evolving disclosure practices and policy considerations. The Modernized Disclosure Requirements also address the comments expressed by various market participants in response to the Consultation Paper.

The Modernized Disclosure Requirements include the following amendments and changes:

Changes to terms and definitions

a. Mineral project

The current Instrument, Companion Policy and Form use the terms "mineral project", "project", "mineral property" and "property" interchangeably. The Modernized Disclosure Requirements add clarity by replacing these terms with "mineral project".

The current definition treats diamonds, base metals, precious metals and industrial metals as separate categories. The Modernized Disclosure Requirements clarify the definition of "mineral project" by removing these terms to reflect that we consider them as examples of natural solid inorganic material or natural fossilized organic material.

b. Early stage and advanced properties

The current Instrument defines "early-stage exploration property" and "advanced property". The Modernized Disclosure Requirements remove these definitions to make the Proposed Form suitable for all mineral project stages, which addresses concerns raised by issuers that have projects at various stages.

c. Qualified person

The gatekeeping role of the qualified person is essential to protect the investing public. The Modernized Disclosure Requirements update the qualified person definition to:

- remove the education requirement as it is covered by professional licencing criteria,
- clarify that an individual's experience in the minerals industry must be gained after registration as a professional geologist or engineer, and
- clarify the meaning of experience relevant to the subject matter of the mineral project.

The Modernized Disclosure Requirements also clarify that all disclosure of scientific or technical information for material or non-material projects must be based on information prepared or approved by a qualified person. This change aligns with current industry practice and will result in consistent disclosure to investors.

d. Foreign codes

Since 2011, all major international mining jurisdictions, including Canada, have harmonized their definitions for mineral resources, mineral reserves and mining studies to align with those of the Committee for Mineral Reserves International Reporting Standards (**CRIRSCO**), the international organization that represents more than 85% of global jurisdictions with mineral project reporting standards. The Canadian Institute of Mining, Metallurgy, and Petroleum (**CIM**) is the Canadian member of CRIRSCO and maintains the definitions in the Canadian context. The current Instrument incorporates by reference the CIM Definition Standards for Mineral Resources and Reserves (the **CIM Definition Standards**), which aligns the CSA's mining disclosure requirements with CRIRSCO standards. The current Instrument also permits foreign issuers to refer to similar definitions in standards in their jurisdiction that are similar to the CIM Definition Standards.

As CIM Definition Standards are sufficiently similar to other jurisdictions, we no longer need to allow issuers to rely on other reporting codes. The Modernized Disclosure Requirements remove these defined foreign codes so that technical report disclosure will require disclosure aligned with the CIM definitions of mineral resources, mineral reserves and mining studies.

New CIM definitions

As part of the CSA's initiative to align the Modernized Disclosure Requirements with industry practice, CIM is working in parallel with the CSA to include additional definitions in the revised CIM Definition Standards.

The following definitions will be included in the CIM Definition Standards and incorporated by reference in the Proposed NI 43-101:

- "scoping study" – this new CIM definition replaces the definition of "preliminary economic assessment" (**PEA**) in the current Instrument. PEA disclosure has been an area of significant non-compliance, particularly related to disclosure of a PEA after establishing mineral reserves, which has led to staff interventions and refiling of technical reports. We continue to require specific cautionary statements to alert investors about the conceptual nature of scoping studies;
- "exploration target" – this CIM definition replaces the expression "target for further exploration" in the current Instrument to align with global standards;
- "life of mine plan" – this new CIM definition will be used when disclosing mineral project status while in production to align with global standards.

Royalty issuer technical reports

An issuer that has only a royalty or similar interest in a mineral project is currently required to file a technical report. These reports provide limited information, as a royalty issuer's qualified person does not usually have access to the owner's data and cannot

complete a current personal inspection or verify technical information. The Modernized Disclosure Requirements remove the requirement for a royalty-only issuer to file a technical report.

Environmental and social issues

Over the last decade, CSA staff have seen an increase in public and investor awareness of environmental and social issues related to mineral projects. However, disclosure requirements related to environmental, permitting and social matters in a technical report have remained largely unchanged since 2001. The Modernized Disclosure Requirements enhance certain terminology, for example by using the broad term "rightsholders" and replacing outdated terms such "local" and "social and community impact". The requirements in technical reports have also been adjusted to require the dates and sources of any environmental, permitting and social reporting disclosure so the public knows whether the information is current, given the non-periodic, milestone-driven nature of a technical report.

Indigenous Peoples, rightsholders and communities

We considered feedback from the Consultation Paper, including from groups representing Indigenous Peoples in Canada about whether specific disclosure of the risks and uncertainties related to the rights of Indigenous Peoples or an issuer's relationship with Indigenous Peoples should be mandatory in a technical report, and if we should require the qualified person or other expert to validate the issuer's disclosure of significant risks and uncertainties related to its existing relationship with Indigenous Peoples. Many commenters noted that technical reports are milestone-driven documents triggered to support an issuer's scientific and technical disclosure about its material mineral projects, and that disclosure of an issuer's relationship generally with Indigenous Peoples and the impact on its business generally should more appropriately form part of the issuer's ongoing continuous disclosure record. The Modernized Disclosure Requirements will instead require disclosure in a technical report specifically about permits, agreements and negotiations with Indigenous Peoples, rightsholders or communities concerning the mineral project, as that disclosure is relevant in a technical report in order for investors to fully understand and appreciate the risks and uncertainties relating to a mineral project.

We remind issuers that existing disclosure obligations under Canadian securities laws require issuers to disclose material information to investors. These disclosure obligations apply irrespective of specific disclosure requirements under the Instrument or Form. Issuers need to assess whether information related to the issuer's relationships, engagement and agreements with Indigenous Peoples, rightsholders or communities is material information that is required to be disclosed under Canadian securities laws.

Current personal inspection requirement

The current personal inspection requirement is a foundational element of the qualified person's role as a gatekeeper to the investing public. It enables the qualified person to become familiar with conditions on the property, to observe the property geology and mineralization, and to verify the work done on the property. The Modernized Disclosure Requirements enhance this current requirement by including a new standalone item in the Proposed Form for disclosure specific to the current personal inspection by each qualified person, highlighting this important element of the technical report.

Removal of deferred current personal inspection

The current Instrument allows for a deferral of the current personal inspection of the mineral project by a qualified person due to seasonal weather conditions, provided that the personal inspection is conducted as soon as possible and the technical report is refiled. In recent years, this provision has been rarely used and when it was used, there was non-compliance with the refiling requirement. The Modernized Disclosure Requirements remove the ability to defer a current personal inspection requirement and reinforce that at least one qualified person must conduct a current personal inspection on the mineral project before a technical report is filed.

Mineral resource disclosure

Mineral resource estimates represent a significant milestone for all issuers with mineral projects and these estimates are considered the foundation for all subsequent engineering studies and economic analysis of a mineral project. In November 2019, CIM published a review '*Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines'* to assist issuers and qualified persons in preparing mineral resource estimates. In June 2020, we published CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* in which staff noted several observed deficiencies in disclosure of mineral resource estimates. As a result, since 2020 we have generally seen enhanced disclosure by qualified persons in technical reports explaining how the mineral resource estimate was determined. To ensure fulsome, comparable disclosure continues to be provided, the Modernized Disclosure Requirements codify current industry practice by requiring:

- information about how reasonable prospects for eventual economic extraction were determined,
- enhanced disclosure about the classification of mineral resource estimates,

- the issuer's attributable percentage of resources for fractional ownerships, and
- project-specific risk disclosure requirements for mineral resource estimates.

Adjacent properties

Disclosure by an issuer about a property adjacent to its project is often used for promotional purposes in technical reports and other documents. The Modernized Disclosure Requirements ensure that while an issuer may still discuss neighbouring mineralization, it cannot focus on this type of disclosure and must include cautionary statements that this information is not necessarily indicative of mineralization on the issuer's mineral project.

Data verification

We have seen examples of inadequate disclosure of data verification at every development stage of a mineral project. Many qualified persons incorrectly apply data verification only to exploration and drilling activities and not to other technical data, such as metallurgy or mining methods. The Modernized Disclosure Requirements require specific disclosure about the data verification performed by qualified persons for each item of the technical report.

Disclaimers

The current Instrument limits the use of disclaimers in a technical report but not in other disclosure. Issuers have therefore used disclaimers in other documents without regard for the veracity of the disclosure of scientific and technical information about a mineral project. The Modernized Disclosure Requirements clarify that an issuer's disclosure (including a technical report) cannot include any disclaimer of scientific or technical information.

Written disclosure and material mineral projects

Under the current Instrument, there are many prescribed requirements for written disclosure pertaining to scientific and technical information that only apply to an issuer's material mineral projects. The Modernized Disclosure Requirements clarify that the prescribed requirements for written disclosure apply to material and non-material mineral projects. The requirements apply to written disclosure regarding data verification, exploration information, and mineral resources and mineral reserves. This change aligns with current industry practice and will result in consistent disclosure to investors.

Relevant scientific and technical information

Technical reports are intended to provide a summary of scientific and technical information about an issuer's material mineral projects. The Modernized Disclosure Requirements replace the phrase "material scientific and technical information" with "relevant scientific and technical information" related to the content of a technical report. This change clarifies that the qualified person is not expected to determine materiality but is expected to determine what information is relevant to the mineral project for the purpose of the technical report.

Other amendments and changes

The Modernized Disclosure Requirements include several more minor changes to enhance and clarify mining disclosure for investors.

Companion Policy

The Modernized Disclosure Requirements introduce new Companion Policy guidance specific to disclosure in technical reports. This is the first time the CSA will offer extensive guidance on the Form in the Companion Policy, which we expect will provide significant assistance to qualified persons who author technical reports.

Consequential Amendments and Changes

As part of this modernization project, the CSA also proposes to make consequential updates to existing instruments and policies to reflect the Modernized Disclosure Requirements' new numbering convention. In many cases, the proposed amendments involve revising or deleting references to provisions found in the current Instrument. In certain instruments, we propose to make certain housekeeping amendments, such as repealing or deleting transitional provisions that are no longer applicable and correcting grammatical or typographical errors.

Local Matters

Annex J is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Modernized Disclosure Requirements.

Please submit your comments in writing on or before October 10, 2025.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.asc.ca, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A:	Proposed NI 43-101
Annex B:	Proposed Form
Annex C:	Proposed Companion Policy
Annex D:	Proposed amendments to National Instrument 44-101 *Short Form Prospectus Distributions*
Annex E:	Proposed amendment to National Instrument 44-102 *Shelf Distributions*
Annex F:	Proposed amendment to National Instrument 45-106 *Prospectus Exemptions*
Annex G:	Proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations*
Annex H:	Proposed amendment to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*

Annex I:	Proposed change to Companion Policy 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*
Annex J:	Local Matters

Questions

Please refer your questions to any of the following:

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moira.goodfellow@fcnb.ca

Financial and Consumer Affairs Authority of Saskatchewan
Heather Kuchuran
Director, Corporate Finance
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The Manitoba Securities Commission
Patrick Weeks
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204-945-3326
patrick.weeks@gov.mb.ca

Nova Scotia Securities Commission
Jack Jiang
Securities Analyst
902-424-7059
jack.jiang@novascotia.ca

ANNEX A

National Instrument 43-101
Standards of Disclosure for Mineral Projects

Table of Contents

Proposed National Instrument 43-101
Standards of Disclosure for Mineral Projects

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

1. In this Instrument:

"CIM" means the Canadian Institute of Mining, Metallurgy and Petroleum;

"disclosure" means any oral statement or written disclosure made by or on behalf of an issuer and intended to be, or reasonably likely to be, made available to the public, but does not include written disclosure that is made available to the public by reason only of having been filed with a government or agency of government under a requirement of law other than securities legislation;

"effective date" means, with reference to a disclosure, the date of the most recent scientific or technical information included in the disclosure;

"exploration information" includes geological, geophysical, geochemical, sampling, drilling, trenching, analytical testing, assaying, mineralogical, metallurgical and other similar information concerning a mineral project that is derived from activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit;

"historical estimate" means an estimate of the quantity, grade or quality, or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve and prepared before the issuer acquired, or entered into an agreement to acquire, an interest in the mineral project that contains the deposit;

"initial deposit period" has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*;

"mineral project" means an activity that involves or will involve exploration for, or development or production of, natural solid inorganic or natural fossilized organic material, or a royalty or similar interest in the activity;

"producing issuer" means an issuer with annual audited financial statements that disclose gross revenue derived from mining operations of

(a) not less than $55 million Canadian for the issuer's most recently completed financial year, and

(b) not less than $165 million Canadian in the aggregate for the issuer's 3 most recently completed financial years;

"professional association" means a self-regulatory organization of engineers, geoscientists or both that

(a) is

(i) authorized or recognized under a statute in a jurisdiction of Canada, or

(ii) a foreign association, the practices of which are generally accepted as reputable by the international mining industry,

(b) admits an individual on the basis of academic qualification, experience and ethical fitness,

(c) requires or imposes an obligation on its members to satisfy professional standards of competence and ethics established by the organization,

(d) requires, imposes obligations concerning or encourages continuing professional development, and

(e) has the power or ability and applies the power or uses the ability to discipline, suspend or expel a member regardless of where the member practises or resides;

"qualified person" means an individual who is a professional geoscientist, professional engineer or equivalent of either and

(a) has at least 5 years of experience as a professional geoscientist, professional engineer or equivalent of either in mineral exploration, mine development, mine operation or mineral project assessment, or any combination of these,

(b) has experience relevant to the subject matter of the mineral project,

(c) is in good standing with a professional association, and

(d) in the case of an individual who is a member of a foreign professional association, has a membership designation that

(i) requires or obligates the individual to have attained a position of responsibility in the individual's profession that requires the exercise of independent judgment, and

(ii) requires or obligates

(A) a favourable confidential peer evaluation of the individual's character, professional judgment, experience and ethical fitness, or

(B) a recommendation for membership of at least 2 peers and demonstrated prominence or expertise in the individual's field of practice;

"quantity" means tonnage or volume based on the standard applied in the mining industry to the type of mineral;

"technical report" means a report prepared and filed in accordance with this Instrument;

"written disclosure" includes any writing, picture, map or other printed representation, whether produced, stored or disseminated on paper or electronically.

CIM defined terms

2. In this Instrument, each of the following terms is listed in the order it appears and has the meaning ascribed to it in the CIM Definition Standards for Mineral Resources & Mineral Reserves adopted by CIM, as amended from time to time:

(a) exploration target;

(b) mineral resource;

(c) inferred mineral resource;

(d) indicated mineral resource;

(e) measured mineral resource;

(f) modifying factors;

(g) mineral reserve;

(h) probable mineral reserve;

(i) proven mineral reserve;

(j) scoping study;

(k) pre-feasibility study;

(l) feasibility study;

(m) life of mine plan.

Independence

3. In this Instrument, a qualified person is independent concerning a technical report if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment concerning the preparation of the technical report.

Non-application – certain SEC issuer filings

4. This Instrument does not apply to written disclosure of scientific and technical information filed by an issuer if the written disclosure is disclosure material filed only to comply with paragraph 11.1 (1) (b) of National Instrument 51-102 *Continuous Disclosure Obligations*.

PART 2 DISCLOSURE REQUIREMENTS

All disclosure

5. An issuer that discloses scientific or technical information concerning a mineral project must

(a) base the disclosure on information prepared by or under the supervision of a qualified person, or

(b) obtain prior approval of a qualified person to the disclosure.

Disclosure of mineral resources or mineral reserves

6. An issuer that discloses any information concerning a mineral resource or mineral reserve must

(a) use only the applicable mineral resource and mineral reserve categories set out in section 2,

(b) report each mineral resource and mineral reserve category separately and state whether mineral reserves are included in total mineral resources, and

(c) if the quantity of contained metal or mineral is included in the disclosure, state the grade or quality and the quantity for each category of mineral resources and mineral reserves.

Restricted disclosure

7. (1) An issuer must not disclose the following:

(a) a deposit's quantity, grade or quality, or metal or mineral content unless categorized as an inferred mineral resource, an indicated mineral resource, a measured mineral resource, a probable mineral reserve or a proven mineral reserve;

(b) an economic analysis unless it is based on a pre-feasibility study, feasibility study or life of mine plan;

(c) the gross value of metal or mineral in a sampled interval, drill intersection or deposit;

(d) a metal or mineral equivalent grade for a multiple commodity sampled interval, drill intersection or deposit, unless the issuer discloses the grade, prices, recoveries and any other conversion factors used to estimate the equivalent of each metal or mineral.

(2) Paragraph (1) (a) does not apply to an issuer that discloses an exploration target if the issuer discloses

(a) with the same prominence as and proximate to the disclosure, that the potential range of quantity and range of grade or quality is conceptual in nature, there has been insufficient exploration to define a mineral resource and it is uncertain if further exploration will result in the target being delineated as a mineral resource, and

(b) the basis on which the disclosed potential range of quantity and range of grade or quality have been determined.

(3) Paragraph (1) (b) does not apply to an issuer that discloses an economic analysis in a scoping study if the disclosure states

(a) with the same prominence as and proximate to the disclosure, that the scoping study is based on low-level technical and economic analysis and is insufficient to support estimation of mineral reserves, and that there is no certainty that the results or conclusions of the scoping study will be realized,

(b) with the same prominence as and proximate to the disclosure, if the scoping study includes inferred mineral resources,

(i) that the scoping study includes inferred mineral resources that have a lower level of confidence and cannot be converted to mineral reserves,

(ii) the percentage of inferred mineral resources, and

(iii) that the issuer is not using the scoping study to justify proceeding directly to a feasibility study,

(c) the basis for and any assumptions in the scoping study, and

(d) the impact of the scoping study on any pre-feasibility study or feasibility study.

(4) An issuer must not use “scoping study”, “pre-feasibility study”, “feasibility study” or “life of mine plan” in disclosure unless the study satisfies the criteria set out in the definition of the applicable term referred to in section 2.

Historical estimates

8. An issuer that discloses a historical estimate using the terminology of the historical estimate must include the following in the disclosure:

(a) the source and date of the historical estimate;

(b) the relevance of the historical estimate to the mineral project;

(c) the key assumptions, parameters and methods used to prepare the historical estimate;

(d) a statement indicating whether the historical estimate uses mineral resource or mineral reserve categories other than those listed in section 2 and, if so, an explanation of any differences;

(e) any updated estimates or data available to the issuer;

(f) a description of the work required to upgrade or verify the historical estimate as current mineral resources or mineral reserves;

(g) with the same prominence as and proximate to the disclosure, statements that

(i) a qualified person has not completed sufficient work to classify the historical estimate as current mineral resources or mineral reserves, and

(ii) the issuer is not treating the historical estimate as current mineral resources or mineral reserves.

Limitation on disclaimers

9. An issuer must not disclose scientific or technical information that contains a disclaimer of responsibility for, or limits any reliance by a person or company on, all or a part of the disclosure.

PART 3 ADDITIONAL REQUIREMENTS FOR WRITTEN DISCLOSURE

Name of qualified person

10. If an issuer makes written disclosure of scientific or technical information concerning a mineral project, the issuer must include in the disclosure the name and the relationship to the issuer of the qualified person who

(a) prepared, or supervised the preparation of, the information that forms the basis for the written disclosure, or

(b) approved the written disclosure.

Data verification

11. If an issuer makes written disclosure of scientific or technical information concerning a mineral project, the issuer must include in the disclosure the following:

(a) a statement indicating whether a qualified person verified data disclosed including, for greater certainty, sampling, analytical and other data underlying the information;

(b) steps taken by the qualified person to confirm that the data was generated using standards applied in the mining industry, was accurately transcribed from the original source and is suitable for use in and for the purposes of the disclosure;

(c) any limitations on the process used by the qualified person to verify the data and an explanation of any failure to verify the data;

(d) the qualified person’s opinion on the adequacy of the data for the purposes used in the disclosure.

Exploration information

12. (1) If an issuer makes written disclosure of exploration information concerning a mineral project, the issuer must include in the disclosure a summary of the following:

(a) material results of surveys and investigations;

(b) an interpretation of the information;

(c) any quality assurance programs and quality control measures applied during the execution of work disclosed in the information.

(2) If an issuer makes written disclosure of a sample, analytical or testing result concerning a mineral project, the issuer must include in the disclosure the following:

(a) the location and type of each sample;

(b) the location, azimuth and dip of each drill hole and the depth of each sample interval;

(c) a summary of each relevant analytical value, each width and, to the extent known, the true width of each mineralized zone;

(d) each result of any significantly higher-grade interval within a lower-grade intersection;

(e) any sampling, drilling, recovery or other factors that could materially affect the accuracy or reliability of the sample, analytical or testing result;

(f) a summary description of the type of analytical or testing procedures used, sample size and the name and location of each analytical or testing laboratory used and any relationship of the laboratory to the issuer.

(3) If an issuer makes written disclosure of information concerning mineralization of a mineral project in which the issuer does not have an interest, the issuer must include in the disclosure with the same prominence as and proximate to that disclosure a statement that the information is not necessarily indicative of the mineralization of the issuer's mineral project.

Disclosure of mineral resources or mineral reserves

13. If an issuer makes written disclosure of mineral resources or mineral reserves, the issuer must include in the disclosure the following:

(a) the effective date of each estimate of mineral resources and mineral reserves;

(b) the quantity and grade or quality of each category of mineral resources and mineral reserves;

(c) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves;

(d) any known legal, political, environmental or other risks that could materially affect the potential development of the mineral resources or mineral reserves;

(e) if the disclosure includes an economic analysis of mineral resources, a statement, with the same prominence as and proximate to the disclosure, that mineral resources that are not mineral reserves do not have demonstrated economic viability.

Exception for written disclosure already filed

14. Sections 11 and 12 and paragraphs 13 (a), (c) and (d) do not apply to an issuer if the issuer includes in the written disclosure the title and date of a document previously filed by the issuer in accordance with those provisions.

PART 4 OBLIGATION TO FILE TECHNICAL REPORT

On becoming a reporting issuer

15. (1) On becoming a reporting issuer, an issuer must file a technical report for each mineral project that is material to the issuer.

(2) Subsection (1) does not apply to an issuer if the issuer is a reporting issuer in another jurisdiction of Canada and previously filed a technical report for the mineral project in that jurisdiction.

(3) Subsection (1) does not apply to an issuer if the following apply:

(a) the issuer previously filed a technical report for the mineral project;

(b) on the date on which the issuer becomes a reporting issuer, there is no new material scientific or technical information concerning the mineral project that was not included in the previously filed technical report;

(c) the previously filed technical report meets the requirements for a report filed under section 23, if applicable.

In connection with mineral project disclosure

16. (1) An issuer must file a technical report to support scientific or technical information concerning a mineral project material to the issuer in any of the following documents filed or made available to the public:

(a) a preliminary prospectus, other than a preliminary short form prospectus filed in accordance with National Instrument 44-101 *Short Form Prospectus Distributions*;

(b) a preliminary short form prospectus filed in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* that discloses for the first time either of the following:

(i) mineral resources, mineral reserves or an economic analysis that constitutes a material change for the issuer;

(ii) a change in mineral resources, mineral reserves or an economic analysis from the issuer's most recently filed technical report if the change constitutes a material change for the issuer;

(c) an information or proxy circular concerning a direct or indirect acquisition of the mineral project;

(d) an offering memorandum, other than an offering memorandum delivered solely to an accredited investor as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

(e) an annual information form;

(f) a valuation required to be prepared and filed under securities legislation;

(g) a take-over bid circular, or a notice of change or variation of a take-over bid circular, that discloses mineral resources, mineral reserves or an economic analysis of the mineral project if securities of the offeror, as defined in National Instrument 62-104 *Take-Over Bids and Issuer Bids*, are being offered in exchange under the circular or notice of change or variation;

(h) written disclosure made by or on behalf of the issuer, other than in a document referred to in paragraphs (a) to (g), in which the issuer discloses for the first time either of the following:

(i) mineral resources, mineral reserves or an economic analysis that constitutes a material change for the issuer;

(ii) a change in mineral resources, mineral reserves or an economic analysis from the issuer's most recently filed technical report if the change constitutes a material change for the issuer.

(2) Subsection (1) does not apply to an issuer that discloses a historical estimate in a document referred to in paragraph (1) (h) if the disclosure is made in accordance with section 8.

(3) If an issuer files a technical report under paragraph (1) (a) or (b), and there is new material scientific or technical information concerning the mineral project before the filing of the final prospectus or short form prospectus, the issuer must file with the final prospectus or short form prospectus a revised technical report including the new information.

(4) Subject to subsections (5) and (6), an issuer must file a technical report referred to in subsection (1) not later than the issuer files or makes available to the public the applicable document under subsection (1).

(5) Despite subsection (4), an issuer must

(a) file a technical report supporting disclosure under paragraph (1) (h) not later than,

(i) if the disclosure is also in a preliminary short form prospectus referred to in paragraph (1) (b) or a shelf prospectus supplement, the earlier of 45 days after the date of the disclosure and the date of filing of the prospectus or prospectus supplement,

(ii) if the disclosure is also in a directors' circular, the earlier of 45 days after the date of the disclosure and 3 business days before the expiry of the initial deposit period, and

(iii) if the disclosure is made other than under subparagraphs (i) and (ii), 45 days after the date of the disclosure, and

(b) issue a news release at the time the issuer files the technical report disclosing the filing of the technical report and reconciling any material differences in the mineral resources, mineral reserves or economic analysis disclosed in the technical report filed under paragraph (a) and the disclosure under paragraph (1) (h).

(6) An issuer is not required to file a technical report under subsection (4) or paragraph (5) (a) to support disclosure made under subparagraph (1) (h) (i) if the following apply:

(a) the mineral resources, mineral reserves or economic analysis is disclosed in a technical report filed by or on behalf of another issuer that holds or previously held an interest in the mineral project;

(b) the disclosure includes

(i) information from the technical report referred to in paragraph (a), including, for greater certainty, the name of the other issuer, title and effective date,

(ii) the name of each qualified person who reviewed the technical report on behalf of the issuer, and

(iii) with the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or economic analysis inaccurate or misleading;

(c) the issuer files a technical report concerning its disclosure of the mineral resources, mineral reserves or economic analysis

(i) if the disclosure is also in a preliminary short form prospectus or a shelf prospectus supplement, on the earlier of 180 days after the date of the disclosure and the date of filing of the final short form prospectus or prospectus supplement, and

(ii) if the disclosure is made other than under subparagraph (i), before or on the 180th day after the date of the disclosure.

(7) Subsection (1) does not apply to an issuer if the following apply:

(a) the issuer previously filed a technical report for the mineral project;

(b) on the date a document referred to in subsection (1) is filed by the issuer, there is no new material scientific or technical information concerning the mineral project that is not included in the issuer's previously filed technical report;

(c) the previously filed technical report meets the requirements for a report filed under section 23, if applicable.

Royalty or similar interest

17. Subsections 15 (1) and 16 (1) do not apply to an issuer if the issuer's only interest in a mineral project is a royalty or similar interest.

PART 5 PREPARATION OF TECHNICAL REPORT

Required form

18. An issuer that files a technical report must file a report prepared

(a) by or under the supervision of one or more qualified persons

(b) in English or French, and

(c) in accordance with Form 43-101F1 *Technical Report*.

Addressed to issuer

19. A qualified person who prepares a technical report must address the report to the issuer.

All relevant data

20. A qualified person who prepares a technical report must base the report on all available data relevant to the disclosure that the technical report supports.

Current personal inspection

21. Before an issuer files a technical report, at least one qualified person responsible for preparing or supervising the preparation of all or part of the technical report must complete a current inspection, in person, of the mineral project that is the subject of the technical report.

Execution

22. Each qualified person responsible for preparing or supervising the preparation of all or a part of a technical report must date, sign and, if the qualified person has a seal, seal the report.

Independent technical report

23. (1) Each qualified person responsible for preparing or supervising the preparation of all or part of a technical report must be independent in accordance with section 3 if the report is required to be filed under any of the following:

(a) section 15;

(b) paragraph 16 (1) (a);

(c) paragraph 16 (1) (b), (c), (d), (e), (g) or (h), if the document discloses either of the following:

(i) for the first time, mineral resources, mineral reserves or an economic analysis of a mineral project material to the issuer;

(ii) a 100% or greater change in the total mineral resources, the total mineral reserves or the results of an economic analysis of a mineral project material to the issuer since the issuer's most recently filed independently prepared technical report concerning the mineral project.

(2) A qualified person referred to in subsection (1) must be independent on the effective date of the technical report and the date of filing of the technical report.

(3) Subsection (1) does not apply to a qualified person if the technical report is required to be filed by

(a) a producing issuer, or

(b) an issuer in a joint venture with a producing issuer concerning a mineral project, if each qualified person responsible for preparing or supervising the preparation of all or part of a technical report is an employee or consultant of the producing issuer.

PART 6 CERTIFICATES AND CONSENTS

Certificate of qualified person

24. (1) An issuer that files a technical report must file with the technical report a certificate of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that is dated, signed and, if the qualified person has a seal, sealed by the qualified person and states all of the following:

(a) the name, address and occupation of the qualified person;

(b) the title and effective date of the technical report to which the certificate applies;

(c) the qualified person's qualifications, the name and designation of each professional association to which the qualified person belongs, a brief summary of the qualified person's experience relevant to the subject matter of the mineral project and that the qualified person is a qualified person in accordance with section 1;

(d) whether the qualified person has completed a current inspection, in person, of the mineral project and, if so, the date and duration of the inspection;

(e) each item of the technical report for which the qualified person is responsible;

(f) whether the qualified person is independent in accordance with section 3;

(g) any prior involvement of the qualified person with the mineral project that is the subject of the technical report;

(h) that the qualified person has read this Instrument and Form 43-101F1 *Technical Report* and that the technical report, or each part for which the qualified person is responsible, has been prepared in accordance with this Instrument;

(i) that, on the effective date of the technical report, to the best of the qualified person's knowledge, information and belief, the technical report, or each part of the technical report for which the qualified person is responsible, contains all scientific and technical information that is required to be disclosed under this Instrument and Form 43-101F1 *Technical Report* to make the technical report not misleading.

Consent of qualified person

25. (1) An issuer that files a technical report must file with the technical report a consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that is dated and signed by the qualified person and contains a statement

(a) consenting to the public filing of the technical report,

(b) identifying the document that the technical report supports,

(c) consenting to the use of extracts from, or a summary of, the technical report in the document, and

(d) confirming that the qualified person has read the document and that the document fairly and accurately represents the information in the technical report for which the qualified person is responsible.

(2) Paragraphs (1) (b), (c) and (d) do not apply to an issuer that files a consent with a technical report filed under section 15.

(3) If an issuer has filed a consent under subsection (2) and the issuer is not required under subsection 16 (7) to file a new technical report to support disclosure in a document subsequently filed or made public under subsection 16 (1), the issuer must file a new consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that contains the statements referred to in paragraphs (b) to (d) of subsection (1).

PART 7 EXEMPTIONS

Authority to grant exemption

26. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B to National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8 REPEAL AND EFFECTIVE DATE OF INSTRUMENT

Repeal

27. National Instrument 43-101 *Standards of Disclosure for Mineral Projects* is repealed.

Effective date of Instrument

28. (1) This Instrument comes into force on ●.

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

ANNEX B

Form 43-101F1
Technical Report

Table of Contents

Proposed Form 43-101F1
Technical Report

INSTRUCTIONS:

(1) A technical report is a summary document of all relevant scientific and technical information concerning mineral exploration, development, and production activities on a mineral project that is material to an issuer. This Form sets out the requirements for the preparation and content of a technical report.

(2) Do not incorporate by reference any previous disclosure.

(3) A term used in this Form that is defined or interpreted in the Instrument has that definition or interpretation.

(4) Be concise and include sufficient context and cautionary language to allow a reasonable person to understand the nature, importance and limitations of the data, interpretations and conclusions summarized in the technical report.

(5) Include all headings and information specified under Items 1 to 12 and 23 to 27 of this Form. For all other headings and Items in this Form, include the headings and information that are relevant to the mineral project. Disclosure included under one Item is not required to be repeated under another Item.

(6) Do not include appendices with excessive information.

(7) Guidance on how to prepare the technical report can be found in the Companion Policy 43-101CP.

CONTENTS OF THE TECHNICAL REPORT

Title Page

Include on the first or front page of the technical report the following:

(a) the title;

(b) the name of the mineral project;

(c) the stage of the mineral project;

(d) the name of each issuer for which the report has been prepared;

(e) the country in which the mineral project is located and its general location within the country;

(f) the name and professional designation of each qualified person;

(g) the effective date.

Date and Signature Page

Include a signature page, at the beginning or end of the technical report, signed in accordance with section 22 of the Instrument. Include on the signature page the effective date of the technical report and the date that the report is signed.

Table of Contents

Provide a table of contents listing the contents of the technical report and all figures and tables.

Illustrations

Include legible maps, plans and sections, all prepared at scales that distinguish important features. Date each map and include a legend, author or information source, a scale in bar or grid form and an arrow indicating north. Include a location or index map and a compilation map outlining the general geology of the mineral project. Include more detailed maps showing important features described in the technical report, relative to the mineral project boundaries. For greater certainty, include the following important features, as applicable:

(a) areas of previous exploration, and the location of known mineralization, geochemical or geophysical anomalies, drilling and mineral deposits;

(b) the location and surficial outline of mineral resources, mineral reserves and areas for potential access and infrastructure;

(c) the location of pit limits, underground developments, plant sites, tailings storage areas, waste disposal areas and all other significant infrastructure features.

Requirements for All Technical Reports

Item 1: Summary

Briefly summarize important information in the technical report, including, for greater certainty, mineral project description and ownership, geology and mineralization, status of exploration, development and operations, mineral resource and mineral reserve estimates and the conclusions and recommendations of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report.

Item 2: Introduction

Include a description of the following:

(a) each issuer for which the technical report is prepared;

(b) the terms of reference for and purpose for which the technical report is prepared;

(c) the sources of information and data in the technical report or used in its preparation, with citations if applicable.

Item 3: Reliance on Other Experts:

Do not rely on a report, opinion or statement of a person or company that is not a qualified person for any part of the technical report other than legal, political, environmental or tax matters. If a qualified person who prepares or supervises the preparation of all or part of a technical report relies on a report, opinion or statement of an expert, or information provided by the issuer, concerning legal, political, environmental or tax matters, identify the following:

(a) the source relied on, including, for greater certainty, the date, title and author of the report, opinion, statement or information, as applicable;

(b) the extent to which the qualified person relies on the report, opinion, statement or information;

(c) each part of the technical report to which the reliance applies.

Item 4: Mineral Project Description and Location

Describe the following, as applicable:

(a) the area of the mineral project in hectares or other applicable units;

(b) the location of the mineral project, using an easily recognizable geographic and grid location system;

(c) the type, identifying name or number and expiration date of each mineral tenure comprising the mineral project;

(d) the nature and extent of the issuer's title to or interest in the mineral project including, for greater certainty, surface rights and legal access, and the obligations that must be met to retain the issuer's title to or interest in the project;

(e) any permit or agreement required under laws to conduct the work proposed for the mineral project, including, for greater certainty, those with Indigenous Peoples, rightsholders or communities, as applicable, and whether the permits or agreements have been obtained or entered into;

(f) the terms of any agreement concerning royalties, back-in rights or payments, and any encumbrances, to which the mineral project is subject;

(g) to the extent known, any environmental liabilities to which the mineral project is subject;

(h) any significant factors and risks that are not described in paragraphs (a) to (g) that may affect the ability to perform work on the mineral project.

Item 5: Accessibility, Local Resources, Infrastructure and Physiography

Describe the following:

(a) topography and elevation of the mineral project;

(b) the means of access to the mineral project;

(c) the proximity of the mineral project to a population centre and to any protected or sensitive environmental or cultural areas;

(d) if relevant to the mineral project, the length of the operating season and an explanation of any constraints;

(e) if relevant to the mineral project, the sufficiency of surface rights for mining operations and the availability and sources of power, water, personnel, potential tailings storage areas, potential waste disposal areas, potential heap leach pad areas and potential processing plant sites.

Item 6: History

If relevant, summarize the following:

(a) the prior ownership, and any changes in prior ownership, of the mineral project;

(b) the type, amount, quantity and general results of exploration and development work undertaken by or on behalf of any previous owners or operators of the mineral project;

(c) historical estimates in accordance with section 8 of the Instrument;

(d) any production from the mineral project.

Item 7: Geological Setting and Mineralization

Include the following:

(a) a summary of the regional setting and mineral project geology;

(b) a summary of the significant mineralized zones encountered on the mineral project, including, for greater certainty, a summary of the surrounding rock types, relevant geological controls and the length, width, depth and continuity of the mineralization, and a description of the type, character and distribution of the mineralization;

(c) if the technical report includes a discussion of mineralization on a neighbouring or analogue project, a statement with the same prominence as and proximate to the discussion that the discussion is not necessarily indicative of the mineralization on the mineral project that is subject of the technical report.

Item 8: Deposit Type

Describe the mineral deposit types being investigated or being explored for and the geological model or concepts being applied and on the basis of which the exploration program is planned.

Item 9: Exploration

Describe the nature and extent of all relevant exploration work by the issuer, other than drilling, including the following:

(a) the procedures and parameters relating to surveys and investigations;

(b) the sampling methods and sample quality, including whether samples are representative, and any factors that may have resulted in sample biases;

(c) the location, number, type, nature and spacing or density of samples collected and the size of the area covered;

(d) the significant results and interpretation of the exploration information.

Item 10: Drilling

Describe the following, as applicable:

(a) the type and extent of drilling, including procedures followed, a summary and interpretation of all relevant results and, if applicable, drilling conducted from previous operations;

(b) any drilling, sampling or recovery factors that could materially impact the accuracy and reliability of the results including, for greater certainty, any underground sampling or test work;

(c) for a mineral project without mineral resources, the following:

(i) the location, azimuth and dip of any drill hole, and the depth of the relevant sample intervals;

(ii) the relationship between the sample length and the true thickness of the mineralization, if known, and if the orientation of the mineralization is unknown, state this;

(iii) the results of any significantly higher-grade intervals within a lower-grade intersection.

Item 11: Sample Preparation, Analyses and Security

Include the following:

(a) a description of sample preparation methods and quality control measures used before dispatch of samples to an analytical or testing laboratory, the method or process of sample splitting and reduction and the security measures taken to ensure the validity and integrity of samples taken;

(b) a description of relevant information regarding sample preparation, assaying and analytical procedures used, the name and location of each analytical or testing laboratory, the relationship of the laboratory to the issuer and whether the laboratory is certified by any standards association and, if so, the particulars of any certification;

(c) a summary of the nature, extent and results of quality control procedures used, and quality assurance actions taken or recommended, to provide adequate confidence in data collected and processed under this Item;

(d) the qualified person's opinion on the adequacy of sample preparation, security and analytical procedures.

Item 12: Data Verification

Describe the data verification steps taken by each qualified person who prepared or supervised the preparation of all or part of an Item of the technical report and include the following:

(a) the information required under section 11 of the Instrument;

(b) an opinion on the adequacy of the data for the purposes used in the technical report.

Item 13: Metallurgical Testing

If metallurgical testing analyses have been carried out, discuss the following:

(a) the nature and extent of the testing and analytical procedures and, in summary form, the relevant results;

(b) the basis for any assumptions or predictions regarding recovery estimates;

(c) the degree to which test samples are representative of the various types and styles of mineralization and the mineral deposit as a whole;

(d) any factors or deleterious elements that could have a significant effect on potential economic extraction.

Item 14: Mineral Resource Estimates

If the technical report includes disclosure of mineral resources, include the following, as applicable:

(a) the key assumptions, parameters and methods used to estimate the mineral resource and how it was generated;

(b) the inputs for each cut-off grade or economic limit and how they meet the test of "reasonable prospects for eventual economic extraction", as defined by CIM;

(c) if the grade for a multiple commodity mineral resource is reported as a metal or mineral equivalent, the individual grade of each metal or mineral and the metal prices, recoveries and other relevant conversion factors used to estimate the metal or mineral equivalent grade;

(d) a general discussion of the criteria used to classify the mineral resource, the average drill or sample spacing, the continuity of the important zones in the mineralization model and, if applicable, a relevant visual representation;

(e) the statistical representation of the distribution of distances from the nearest data support for each category of the mineral resource;

(f) the mineral resources reported on a 100% basis and, if the issuer does not hold the mineral resources on a 100% basis, the percentage of the mineral resources attributable to the issuer;

(g) if known, any environmental, permitting, legal, title, taxation, rightsholder, socio-economic, marketing, political and other relevant factors that could materially affect the mineral resource estimate;

(h) if multiple cut-off grade scenarios are presented, identification of the base case or preferred scenario.

Item 15: Mineral Reserve Estimates

If the technical report includes disclosure of mineral reserves, include a discussion of the following, as applicable:

(a) the key assumptions, parameters and methods and the application of the modifying factors explaining how a qualified person converted the mineral resources to mineral reserves;

(b) if the grade for a multiple commodity mineral reserve is reported as a metal or mineral equivalent, the individual grade of each metal or mineral and the metal prices, recoveries and any other relevant conversion factors used to estimate the metal or mineral equivalent grade;

(c) if known, any mining, metallurgical, infrastructure, environmental, permitting, rightsholder and other relevant factors that could materially affect the mineral reserve estimate.

Item 16: Mining Methods

Discuss the current or proposed mining methods and provide a summary of the relevant information used to establish the amenability or potential amenability of the mineral resources or mineral reserves to the proposed mining methods. If relevant, include the following, as applicable:

(a) geotechnical, hydrological and other parameters of the mine or pit designs and plans;

(b) production rates, expected mine life, mining unit dimensions, strip ratio, mining dilution and mining loss factors used;

(c) requirements for stripping, underground development and backfilling;

(d) the necessary type of mining fleet and machinery used or to be used.

Item 17: Processing Methods

Discuss reasonably available information on test or operating results relating to the recoverability of the valuable component or commodity and amenability of the mineralization to the proposed processing methods. If relevant, include the following, as applicable:

(a) a description or flow sheet of any current or proposed process plant;

(b) plant design, equipment characteristics and specifications;

(c) current or projected requirements for energy, water and process materials.

Item 18: Mineral Project Infrastructure

Summarize applicable infrastructure and logistics necessary for the mineral project. If relevant, include the following, as applicable:

(a) roads, rail, port facilities, power and pipelines;

(b) leach pads, waste dumps and stockpiles;

(c) tailings storage facilities;

(d) site monitoring and water management requirements during operations and after closure.

Item 19: Market Studies and Contracts

If relevant, include the following, as applicable:

(a) a summary of available information concerning markets for the issuer's production, including the nature and material terms of any agency relationships;

(b) a discussion of the nature of any studies or analyses completed by the issuer on commodity price projections, product valuations, market entry strategies or product specifications and confirmation that a qualified person has reviewed the studies or analyses and that the results of the studies or analyses support the assumptions in the technical report;

(c) a list of contracts required to develop the mineral project including, for greater certainty, mining, concentrating, smelting, refining, transportation, sales and hedging, handling, and forward sales contracts or arrangements, a list of those entered into and a discussion of whether the terms, rates or charges are within industry norms.

Item 20: Environmental Studies, Permitting and Regional or Local Impact

Discuss available information on environmental, permitting and other regional or local factors concerning the mineral project, including, in each case the source of the information. If relevant, include a list of the following, as applicable:

(a) the date of any environmental study and a discussion of any known environmental issues that could impact the issuer's ability to extract the mineral resources or mineral reserves;

(b) regional, local or other permitting requirements or obligations and plans for the mineral project including, for greater certainty, the status and date of any permit application and any known requirements or obligations to post performance or reclamation bonds;

(c) the status and dates of any negotiations or agreements entered into with Indigenous Peoples, rightsholders or communities.

Item 21: Capital and Operating Costs

Provide the following concerning the mineral project, as applicable:

(a) in tabular form, the capital and operating cost estimates and an explanation of the accuracy of the estimates;

(b) the key assumptions, parameters and an explanation of the basis for the cost estimates, including the related contingency;

(c) an explanation of any cost estimate classification used and the level and accuracy of each important element;

(d) the costs related to closure, remediation and reclamation;

(e) the extent to which any known environmental, permitting, legal, title, taxation, rightsholder, socio-economic, marketing, political or other relevant factors could materially affect the capital and operating cost estimates.

Item 22: Economic Analysis

Other than for a mineral project of a producing issuer for which the issuer is not materially expanding current production, provide an economic analysis for the mineral project that includes the following:

(a) a clear statement of and justification for the principal assumptions;

(b) discounted cash flow forecasts on an annual basis using mineral reserves or mineral resources, an annual production schedule for the life of the mineral project and a discussion of how the risk-adjusted discount rate applied in the forecasts was selected;

(c) a presentation of both pre-tax and post-tax net present value, internal rate of return and payback period of capital and a discussion of how each of these was determined;

(d) a summary of applicable taxes, royalties and government levies including, for greater certainty, those applicable to production and to revenue or income from the mineral project;

(e) sensitivity or other analysis using variants in commodity price, grade, capital and operating costs, discount rate or other significant parameters, as applicable, including a discussion of the impact of the results.

Item 23: Current Personal Inspection

Disclose the following details of the current personal inspection of the mineral project, required under section 21 of the Instrument, by each qualified person, as applicable:

(a) the date and duration of the inspection;

(b) the observations made concerning the Items of the Form for which the qualified person is responsible;

(c) the conditions of the mineral project;

(d) any confirmation sampling or testing conducted under this Item, including results.

Item 24: Other Relevant Data and Information

Include any additional information or explanation necessary to make the technical report not misleading.

Item 25: Interpretation and Conclusions

Summarize the results and interpretations of the information and analysis in the technical report. Discuss any risks and uncertainties that could be expected to affect the reliability of or confidence in the exploration information, mineral resource or mineral reserve estimates or economic analysis. Discuss any foreseeable impacts of these risks and uncertainties on the mineral project's potential economic viability or continued viability.

Item 26: Recommendations

Provide details of the recommended work program and a breakdown of costs. If the work program is recommended to be undertaken in phases, do not provide more than 2 consecutive phases and state whether advancing to the subsequent phase is contingent on positive results in the previous phase.

Item 27: References

Include a list of all references cited in the technical report.

ANNEX C

Companion Policy 43-101
Standards of Disclosure for Mineral Projects

Table of Contents

Item 10 – Drilling

Item 12 – Data Verification

Item 13 – Metallurgical Testing

Item 14 – Mineral Resource Estimates

Items 16 to 22

Item 16 – Mining Methods

Item 19 – Market Studies and Contracts

Item 20 – Environmental Studies, Permitting and Regional or Local Impact

Item 21 – Capital and Operating Costs

Item 22 – Economic Analysis

Item 23 – Current Personal Inspection

Item 26 – Recommendations

C. APPENDICES

Appendix A – Acceptable Foreign Associations and Membership Designations

Appendix B – Example of Consent of Qualified Person

Proposed Companion Policy 43-101
Standards of Disclosure for Mineral Projects

The purpose of this Companion Policy is to explain how the securities regulatory authorities or regulators (we or us) interpret or apply certain provisions of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the Instrument), including Form 43-101F1 *Technical Report* (the Form).

GENERAL GUIDANCE

(1) **Application of the Instrument** – The Instrument establishes standards for disclosure of scientific and technical information regarding mineral projects and requires that the disclosure be based on a technical report or other information prepared by or under the supervision of a qualified person. The Instrument does not apply to disclosure concerning petroleum, natural gas, helium, bituminous sands or shales, groundwater, coal bed methane, or other substances that do not fall within the meaning of the term "mineral project" in section 1 of the Instrument. We consider that solid minerals extracted from brines are captured under the term "mineral project".

(2) **Supplements other requirements** – The Instrument supplements other continuous disclosure requirements of securities legislation that apply to reporting issuers in all business sectors.

(3) **Forward-looking information** – Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) sets out the requirements for disclosing forward-looking information. Frequently, scientific and technical information about a mineral project includes or is based on forward-looking information. A mining issuer that is a reporting issuer must comply with the requirements of Part 4A of NI 51-102, including only disclosing forward-looking information for which the issuer has a reasonable basis, identifying material forward-looking information, stating material factors and assumptions used, and providing the required cautions. Examples of forward-looking information include metal price assumptions, cash flow forecasts, projected capital and operating costs, metal or mineral recoveries, mine life and production rates, and other assumptions used in a scoping study, pre-feasibility study or feasibility study.

(4) **Materiality** – An issuer should determine materiality in the context of the issuer's overall business and financial condition considering qualitative and quantitative factors, assessed in respect of the issuer as a whole. In making materiality judgments, an issuer should consider a number of factors that cannot be captured in a simple bright-line standard or test, including the potential effect on both the market price and value of the issuer's securities considering the current market activity. An assessment of materiality depends on the context. Information that is immaterial today could be material tomorrow; an item of information that is immaterial alone could be material if it is aggregated with other items.

(5) **Mineral project material to the issuer** – An actively trading issuer, in most circumstances, will have at least one material mineral project. Some issuers may hold multiple mineral projects at similar stages of development and will need to assess whether all mineral projects are material. We will assess an issuer's view of the materiality of a mineral project based on its disclosure record, its deployment of resources, and other indicators. For example, we will likely conclude that a mineral project is material if any of the following apply:

(a) the issuer's disclosure record is focused on the mineral project;

(b) the issuer's disclosure record indicates or suggests the results are significant or important;

(c) the cumulative and projected acquisition costs or proposed exploration expenditures are significant compared to the issuer's other mineral projects; or

(d) the issuer is raising significant money or devoting significant resources to the exploration and development of the mineral project.

In determining if a mineral project is material, the issuer should consider how important or significant the mineral project is to its overall business, and in comparison to its other mineral projects. For example:

(a) mineral projects with mineral resources, economic analyses, mineral reserves, or in production, in most cases, will be more likely to be material than mineral projects without these;

(b) historical expenditures or book value might not be a good indicator of materiality for an inactive mineral project if the issuer is focussing its resources on new mineral projects;

(c) a small interest in a sizeable mineral project might, in the circumstances, not be material to the issuer;

(d) a royalty or similar interest in a mineral project with mineral resources, economic analyses, mineral reserves, or in production could be material to the issuer in comparison to its active mineral projects; or

(e) several non-material mineral tenures in an area or region, when taken as a whole, could be a material mineral project of the issuer.

(6) **Use of plain language** – An issuer and qualified person should apply plain language principles when preparing disclosure regarding mineral projects, keeping in mind that the investing public are often not mining experts. Written disclosure should be presented in an easy-to-read format using clear and unambiguous language and, wherever possible, should present data in table format. This includes information in the technical report, to the extent possible. We recognize that the technical report does not always lend itself well to plain language and therefore the issuer might want to consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure.

(7) **Industry practice guidelines** – While the Instrument sets standards for disclosure of scientific and technical information about a mineral project, the standards and methodologies for collecting, analysing and verifying this information are the responsibility of the qualified person. CIM has published and adopted several industry practice guidelines to assist qualified persons and other practitioners. These guidelines, as amended and supplemented, are posted on https://mrmr.cim.org/ and include Exploration, Estimation of Mineral Resources / Mineral Reserves, Mineral Processing, Environmental Social and Governance, and others.

The Instrument does not require a qualified person to follow CIM practice guidelines. However, we think that a qualified person, acting in compliance with the professional standards of competence and ethics established by their professional association, will use procedures and methodologies that are consistent with industry standard practices, as established by CIM or similar organizations in other jurisdictions. Issuers that disclose scientific and technical information that does not conform to industry standard practices could be making misleading disclosure, which is an offence under securities legislation.

(8) **Objective standard of reasonableness** – Where a determination about the definitions or application of a requirement in the Instrument turns on reasonableness, the test is objective, not subjective. It is not sufficient for an officer of an issuer or a qualified person to determine that they personally believe the matter under consideration. The individual must form an opinion as to what a reasonable person would believe in the circumstances.

(9) **Improper use of terms in the French language** – For an issuer preparing its disclosure using the French language, the words “gisement” and “gîte” have different meanings and using them interchangeably or in the wrong context may be misleading. The word “gisement” means a mineral deposit that is a continuous, well-defined mass of material containing a sufficient volume of mineralized material that can be or has been mined legally and economically. The word “gîte” means a mineral deposit that is a continuous, defined mass of material, containing a volume of mineralized material that has had no demonstration of economic viability.

(10) **Improper use of terms “NI 43-101 compliant” or “NI 43-101 non-compliant”** – Issuers should not refer to their exploration results, mineral resource estimates, mineral reserve estimates, or mining study as being “NI 43-101 compliant” or “NI 43-101 non-compliant” as these phrases are potentially misleading as we do not provide issuers with this determination. Issuers should instead characterize their results, estimates, or mining study as being “reported in accordance with NI 43-101” and should refer to a technical report as being “prepared in accordance with NI 43-101.”

A. GUIDANCE TO THE INSTRUMENT

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

Section 1 Definitions

(a) “effective date” – This is the cut-off date for the scientific and technical information included in the disclosure. Under section 24 of the Instrument, the qualified person must provide their certificate as at the effective date of the technical report and specify this date in their certificate. The effective date can precede the date of signing the technical report but if there is too long a period between these dates, the issuer is exposed to the risk that new material or relevant information could become available, and the technical report would then not be current. Please see additional guidance in Part B. Guidance to the Form: *Dates and Signatures* of this Companion Policy.

(b) “mineral project” – We consider a mineral project to include multiple mineral tenures that are contiguous or in such close proximity that any underlying mineral deposits would likely be developed using common infrastructure. If an issuer discovers or acquires a mineral deposit that may benefit from shared infrastructure or synergies with other mineral deposits, we will consider all underlying mineral deposits to be part of a single mineral project for the purpose of a technical report.

We do not consider the definition of mineral project to include standalone roasters, smelters, refineries, process plants, or other facilities that are not developed in conjunction with a specific deposit, mineral resource or mineral reserve.

(c) "professional association" – Paragraph (a) (ii) of the definition of "professional association" in the Instrument includes a test for determining what constitutes an acceptable foreign association. In assessing whether a foreign organization is a professional association, we will consider the reputation of the association and whether it is substantially like a professional association in a jurisdiction of Canada.

Appendix A to this Companion Policy provides a list of the foreign associations that we consider to be professional associations as of the effective date of the Instrument. The listing of a professional association on Appendix A is only for purposes of the Instrument and does not supersede or alter local requirements where geoscience or engineering is a regulated profession.

An issuer that wishes to rely on a qualified person that is a member of a professional association not included in Appendix A, but which the issuer believes meets the tests in the Instrument, may make submissions to have the association added to Appendix A. Submissions should include appropriate supporting documentation. The issuer should allow sufficient time for its submissions to be considered before naming the qualified person in connection with its disclosure or filing any technical report signed by the qualified person.

(d) "qualified person" – The definition of "qualified person" in the Instrument does not include engineering or geoscience technicians, engineers or geoscientists in training, or any designation that restricts an individual's scope of practice or requires the individual to practise under the supervision of a professional engineer, professional geoscientist, or equivalent.

The obligation of a qualified person to take responsibility for disclosure in the Instrument should be interpreted as requiring the qualified person to have read the Instrument and Form, and to be able to demonstrate their understanding of standards of disclosure for mineral projects.

Paragraph (a) of the definition requires 5 years of professional experience, which must be gained after the individual becomes registered as a professional geoscientist, professional engineer, or equivalent. The 5 years of professional experience can be from Canadian or foreign professional registration or a combination thereof.

Paragraph (b) of the definition requires a qualified person to have appropriate experience relevant to the subject matter of the mineral project, which we interpret to mean a level of experience sufficient to be able to identify with substantial confidence valid assumptions, risks and any problems that could affect the reliability of data related to the mineral project. This includes relevant experience acquired before or after the completion of any related professional registration. Relevance to the subject matter of the mineral project is not restricted to commodity type but may include deposit type and style of mineralization, as well as the specific type of activity being undertaken by the individual which often relates to the development stage of the mineral project and the individual's area of practice. An individual acting as a qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience within their area of practice.

Paragraphs (c) and (d) of the definition refer to the Canadian and foreign professional registration requirements that are treated similarly.

Paragraph (c) of the definition requires a qualified person to be "in good standing", this includes satisfying any related registration, licensing or other requirements of the professional association. Individual Canadian provincial and territorial legislation may require a qualified person to be registered if practising in that jurisdiction of Canada. It is the responsibility of the qualified person, in compliance with their professional association's code of ethics, to comply with any laws requiring licensure of geoscientists and engineers.

Paragraph (d) of the definition includes a test for what constitutes an acceptable membership designation in a foreign professional association. Appendix A to this Companion Policy provides a list of the membership designations that we think meet this test as of the effective date of the Instrument. In assessing whether we think a membership designation meets the test, we will consider whether it is substantially like a membership designation in a professional association in a jurisdiction of Canada.

We interpret the reference to demonstrated prominence or expertise in subparagraph (d) (ii) (B) to mean having the membership designation equivalent to Canadian professional registration requirements. This includes at least 5 years of professional experience and satisfying an additional entrance requirement relating to level of responsibility. Some examples of such a requirement are:

(i) at least 3 years in a position of responsibility where the individual was depended on for significant participation and decision-making;

(ii) experience of a responsible nature and involving the exercise of independent judgment in at least 3 of those years; or

(iii) at least 5 years in a position of major responsibility, or a senior technical position of responsibility.

(e) "technical report" – We expect a technical report to include a summary of all relevant information about the mineral project. The qualified person is responsible for preparing the technical report. Therefore, it is the qualified person, not the issuer, who has the responsibility of determining the relevance of the scientific or technical information to be included in the technical report.

A report may constitute a "technical report" as defined in the Instrument, even if prepared before the date the technical report is required to be filed, provided the information in the technical report remains accurate and complete as at the required filing date. However, a report that an issuer files that is not required under the Instrument will not be considered a technical report until such time as the Instrument requires the issuer to file it and the issuer has filed all certificates and consents of qualified persons required under the Instrument.

Section 3 Independence

When an independent qualified person is required, an issuer and a qualified person should apply the test in section 3 of the Instrument to confirm that the requirement is met. The below is a non-exhaustive list of circumstances when we would consider that a qualified person is not independent for the purposes of the Instrument. There may be other circumstances when an individual would not be considered independent.

We consider that a qualified person is not independent if the individual:

(a) is or expects to be an employee, insider or director of the issuer;

(b) is or expects to be an employee, insider or director of a related party of the issuer;

(c) is or expects to be a partner of a person or company in paragraph (a) or (b);

(d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer, as defined in securities legislation;

(e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the mineral project that is the subject of the technical report or in a neighbouring mineral project;

(f) is or expects to be an employee, insider or director of another issuer that has a direct or indirect interest in the mineral project that is the subject of the technical report or in a neighbouring mineral project; or

(g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the mineral project that is the subject of the technical report or a neighbouring mineral project.

As well, in some cases, it might be reasonable to consider that independence is not compromised even though the qualified person holds an interest in the issuer's securities, the securities of another issuer with an interest in the subject mineral project, or in a neighbouring mineral project. The issuer needs to determine whether a reasonable person would consider such interest would interfere with the qualified person's judgment regarding the preparation of the technical report.

PART 2 DISCLOSURE REQUIREMENTS

Section 5 All disclosure

(a) **Disclosure is the responsibility of the issuer** – Primary responsibility for public disclosure remains with the issuer and its directors and officers. The qualified person is responsible for preparing or supervising the preparation of the technical report and providing scientific and technical advice in accordance with applicable professional standards. The proper use, by or on behalf of the issuer, of the technical report and other scientific and technical information provided by the qualified person is the responsibility of the issuer and its directors and officers.

The onus is on the issuer and its directors and officers and, in the case of a filed document, each signatory to the document, to ensure that disclosure in the document is consistent with the related technical report or technical advice or opinion. An issuer should consider having the qualified person review disclosure that summarizes or restates the technical report or the technical advice or opinion to ensure that the disclosure is accurate.

(b) **Material information not confirmed by a qualified person** – Securities legislation requires an issuer to disclose material facts and to make timely disclosure of material changes. We recognize that there can be circumstances in which an issuer expects that certain information concerning a mineral project may be material notwithstanding the fact that a qualified person has not prepared or supervised the preparation of the information. In this situation, the issuer may file a confidential material change report concerning this information while a qualified person reviews the information. Once a

qualified person has confirmed the information, the issuer can issue a news release and the basis of confidentiality will end.

During the period of confidentiality, persons in a special relationship to the issuer are prohibited from tipping or trading until the information is disclosed to the public. National Policy 51-201 *Disclosure Standards* provides further guidance about materiality and timely disclosure obligations.

(c) **Making information available to the public** – Issuers should consider broadly the various instances when information about mineral projects is made available to the public and whether the requirement in section 5 of the Instrument has been satisfied. This applies to a broad range of disclosure including, but not limited to, the following:

- public speeches, presentations or social media posts made by or shared by representatives of the issuer or on behalf of the issuer;
- interviews involving representatives of the issuer or made on behalf of the issuer, where a transcript is not immediately available to the viewer;
- information contained in a continuous disclosure filing required under securities legislation;
- information contained in any written disclosure that is published by the issuer or a representative of the issuer in a manner which effectively reaches the public, whether or not filed with us;
- information contained in written disclosure made in connection with a distribution of securities;
- information contained in a presentation slide deck presented by a representative of the issuer or on behalf of the issuer; and
- all forms of electronic transmission, including information contained in video or video transcripts, whether or not automatically generated, that are available to the public.

Section 6 Disclosure of mineral resources or mineral reserves

Section 6 of the Instrument requires that an issuer disclosing mineral resources or mineral reserves use only the terms and categories in the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council (CIM Definition Standards) as set out in section 2 of the Instrument. For mineral resources or mineral reserves estimated to another code, template or standard, these estimates of quantity and grade must be reported using the current CIM Definition Standards. Any differences or changes to comply with the CIM Definition Standards should be clearly explained. If an issuer wishes to announce an acquisition or proposed acquisition of a mineral project that contains estimates of quantity and grade that are not in accordance with the CIM Definition Standards, the issuer might be able to disclose the estimate as an historical estimate, in compliance with section 8 of the Instrument. However, it might be more appropriate for the issuer to disclose the estimate as an exploration target in compliance with subsection 7 (2) of the Instrument if the supporting information for the estimate is not well-documented.

Section 7 Restricted disclosure

(a) **Use of term "ore"** – The use of the word "ore" in the context of mineral resource estimates is potentially misleading because "ore" implies technical feasibility and economic viability that should only be attributed to mineral reserves.

(b) **Economic analysis** – Subject to subsection 7 (3) of the Instrument, paragraph 7 (1) (b) of the Instrument prohibits disclosure of the results of an economic analysis unless the disclosure is based on the results of a pre-feasibility study, feasibility study, or life of mine plan as set out in section 2 of the Instrument and defined by CIM. Results of an economic analysis provide forward-looking information such as projected capital and operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period and mine life. Disclosing results of an economic analysis not based on the results of a pre-feasibility study, feasibility study, or life of mine plan may be potentially misleading as the results of the economic analysis may not have a reasonable basis. For example, CIM considers the level of geologic knowledge and confidence in inferred mineral resources is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure.

Despite paragraph 7 (1) (b) of the Instrument, subsection 7 (3) of the Instrument permits an issuer to disclose the results of an economic analysis from a scoping study, as set out in section 2 of the Instrument and defined by CIM. A scoping study may include or be based on inferred mineral resources provided the issuer complies with all the requirements of subsection 7 (3) of the Instrument. The issuer must also include the cautionary statement under paragraph 13 (e) of the Instrument, which applies to disclosure of all economic analyses of mineral resources, to further alert investors to the limitations of the information. The exception under subsection 7 (3) of the Instrument does not allow an issuer to disclose the results of an economic analysis using an exploration target, an historical estimate, or by-product commodities not included in the mineral resource estimate as these do not have a reasonable basis for forward looking information.

(c) **Gross value of metal or mineral** – We interpret gross metal value or gross mineral value to include any representation of the potential monetary value of the metal or mineral in the ground that does not take into consideration the costs, recoveries and other relevant factors associated with the extraction and recovery of the metal or mineral. We consider this type of disclosure to be misleading because it overstates the potential value of the mineral deposit.

(d) **Metal equivalents** – As there is no standard equation for metal or mineral equivalents, an issuer may disclose metal equivalents provided they comply with the conditions of paragraph 7 (1) (d) of the Instrument. The metal chosen for reporting on an equivalent basis should be the metal that contributes most to the metal equivalent grade. An issuer may satisfy the requirement to disclose metallurgical recoveries through the results of metallurgical test work. If metallurgical test work is not available, an issuer may include reasonable assumptions for recoveries from analogue deposits. For mineral projects where metallurgical recoveries cannot be assumed with reasonable confidence, reporting of metal equivalents may be misleading.

We consider disclosure of metal equivalents without considering metallurgical recoveries or other relevant factors misleading because it overstates the amount of metal that may eventually be obtained. Similarly, all elements included in the metal equivalent should have a reasonable potential to be recovered and sold.

If an issuer discloses metal equivalents calculated entirely by price-weighting, we consider this type of disclosure to be misleading because it is indistinguishable from a gross metal value, which is restricted under paragraph 7 (1) (c) of the Instrument.

(e) **Exploration target** – Potential quantities and grades of an exploration target are conceptual in nature. However, disclosure under subsection 7 (2) of the Instrument should be based on analytical results to date. Exploration targets that are based on limited or no real assessment of the mineral project are without foundation, and not suitable for disclosure.

(f) **Impact of scoping study on previous feasibility or pre-feasibility study** – An issuer may disclose the results of a scoping study that includes inferred mineral resources, after it has completed a feasibility study or pre-feasibility study that establishes mineral reserves, if the disclosure complies with subsection 7 (3) of the Instrument. Under paragraph 7 (3) (d) of the Instrument, the issuer must discuss the impact of the scoping study on the mineral reserves and feasibility study or pre-feasibility study. This means considering and disclosing whether the existing mineral reserves and feasibility study or pre-feasibility study are still current and valid considering the key assumptions and parameters used in the scoping study.

If a scoping study considers the potential economic viability of a satellite deposit or of an alternate case, such as an expansion in conjunction with the main development of the mineral project, then the existing mineral reserves in the main study or production scenario could still be current. However, if the incorporated scoping study significantly modifies the key variables in the main study, including metal prices, mine plan and costs, the main study and mineral reserves may no longer be current. Mineralization treated as a mineral reserve in the pre-feasibility study or feasibility study cannot be re-used as a mineral resource in the incorporated scoping study. An author may consider disclosing these results separately under Item 24 of the Form.

(g) **Cautionary language and explanations** – The requirements of subsections 7 (2) and 7 (3), and paragraph 13 (e) of the Instrument mean that the issuer must include the required cautionary statements and explanations each time it makes the disclosure permitted by these exceptions. These provisions also require the cautionary statements to have equal prominence with the rest of the disclosure. We interpret this to mean equal size, type and proximate location. The issuer should consider including the cautionary language and explanations in the same paragraph as, or immediately following, the disclosure permitted by these exceptions.

Section 8 Historical estimates

(a) **Required disclosure** – An issuer may disclose an estimate of resources or reserves made before it entered into an agreement to acquire an interest in the mineral project, provided the issuer complies with the conditions set out in section 8 of the Instrument. The issuer must provide the required disclosure each time it discloses the historical estimate, until the issuer has verified the historical estimate as a current mineral resource or mineral reserve. The required cautionary statements must also have equal prominence, as discussed further in subsection 7 (g) of this Companion Policy.

(b) **Source and date** – Under paragraph 8 (a) of the Instrument, the issuer must disclose the source and date of the historical estimate. We apply this to mean the original source and date of the estimate, not third-party documents, databases or other sources, including government databases, which may also report the historical estimate.

(c) **Suitability for public disclosure** – In determining whether to disclose an historical estimate under section 8 of the Instrument, an issuer should consider whether the historical estimate is suitable for public disclosure considering the stage of development of the mineral project.

(d) **Technical report trigger** – The disclosure of an historical estimate will not trigger the requirement to file a technical report under paragraph 16 (1) (h) of the Instrument if the issuer discloses the historical estimate in accordance with section 8 of the Instrument, including the cautionary statements required under paragraph (g) of that section.

An issuer could trigger the filing of a technical report under paragraph 16 (1) (h) of the Instrument if it discloses the historical estimate in a manner that suggests or treats the historical estimate as a current mineral resource or mineral reserve. We will consider that an issuer is treating the historical estimate as a current mineral resource or mineral reserve in its disclosure if, for example, the issuer:

(i) uses the historical estimate in an economic analysis or as the basis for a production decision;

(ii) states it will be adding on or building on the historical estimate; or

(iii) adds the historical estimate to current mineral resource or mineral reserve estimates.

Section 9 Limitation on disclaimers

An issuer may not include any statement that disclaims responsibility for any information prepared, supervised, or approved by a qualified person. We interpret this to include the modification of cautionary statements required with certain disclosures to apply to other elements of disclosure about a mineral project. For example, the statements required by paragraph 8 (g) of the Instrument may not be adapted to disclaim old or legacy exploration information not collected by the issuer.

PART 3 ADDITIONAL REQUIREMENTS FOR WRITTEN DISCLOSURE

Section 14 Exception for written disclosure already filed

The Instrument provides that the disclosure requirements of sections 11 and 12 and paragraphs 13 (a), (c) and (d) of the Instrument may be satisfied by referring to a previously filed document that includes the required disclosure. However, the disclosure must be factual, complete, balanced and not present or omit information in a manner that is misleading.

PART 4 OBLIGATION TO FILE TECHNICAL REPORT

Section 16 In connection with mineral project disclosure

(1) **Information circular trigger in paragraph 16 (1) (c)**

(a) The requirement for “prospectus-level disclosure” in an information circular does not make this document a “prospectus” such that the prospectus trigger applies. The information circular is a separate trigger that applies only in certain situations specified in the Instrument.

(b) Paragraph 16 (1) (c) of the Instrument requires the issuer to file technical reports for mineral projects that will be material to the resulting issuer. Often the resulting issuer is not the issuer filing the information circular. In determining if it must file a technical report on a particular mineral project, the issuer should consider if the mineral project will be material to the resulting issuer after the completion of the proposed transaction.

(c) Our view is that the issuer filing the information circular does not need to file a technical report on its SEDAR+ profile if:

(i) the other party to the transaction has filed the technical report;

(ii) the information circular refers to the other party’s SEDAR+ profile; and

(iii) on completion of the transaction, technical reports for all material mineral projects are filed on the resulting issuer’s SEDAR+ profile or the SEDAR+ profile of a wholly owned subsidiary.

(2) **Take-over bid circular trigger in paragraph 16 (1) (g)** – For purposes of the take-over bid circular trigger, the issuer referred to in the introductory language of subsection 16 (1) of the Instrument and the offeror referred to in paragraph (g) of that subsection are the same entity. Since the offeror is the issuer that files the circular, the technical report trigger applies to mineral projects that are material to the offeror.

(3) **First time disclosure trigger in subparagraph 16 (1) (h) (i)** – In most cases, first time disclosure of mineral resources, mineral reserves, or the results of an economic analysis on a mineral project material to the issuer will constitute a material change in the affairs of the issuer.

The results of an economic analysis may refer to those found in a scoping study, pre-feasibility study, feasibility study or life of mine plan such as projected capital costs, operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period, or mine life.

(4) **Mineral project acquisitions – 45-day filing requirement** – Subsection 16 (5) of the Instrument requires an issuer in certain cases to file a technical report within 45 days to support first time disclosure of mineral resources, mineral reserves, or the results of an economic analysis on a mineral project material to the issuer. Mineral project materiality is not contingent on the issuer having acquired an actual interest in the mineral project or having formal agreements in place. In many cases, the mineral project will become material at the letter of intent stage, even if subject to conditions such as the approval of a third party or completion of a due diligence review. In such cases, the 45-day period will begin to run from the time the issuer first discloses the mineral resources, mineral reserves, or results of an economic analysis.

(5) **Mineral project acquisitions – alternatives for disclosure of previous estimates** – If an issuer options or agrees to buy a mineral project material to the issuer, any previous estimates of mineral resources or mineral reserves on the mineral project will be in most cases material information that the issuer must disclose.

The issuer has a number of options available for disclosing the previous estimate without triggering a technical report within 45 days. If the previous estimate is not well-documented, the issuer may choose to disclose this information as an exploration target, in compliance with subsection 7 (2) of the Instrument. Alternatively, the issuer may be able to disclose the previous estimate as an historical estimate, in compliance with section 8 of the Instrument. Both these options require the issuer to include certain cautionary language and restrict the issuer from using the previous estimates in an economic analysis.

In circumstances where the previous estimate is supported by a technical report prepared for another issuer, the issuer may be able to disclose the previous estimate as a mineral resource, mineral reserve or results of an economic analysis, in compliance with subsection 16 (6) of the Instrument. In this case, the issuer will still be required to file a technical report. However, it has up to 180 days to do so.

(6) **Production decision** – The Instrument does not require an issuer to file a technical report to support a production decision because the decision to put a mineral project into production is the responsibility of the issuer. The development of a mining operation typically involves large capital expenditures and a high degree of risk and uncertainty. To reduce this risk and uncertainty, the issuer typically makes its production decision based on a pre-feasibility or feasibility study of established mineral reserves.

We recognize that there might be situations where the issuer decides to put a mineral project into production without first establishing mineral reserves. Historically, such developments have a much higher risk of economic or technical failure. To avoid making misleading disclosure, the issuer should disclose that it is not basing its production decision on a pre-feasibility or feasibility study supporting mineral reserves demonstrating economic and technical viability and should provide adequate disclosure of the increased uncertainty and the specific economic and technical risks of failure associated with its production decision. Providing disclosure related to the increased uncertainty and risks related to the production decision does not preclude the requirement to file a technical report if an issuer discloses the results of an economic analysis.

Under paragraph 1.4 (e) of Part 2 of Form 51-102F1 *Management's Discussion & Analysis*, an issuer must also disclose in its MD&A whether a production decision or other significant development is based on a technical report.

(7) **Shelf life of technical reports** – Economic analyses in technical reports are based on commodity prices, costs, sales, revenue and other assumptions and projections that can change significantly over short periods of time. As a result, economic information in a technical report can quickly become outdated. Continued reference to outdated technical reports or economic projections without appropriate context and cautionary language could result in misleading disclosure. Where an issuer has triggered the requirement to file a technical report under subsection 16 (1) of the Instrument it should consider the current validity of economic assumptions in its existing technical report to determine if the technical report is still current. An issuer might be able to extend the life of a technical report by having a qualified person include appropriate sensitivity analyses of the key economic variables.

(8) **Technical reports must be current and complete** – Any time an issuer is required to file a technical report, that report should be complete and current. There should only be one current technical report on a mineral project at any point in time. When an issuer files a new technical report, it will replace any previously filed technical report as the current technical report on that mineral project. This means the new technical report will include any material information documented in a previously filed technical report, to the extent that this information is still current and relevant.

If an issuer gets a new qualified person to update a previously filed technical report prepared by a different qualified person, the new qualified person must take responsibility for the entire technical report, including any information referenced or summarized from a previous technical report.

(9) **Exception from requirement to file technical report if information included in a previously filed technical report** – Subsection 16 (7) of the Instrument provides an exemption from the technical report filing requirement if the disclosure document does not contain any new material scientific or technical information about a mineral project that is the subject of a previously filed technical report.

In our view, a change to mineral resources or reserves due to mining depletion from a producing mineral project will not constitute new material scientific or technical information as the change should be reasonably predictable based on an issuer's continuous disclosure record.

(10) **Reports not required by the Instrument** – The securities regulatory authorities in most jurisdictions of Canada require a reporting issuer to file, if not already filed with them, any record or disclosure documents that the issuer files with any other securities regulator, including geological reports filed with stock exchanges. In other cases, an issuer might wish to file voluntarily a report in the form of a technical report. The Instrument does not prohibit an issuer from filing such reports in these situations. However, any document purporting to be a technical report must comply with the Instrument and Form.

When an issuer files a report in the form of a technical report that is not required to be filed by the Instrument, the issuer is not required to file a consent of qualified person that complies with subsection 25 (1) of the Instrument. The issuer should consider filing a cover letter with the report explaining why the issuer is filing the report and indicating that it is not filing the report as a requirement of the Instrument. Alternatively, the issuer may consider filing a modified consent with the report that provides the same information.

(11) **Preliminary short form prospectus** – Under paragraph 16 (1) (b) of the Instrument, an issuer must file a technical report with a preliminary short form prospectus if the prospectus discloses for the first time mineral resources, mineral reserves, or the results of an economic analysis that constitute a material change in relation to the issuer, or a change in this information, if the change constitutes a material change in relation to the issuer.

If this information is not disclosed for the first time in the preliminary short form prospectus itself but is repeated or incorporated by reference into the preliminary short form prospectus, the technical report must still be filed at the same time as the preliminary short form prospectus. Subsections 16 (5) and (6) of the Instrument, in certain limited circumstances, permit the delayed filing of a technical report. For example, an issuer normally has 45 days, or in some cases 180 days, to file a technical report supporting the first-time disclosure of a mineral resource. However, if a preliminary short form prospectus that includes the prescribed disclosure is filed during the period of the delay, subparagraphs 16 (5) (a) (i) and 16 (6) (c) (i) of the Instrument require the technical report to be filed on the date of filing the preliminary short form prospectus.

(12) **Triggers with thresholds –** The technical report triggers in paragraphs 16 (1) (b), (g) and (h) of the Instrument only apply if the relevant disclosure meets certain thresholds and the mineral project is material to the issuer.

(13) **Triggers with permitted filing delays** – Subsections 16 (5) and (6) of the Instrument allow technical reports in certain circumstances to be filed later than the disclosure documents they support. In these cases, once the requirement to file the technical report has been triggered, the issuer remains subject to the requirement irrespective of subsequent developments relating to the mineral project, including, for example, the sale or abandonment of the mineral project.

Section 17 Royalty or similar interest

(1) **Royalty or similar interest** – We consider a "royalty or similar interest" to include a gross overriding royalty, net smelter return, net profit interest, free carried interest and a product tonnage royalty. We also consider a "royalty or similar interest" to include an interest in a revenue or commodity stream from a proposed or current mining operation, such as the right to purchase certain commodities produced from the operation.

(2) **Limitation on exemptions** – The term "royalty or similar interest" does not include a participating or carried interest. These exemptions do not apply where the issuer also has a participating or carried interest in the mineral project or the mining operation, either direct or indirect.

PART 5 PREPARATION OF TECHNICAL REPORT

Section 18 Required form

(1) **Filing other scientific and technical reports** – An issuer may have other reports or documents containing scientific or technical information, prepared by or under the supervision of a qualified person, which are not in the form of a technical report. We consider that filing such information on SEDAR+ as a technical report could be misleading. An issuer wishing to provide public access to these documents should consider posting them on its website, and prior to posting the issuer must ensure that the scientific or technical information complies with the Instrument.

(2) **Prepared by a qualified person**

(a) **Selection of qualified person** – It is the responsibility of the issuer and its directors and officers to retain a qualified person who meets the criteria listed under the definition of qualified person in the Instrument, including having the relevant experience and competence for the subject matter of the technical report.

(b) **Assistance of non-qualified persons** – A person who is not a qualified person may work on a mineral project. If a qualified person relies on the work of a non-qualified person to prepare a technical report or to provide information or advice to the issuer, the qualified person must take responsibility for that work, information or advice by taking whatever steps are appropriate, in their professional judgment, to ensure that the work, information, or advice that they rely on is sound.

(c) **More than one qualified person** – Paragraph 18 (a) of the Instrument provides that one or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for more advanced mineral projects, could require the involvement of several qualified persons with different areas of expertise. In that case, each qualified person taking responsibility for particular sections or items of the technical report must sign the technical report and provide a certificate and consent under Part 6 of the Instrument.

(d) **A qualified person is responsible for all items of technical report** – Paragraph 18 (a) of the Instrument requires a technical report to be prepared by or under the supervision of one or more qualified persons. This means that at least one qualified person must take responsibility for each section or item of the technical report, including any information incorporated from a previously filed technical report, and specifically including a mineral resource or mineral reserve estimate prepared by another qualified person.

If two or more qualified persons indicate they are jointly responsible for a particular section or item of the technical report, this means that each of the qualified persons indicated are equally responsible for the entire section or item. For example, if qualified person “A” and qualified person “B” indicate they are jointly responsible for section 1, both A and B are equally responsible for the entirety of section 1. Joint responsibility cannot be used as a disclaimer to renounce responsibility for certain portions of a section or item.

(3) **Preparation in English or French** – Paragraph 18 (b) of the Instrument requires a technical report to be prepared in English or French. Reports prepared in a different language and translated into English or French are not acceptable due to the highly technical nature of the disclosure and the difficulties of ensuring accurate and reliable translations.

Section 19 Addressed to issuer

We consider that the technical report is addressed to an issuer if the issuer’s name appears on the title page as the party for which the qualified person prepared the technical report. We also consider that the technical report is addressed to the issuer filing the technical report if it is addressed to an issuer that is or will become a wholly owned subsidiary of the issuer filing the technical report.

Section 20 All relevant data

Section 1 (e) of this Companion Policy provides that a technical report is a report that provides a summary of all relevant scientific and technical information about a mineral project. The Form includes similar language. The target audience for technical reports are members of the investing public, many of whom have limited geological and mining expertise. To avoid misleading disclosure, technical reports must provide sufficient detail for a reasonable person to understand the nature and significance of the results, interpretation, conclusions and recommendations presented in the technical report.

However, we do not think that technical reports need to be a repository of all technical data and information about a mineral project or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices or other supporting technical information.

Section 21 Current personal inspection

(1) **Meaning** – The current personal inspection referred to in section 21 of the Instrument is the most recent personal inspection of the mineral project, provided there is no new relevant scientific or technical information about the mineral project since that personal inspection. A personal inspection may constitute a current personal inspection even if the qualified person conducted the personal inspection considerably before the filing date of the technical report, if there is no new relevant scientific or technical information about the mineral project at the filing date. However, since the qualified person is certifying that the technical report contains all relevant information about the mineral project, the qualified person should consider taking the necessary steps to verify independently that there has been no additional work done on the mineral project since their last personal inspection.

(2) **Importance of personal inspection** – We consider a current personal inspection under section 21 of the Instrument to be particularly important because it will enable qualified persons to become familiar with conditions on the mineral project. A qualified person can observe the geology and mineralization, verify work done and, on that basis, design or review and recommend to the issuer an appropriate exploration or development program. A current personal inspection is required even for mineral projects with poor exposure. In such cases, it could be relevant for a qualified person to observe the depth and type of the overburden and cultural effects that could interfere with the results of the geophysics. A current personal inspection also allows for a qualified person to observe the access, limitations, environmental setting and the overall nature of the mineral project, which may or may not impact the ability to conduct further work or development.

It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection. A qualified person, or where required, an independent qualified person, must visit the site and cannot delegate the personal inspection requirement. For example, we consider a current personal inspection to be delegated when a qualified person only takes responsibility for Item 23 of a technical report.

(3) **More than one qualified person** – Section 21 of the Instrument requires at least one qualified person who is responsible for preparing or supervising the preparation of the technical report to inspect the mineral project. This is the minimum standard for a current personal inspection. There could be cases on more advanced mineral projects where it is necessary for more than one qualified person to conduct current personal inspections of the mineral project, taking into account the nature of the work on the mineral project and the different expertise required to prepare various elements of the technical report.

Please see additional guidance in Part B. Guidance to the Form: Item 23 – Current Personal Inspection.

Section 22 Execution

Section 22 and subsections 24 (1) and 25 (1) of the Instrument require the qualified person to date, sign, and if the qualified person has a seal, seal the technical report, certificate and consent. If a qualified person's name appears in an electronic document with (signed by) or (sealed) next to their name or there is a similar indication in the document, we will consider that the person has signed and sealed the document.

Section 23 Independent technical report

(1) **Independent qualified persons** – Subsection 23 (1) of the Instrument requires that one or more independent qualified persons prepare or supervise the preparation of the independent technical report. This subsection does not preclude non-independent qualified persons from assisting in the preparation of the technical report. However, to meet the independence requirement, the independent qualified persons must assume overall responsibility for all items of the technical report.

(2) **One hundred percent or greater change** – Subparagraph 23 (1) (c) (ii) of the Instrument requires the issuer to file an independent technical report to support disclosure of a 100 percent or greater change in total mineral resources or total mineral reserves or the results of an economic analysis.

We interpret this to mean a 100 percent or greater change in either the total tonnage or volume, or total contained metal or mineral content, of the mineral resource or mineral reserve. We also interpret the 100 percent or greater change to apply to mineral resources and mineral reserves separately. Therefore, a 100 percent or greater change in mineral resources on a material mineral project will require the issuer to file an independent technical report regardless of any changes to mineral reserves, and vice versa.

In addition, this requirement applies when there is a 100 percent or greater change in the net present value, internal rate of return, or any metric relied upon in the results of an economic analysis of a mineral project.

(3) **Objectivity of author** – We could question the objectivity of the author based on our review of a technical report. To preserve the requirement for independence of the qualified person, we could ask the issuer to provide further information, additional disclosure, or the opinion or involvement of another qualified person to address concerns about possible bias or partiality on the part of the author of a technical report.

PART 6 CERTIFICATES AND CONSENTS

The Instrument requires certificates and consent of qualified persons, prepared in accordance with sections 24 and 25 of the Instrument to be filed at the same time as the technical report. The Instrument does not specifically require the issuer to file the certificate of qualified person as a separate document. It is generally acceptable for the qualified person to include the certificate in the technical report and to use the certificate as the date and signature page.

Section 24 Certificate of qualified person

(1) **Certificates apply to the entire technical report** – Subsection 24 (1) of the Instrument requires certificates that apply to the entire technical report, including any sections that refer to information in a previously filed technical report. At least one qualified person must take responsibility for each item required by the Form.

(2) **Deficient certificates** – Certificates must include all the statements required by subsection 24 (1) of the Instrument. An issuer that files certificates with required statements that are missing or altered to change the intended meaning has not complied with the Instrument.

(3) **Summary of relevant experience** – We consider it insufficient to simply state the number of years working in the industry for paragraph 24 (1) (c) of the Instrument. The certificate must provide a sufficient summary of the qualified person's relevant experience in the specific subject matter of the technical report such that the investing public can understand how the qualified person determined they have the appropriate relevant experience to act as a qualified person for the items in the technical report for which they are responsible.

(4) **Professional registration** – The certificate should also provide the year which the qualified person was registered with their stated professional association and any previous registration with another professional association that contributes to their 5 years of professional experience.

Section 25 Consent of qualified person

(1) **Consent of experts** – If the technical report supports disclosure in a prospectus, the qualified person will likely have to provide an expert consent under the prospectus rules (section 10.1 of National Instrument 41-101 *General Prospectus Requirements* and paragraph 4.2 (a) (vii) of National Instrument 44-101 *Short Form Prospectus Distributions*), in addition to any consent of qualified person required under the Instrument.

(2) **Deficient consents** – Consents must include all the statements required by subsection 25 (1) of the Instrument. An issuer that files consents with required statements that are missing or altered to change the intended meaning has not complied with the Instrument. Appendix B to this Companion Policy provides an example of an acceptable consent of a qualified person.

(3) **Modified consents under subsection 25 (2**) – Subsection 25 (1) of the Instrument requires the qualified person to identify and read the disclosure that the technical report supports and confirm that the disclosure accurately represents the information in the technical report. We recognize that an issuer can become a reporting issuer in a jurisdiction of Canada without the requirement to file a disclosure document listed in subsection 16 (1) of the Instrument. In these cases, the issuer has the option of filing a modified consent under subsection 25 (2) of the Instrument that excludes the statements in paragraphs 25 (1) (b), (c) and (d).

(4) **Filing of full consent required** – If an issuer files a modified consent under subsection 25 (2) of the Instrument, it must still file a full consent the next time it files a disclosure document that would normally trigger the filing of a technical report under subsection 16 (1) of the Instrument. This requirement is set out in subsection 25 (3) of the Instrument.

(5) **Filing of consent for technical reports not required by the Instrument** – Where an issuer files a technical report voluntarily or as a requirement of a Canadian stock exchange, and the filing is not also required under the Instrument, the report is not a "technical report" subject to the consent requirements under subsection 25 (1) of the Instrument. Therefore, when the issuer subsequently files a disclosure document that would normally trigger the filing of a technical report under subsection 16 (1) of the Instrument, the issuer must file the consents of qualified persons in accordance with subsection 25 (1) of the Instrument.

If an issuer files a filing statement or other prospectus-level disclosure document with a Canadian stock exchange, and the filing is not also required under the Instrument, the issuer may choose or be required by the stock exchange to file a full consent that includes paragraphs 25 (1) (b), (c) and (d) of the Instrument as they relate to the filing statement or other disclosure document.

B. GUIDANCE TO THE FORM

GENERAL INSTRUCTIONS

A technical report is a summary document of relevant scientific and technical information concerning mineral exploration, development and production activities on a mineral project that is material to an issuer.

A technical report is intended to offer clear and consistent information that may be used to inform investment decisions. The intended audience is the investing public and their advisors who, in most cases, will not be mining experts. Authors should keep

the intended audience in mind. Authors should also consider that the contents of a technical report are a snapshot in time of a mineral project's status.

While the Form mandates the headings and general format of the technical report, the qualified person preparing the technical report is responsible for determining the level of detail required under each item based on the qualified person's assessment of the relevance and significance of the information.

As noted in General Guidance (7) of this Companion Policy, the Instrument does not require a qualified person to follow CIM practice guidelines. However, we think that a qualified person, acting in compliance with the professional standards of competence and ethics established by their professional association, will use procedures and methodologies that are consistent with industry standard practices, as established by CIM or similar organizations in other jurisdictions.

APPENDICES

It is not necessary to include appendices with excessive information, such as assay certificates or extensive geological, geochemical, geophysical, other survey results or raw data. The limited use of an appendix may be appropriate in certain circumstances, for example an extensive list of land tenures.

ALL HEADINGS UNDER THE FORM

For mineral projects without information to disclose under any item, rather than providing disclosure that an item is "not applicable" or "n/a", the technical report should explain that there is no relevant information under those headings. For example:

- if metallurgical testing was not conducted at the effective date, the technical report should indicate that no metallurgical test work has been completed rather than "not applicable";
- if a mineral project does not have a mineral resource estimate, the technical report should indicate that there are no current mineral resources on the mineral project under Item 14.

We consider such information to be relevant to the mineral project, as such, it is not sufficient to only indicate "Not Applicable" under a heading.

TITLE PAGE

The Form requires issuers to provide the current stage of the mineral project on the first or front page of the technical report. Also, a stage or level of work completed on a mineral project should be clearly identified for the intended audience. Suitable stages include:

- "early" or "exploration" – meaning without a mineral resource estimate;
- "resource" – meaning with a mineral resource estimate but no economic analysis;
- "scoping study" – within the meaning of the Instrument;
- "pre-feasibility study" – within the meaning of the Instrument;
- "feasibility study" – within the meaning of the Instrument;
- "life of mine plan" – within the meaning of the Instrument.

DATES AND SIGNATURES

(1) In addition to "effective date" which is a defined term in the Instrument, the following explains the most common dates associated with a technical report:

- "date of signing" or "signature date" – This is the date that a qualified person completes and signs the technical report; this does not have to be the same date as the effective date;
- "filing date" – There is no requirement to include the date on which a technical report is filed on SEDAR+. However, the effective date and signature date should not be after the date on which the document is filed;
- "consent date" – This is the date on which the consent of the qualified person is given, which may be after the signature date or effective date, or both, of the relevant technical report.

(2) If the qualified person includes their certificate in the technical report, it is generally acceptable to use the certificate as the date and signature page.

Item 1 Summary

The Information summarized in this item should be consistent with the stage of development of the mineral project, although we do not specifically require every heading in the report to be duplicated in this item. The information summarized by Items 5.4 (2) through 5.4 (14) of Form 51-102F2 *Annual Information Form* are a suggested framework for the information to be included here.

Item 3 Reliance on Other Experts

Reliance on other experts is limited to specific areas: legal, political, environmental or tax matters. Authors are reminded that they may not rely on third parties for any scientific or technical information included in the technical report.

Item 4 Mineral Project Description and Location

(1) Information required under Items 4 (d), (e), (g) and (h) may include the rights of Indigenous Peoples, as defined in the mineral project's jurisdiction. The information to be provided does not require the disclosure of confidential information about rightsholders, for example an agreement between an issuer and a rightsholder that is subject to confidentiality obligations.

(2) The reference in Item 4 (c) to type of mineral tenure may include a claim, exclusive exploration right, licence, lease, concession, permit or tenement.

(3) Item 4 (d) requires disclosure of who holds the surface rights associated with the mineral project, if any.

Item 5 Accessibility, Local Resources, Infrastructure and Physiography

We expect that the disclosure of sufficiency of surface rights to include a description of the surface rights necessary to further develop any potential mining operation under Item 5 (e).

Item 6 History

(1) Historical information required under Item 6 (b) may be presented in tabular format, where appropriate. If a mineral project does not have extensive history to warrant such a table, a summary in paragraph format will generally be sufficient.

(2) As historical work may have been conducted outside the current mineral project boundaries, the report should clearly distinguish this historical work from the work conducted on the mineral project area that is the subject of the technical report.

Item 7 Geological Setting and Mineralization

If disclosure under this item or any other item of the Form includes disclosure about a neighbouring or analogue mineral project, the disclosure should clearly distinguish between the information about such other mineral project and the issuer's mineral project, and the disclosure should not state or imply the issuer will obtain similar information from its own mineral project. The source of information for the other mineral project should also be clearly identified.

Item 9 Exploration

(1) If the issuer has not conducted any exploration on the mineral project this should be clearly stated.

(2) If, in addition to any exploration work by the issuer, the technical report includes exploration results from previous operators, clearly identify the work conducted from previous operations. We consider it suitable to include work done by others if the issuer and the qualified person believe the work remains current.

Item 10 Drilling

(1) If the issuer has not conducted any drilling on the mineral project this should be clearly stated.

(2) The disclosure required under this item may include any underground sampling, drilling or test work.

(3) For mineral projects with mineral resource estimates, the qualified person may meet the requirements under Item 10 (c) by providing a drill plan and representative drill sections through the mineral deposit.

(4) If drill results from previous operators have been verified by the qualified person and are included in a mineral resource estimate and are therefore being treated as reliable, we expect that these drill results will be included under this Item. The report should clearly distinguish the results of drilling conducted by or on behalf of the issuer from those of previous operators.

Item 12 Data Verification

The appropriate qualified person should conduct data verification on any scientific and technical information included in the report. Data verification steps may be necessary for, but not limited to, parts or all of Items 9, 10, 11, 13, 14, 15 and 17, and any assumptions used in Items 21 and 22.

Technical report authors are reminded that simply referencing prior data verification conducted by others does not meet the requirements of this Item.

We remind issuers that a technical report disclosing mineral resources or mineral reserves under Items 14 and 15, respectively, must comply with the requirements set out in sections 6, 7 and 13 of the Instrument.

Item 13 Metallurgical Testing

Disclosure related to the amount and reliability of the metallurgical test work conducted on the mineral deposit should be appropriate and sufficient to support the stage of development of the mineral project.

Item 14 Mineral Resource Estimates

(1) A statement of quantity and grade or quality is an estimate and should be rounded to reflect the fact that it is an approximation.

(2) Where multiple cut-off grade scenarios are presented, the qualified person must identify and highlight the base case or preferred scenario. All estimates resulting from each of the cut-off grade scenarios must meet the test of reasonable prospects requirements of mineral resources.

(3) We do not interpret “relevant conversion factors” in Item 14 (c) related to metal equivalents to include the application of the modifying factors used in the conversion to mineral reserves.

(4) Visual representations required under Item 14 (d) should clearly show the spatial continuity of the mineral resource, the confidence classifications and the constraining surfaces or shapes.

(5) Each mineral project has its own set of risks and uncertainties, any of which could materially affect the mineral resource estimate. Disclosure under Item 14 (g) should be relevant to the particular mineral project. Failure to provide known risks specific to the mineral project may make the mineral resource estimate disclosure potentially misleading.

(6) A mineral deposit is not a mineral resource unless it demonstrates the reasonable prospects requirements of mineral resources. Item 14 (b) requires the technical report to disclose the assumptions used to establish the reasonable prospects, which we interpret to include both economic and technical aspects.

The economic aspects may include the metallurgical recovery, cost assumptions, metal prices and any other factors that might impact the eventual mining of the mineral resource. And depending on the type of mining method, the technical aspects may include minimum widths, spatial continuity and the application of appropriate constraining surfaces, areas and volumes.

For example, a technical report disclosing a pit shell must also provide a description of the geological controls that are the basis for the geological model used to constrain the mineral resource estimation, including descriptions of the data and the criteria and methodology used to develop the model.

(7) If the issuer wishes to disclose a previous mineral resource estimate or previous mineral reserve estimate prepared by the issuer related to the mineral project, these estimates should be referred to as a previous estimate and not a historical estimate which is a defined term in the Instrument.

Items 16 to 22

Scoping studies, pre-feasibility studies, feasibility studies and life of mine plans generally analyse and assess the same geological, engineering and economic factors with increasing detail and precision. Therefore, the criteria for Items 16 to 22 can be used as a framework for reporting the results of all four studies. In situations where a mineral project does not have mineral resources or mineral reserves but the mineral project is in production, or was previously in production, we expect disclosure will be provided under Items 16 to 22, where applicable.

Item 16 Mining Methods

For a mineral project in production or operation, we expect the technical report to disclose the mining methods currently in place.

Item 19 Market Studies and Contracts

The discussion of market studies should clearly explain any impacts that the mineral project that is subject of the technical report may have on the market. Discussion under this item should also include identification of any circumstances unique to that market.

Item 20 Environmental Studies, Permitting and Regional or Local Impact

The information disclosed in this item should include the dates of any current (meaning in place at the effective date) reports, documents, studies, permits or permit status.

Along with the date, titles of any reports, documents, studies or permits should also be disclosed to ensure the intended audience can understand that these documents may have been superseded even if the remainder of the technical report remains current.

Item 21 Capital and Operating Costs

Disclosure under this item should be made, even if the mineral project in production does not have mineral resources or mineral reserves. A technical report for a mineral project in production (or operation) may disclose actual costs rather than estimates when available. If disclosing actual costs, consider reconciling to the most recent estimated costs such that the intended audiences may see differences between forecasts and actuals.

Item 22 Economic Analysis

(1) The economic analysis in technical reports must include any applicable cautionary language required by subsection 7 (3) of the Instrument.

(2) Discussion of how the risk-adjusted discount rate was selected should consider risks specific to the mineral project such as location, stage of development or type of commodity.

Item 23 Current Personal Inspection

(1) The observations by the qualified person conducting the current personal inspection may include anything the intended audience might need to know that could impact further advancement of the mineral project.

(2) We do not consider the sampling or testing done by the qualified person during the current personal inspection to be exploration activities of the issuer.

(3) We additionally note that it is considered acceptable that the current personal inspection may be assisted by, but not replaced by, remote technologies including drones.

Item 26 Recommendations

In some specific cases, the qualified person may not be in a position to make meaningful recommendations for further work. Generally, these situations will be limited to mineral projects under development or in production where material exploration activities and engineering studies have largely concluded. In such cases, the qualified person should explain why they are not making further recommendations.

In general, we do not expect recommendations as part of a life of mine plan.

Appendix A

Acceptable Foreign Associations and Membership Designations

Foreign Association	Membership Designation
American Institute of Professional Geologists (AIPG)	Certified Professional Geologist (CPG)
The Society for Mining, Metallurgy and Exploration, Inc. (SME)	Registered Member
Mining and Metallurgical Society of America (MMSA)	Qualified Professional (QP)
Any state in the United States of America	Licensed or certified as a professional engineer
European Federation of Geologists (EFG)	European Geologist (EurGeol)
Institute of Geologists of Ireland (IGI)	Professional Member (PGeo)
Institute of Materials, Minerals and Mining (IMMM or IOM3)	Professional Member (MIMMM), Fellow (FIMMM), Chartered Scientist (CSci MIMMM), or Chartered Engineer (CEng MIMMM)
Geological Society of London (GSL)	Chartered Geologist (CGeol)
Australasian Institute of Mining and Metallurgy (AusIMM)	Fellow (FAusIMM) or Chartered Professional Member or Fellow (MAusIMM (CP), FAusIMM (CP))
Australian Institute of Geoscientists (AIG)	Member (MAIG), Fellow (FAIG) or Registered Professional Geoscientist Member or Fellow (MAIG RPGeo, FAIG RPGeo)
The Institution of Engineers Australia (Engineers Australia)	Chartered Professional Engineer (CPEng)
The Institution of Professional Engineers New Zealand (Engineers New Zealand, IPENZ)	Chartered Professional Engineer (CPEng)
The Southern African Institute of Mining and Metallurgy (SAIMM)	Fellow (FSAIMM)
South African Council for Natural Scientific Professions (SACNASP)	Professional Natural Scientist (Pr.Sci.Nat.)
Engineering Council of South Africa (ECSA)	Professional Engineer (Pr.Eng.) or Professional Certificated Engineer (Pr.Cert.Eng.)
Comisión Calificadora de Competencias en Recursos y Reservas Mineras (Chilean Mining Commission)	Registered Member

Appendix B

Example of Consent of Qualified Person

[QP's Letterhead] or [Insert name of QP]
[Insert name of QP's company] [Insert address of QP or QP's company]

CONSENT OF QUALIFIED PERSON

I, [name of QP], consent to the public filing of the technical report titled [insert title of report] and dated [insert effective date of report] (the "Technical Report") by [insert name of issuer filing the report].

I also consent to any extracts from or a summary of the Technical Report in the [insert date and type of disclosure document (i.e. news release, prospectus, AIF, etc.)] of [insert name of issuer making disclosure].

I certify that I have read [date and type of document (i.e. news release, prospectus, AIF, etc.) that the report supports] being filed by [insert name of issuer] and that it fairly and accurately represents the information in the sections of the Technical Report for which I am responsible.

Dated this [insert date].

_____ [Seal or Stamp]
Signature of Qualified Person

_____
Print name of Qualified Person

ANNEX D

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

1. National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.

2. Subsection 4.2.1(2) is amended by replacing "falls within paragraphs (a), (b), (d) and (e) of the definition of "qualified person" in***" with "***is a "qualified person" as defined in***".***

3. Form 44-101F1 Short Form Prospectus is amended in section 9.1 by replacing "property***" wherever it occurs with "***project***".***

4. *(1) This Instrument comes into force on [●].*

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

ANNEX E

PROPOSED AMENDMENT TO
NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS

1. National Instrument 44-102 Shelf Distributions is amended by this Instrument.

2. Subsection 7.2(1.2) is amended by replacing "falls within paragraphs (a), (b), (d) and (e) of the definition of "qualified person" in***" with "***is a "qualified person" as defined in***".***

3. *(1) This Instrument comes into force on [●].*

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

ANNEX F

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106
PROSPECTUS EXEMPTIONS

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

2. Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended in section 2 of Part D of the Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers by replacing "property***" with "***project***" wherever it occurs.***

3. *(1) This Instrument comes into force on [●].*

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

ANNEX G

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

1. National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.

2. Part 2 of Form 51-102F2 Annual Information Form is amended in section 5.4 by replacing "had***" with "***has***".***

3. Part 2 of Form 51-102F2 Annual Information Form is amended in subsection 5.4(1) by

(a) deleting ", author(s),***" after "***title***",***

(b) replacing "on the property***" with "***for mineral project***", and***

(c) adding the following after "*Standards of Disclosure for Mineral Projects***":***

and the name of each qualified person who prepared, or supervised the preparation of, all or part of the technical report***.***

4. Part 2 of Form 51-102F2 Annual Information Form is amended by replacing subsection 5.4(2) with the following:

(2) **Mineral Project Description and Location**

(a) The location of the mineral project.

(b) The nature and extent of your company's title to, or interest in, the mineral project, including, for greater certainty, surface rights and legal access, and the obligations that must be met to retain your company's title to, or interest in, the project.

(c) The terms of any agreement concerning royalties, back-in rights, payments or other similar agreement, and any encumbrances, to which the mineral project is subject.

(d) Any significant factors and risks that may affect the ability to perform work on the mineral project***.***

5. Part 2 of Form 51-102F2 Annual Information Form is amended by replacing paragraph 5.4(3)(a) with the following:

(3) **History**

(a) If relevant, a summary of the prior exploration and development of the mineral project, including for greater certainty the type, amount and results of any exploration and development work undertaken by previous owners, any relevant historical estimates and any previous production from the project***.***

6. Part 2 of Form 51-102F2 Annual Information Form is amended by replacing subsection 5.4(4) with the following:

Geological Setting, Mineralization and Deposit Types

(a) The regional setting and mineral project geology.

(b) The significant mineralized zones encountered on the mineral project, including, for greater certainty, a summary of the surrounding rock types, relevant geological controls, the length, width, depth and continuity of the mineralization and a description of the type, character and distribution of the mineralization.

(c) The mineral deposit type and geological model or concepts being applied.

7. Part 2 of Form 51-102F2 Annual Information Form is amended in subsection 5.4(7)

(a) by replacing "without limitation***" with "***as applicable***",***

(b) in paragraph 5.4(7)(a) by replacing "employed***" with "***used***", and***

(c) in paragraph 5.4(7)(d) by replacing "procedures***" with "***steps***".***

8. Part 2 of Form 51-102F2 Annual Information Form is amended in subsection 5.4(8) by deleting ", to the extent known, provide***".***

9. ***Part 2 of Form 51-101F2 Annual Information Form is amended in paragraph 5.4(9)(d) by replacing "***issues***" with "***factors***".***

10. ***Part 2 of Form 51-102F2 Annual Information Form is amended in subsections 5.4 (10) and (11) by replacing "***For advanced properties***" with "***For the mineral project, as applicable***".***

11. ***Part 2 of Form 51-102F2 Annual Information Form is amended in subsection 5.2(12) by***

(a) ***replacing "***For advanced properties***"*** with ***"***For the mineral project, as applicable***",***

(b) ***in paragraph (a) by replacing "***logistic requirements for the project***" with "***logistics necessary for the mineral project***", and***

(c) ***in paragraph (b) by replacing "***, and social or community factors related to the project***" with "***and other regional or local factors concerning the mineral project***".***

12. ***Part 2 of Form 51-102F2 Annual Information Form is amended in subsection 5.4 (13) by replacing "***For advanced properties***" with "***For the mineral project, as applicable***".***

13. ***Part 2 of Form 51-102F2 Annual Information Form is amended in paragraph 5.4(13)(a) by deleting "***, with the major components***".***

14. ***Part 2 of Form 51-102F2 Annual Information Form is amended in paragraph 5.4(13)(b) by***

(a) ***adding "***discounted***" before "***cash***", and***

(b) ***deleting "***, unless exempted under Instruction (1) to Item 22 of Form 43-101F1***".***

15. ***Part 2 of Form 51-102F2 Annual Information Form is amended in subparagraph (ii) of the Instructions to section 5.4 by replacing "***property***" with "***mineral project***".***

16. *(1)* *This Instrument comes into force on [●].*

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

ANNEX H

PROPOSED AMENDMENT TO
MULTILATERAL INSTRUMENT 51-105
ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

1. ***Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.***

2. ***Section 9 is amended by replacing "***Section 4.1***" with "***Section 15***".***

3. *(1)* *This Instrument comes into force on [●].*

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

ANNEX I

PROPOSED CHANGE TO
COMPANION POLICY 51-105CP MULTILATERAL INSTRUMENT 51-105
ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

1. Companion Policy 51-105CP Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is changed by this document.

2. Companion Policy 51-105CP Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is changed by replacing "property***" with "***project***" wherever it occurs.***

3. *This change becomes effective on [●].*

ANNEX J

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

1. Introduction

The Ontario Securities Commission (the **Commission** or the **OSC**) is publishing this Annex to supplement the CSA Notice and Request for Comment – Proposed Repeal and Replacement of National Instrument 43-101 *Standards for Mineral Projects* (the **CSA Notice**) and to set out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**).

The CSA are publishing for comment the Modernized Disclosure Requirements as part of an effort to modernize, clarify, and streamline the standards of disclosure requirements for mineral projects.

Unless otherwise defined in this Annex, defined terms or expressions used in this Annex share the meanings provided in the CSA Notice. Please refer to the main body of the CSA Notice for additional details.

2. Local Amendments

The Commission is not publishing for comment any proposed amendments to any rules, or proposed changes to any guidance, that are only in effect in Ontario.

3. Overview

The CSA undertook a review of the Instrument, the Form and the Companion Policy proposing updates to enhance Canada's mining disclosure regime to address evolving disclosure practices and policy considerations identified by CSA staff, and to reflect changes in the industry and investor expectations. In addition, the Modernized Disclosure Requirements will continue to provide consistent and comparable information to assist investors in making informed investment decisions and provide issuers with clear and understandable disclosure requirements.

Based on feedback from the Consultation Paper, the Instrument and the Form are generally working well, but it has been over two decades since many of the disclosure requirements came into force and 14 years since the last update during which time there have been significant changes in industry practice and investor expectations. The CSA determined that it would be appropriate to modernize, streamline, and clarify certain disclosure requirements. To assist issuers and qualified persons preparing technical disclosure in compliance with the Instrument and the Form we also propose to update and expand guidance in the Companion Policy related to the Instrument and the Form.

4. Proposed Intervention

a. Instrument

The proposed amendments to the Instrument are intended to refresh, update, and streamline many of the current disclosure requirements to reflect alignment with international disclosure standards, changes in market practice, and evolving policy considerations. For each proposed amendment a brief description is provided along with the approximate number and percentage of reporting issuers with mineral projects that have Ontario as their principal regulator that are affected by the proposed amendments.

Based on data from SEDAR+ we estimate as of June 30, 2024, there are approximately 338 reporting issuers with mineral projects that have Ontario as their principal regulator. This represents 32% of all reporting issuers that have Ontario as their principal regulator. The approximate breakdown of these 338 Ontario reporting issuers by their stage of development is:

- **Production** – 54 issuers (16%)
- **Development (Mineral Reserve)** – 40 issuers (12%)
- **Development (Preliminary Economic Assessment)** – 26 issuers (8%)
- **Mineral Resource** – 51 issuers (15%)
- **Exploration** – 156 issuers (46%)
- **Royalty** – 11 issuers (3%)

Based on data from SEDAR+ there were 723 Technical Reports filed between 2020 and 2023 representing an average of approximately 180 Technical Reports filed per year by reporting issuers with mineral projects that have Ontario as their principal regulator. The approximate breakdown of these 180 Technical Reports filed per year by stage of development is:

- **Production** – 15 Technical Reports (8%)
- **Development (Mineral Reserve)** – 17 Technical Reports (9%)
- **Development (Preliminary Economic Assessment** – 21 Technical Reports (12%)
- **Mineral Resource** – 53 Technical Reports (29%)
- **Exploration** – 73 Technical Reports (41%)
- **Royalty** – 1 Technical Report (1%)

We are proposing several amendments to the Instrument which include:

i. Foreign Codes

Since 2011, all the major international mining jurisdictions, including Canada, have harmonized their definition standards for mineral resources, mineral reserves, and mining studies to be aligned with the Committee for Mineral Reserves International Reporting Standards (**CRIRSCO**), an international organization of 15 countries working collaboratively to standardize global reporting codes in the mining industry. The Canadian Institute of Mining, Metallurgy, and Petroleum (**CIM**) definition standards, incorporated by reference into the Instrument, are aligned with CRIRSCO. Given the global harmonization of the mining definition standards and the estimation of mineral resource and mineral reserves we propose to remove the allowance for using an "acceptable foreign code" as this is no longer necessary. By removing "acceptable foreign code" we will also remove reference to the five named foreign codes (JORC Code, PERC Code, SAMREC Code, SEC Industry Guide 7, and Certification Code) along with removal of the entire Part 7 of the Instrument related to use of foreign codes. Due to international harmonization of the definition standards and mineral estimation by the CRIRSCO-aligned countries we do not anticipate any effect on compliance costs for issuers. The proposed amendment will apply to approximately 20 issuers that use or have used a foreign code over the last four years or 6% of issuers with mineral projects.

ii. Property vs Mineral Project

Throughout the Instrument the terms property and mineral project are used interchangeably, but using two different terms has caused confusion for some issuers. We propose to replace the undefined term property with the defined term "mineral project". We do not anticipate that the proposed amendment will have any impact on compliance costs for issuers and may benefit issuers by reducing the uncertainty of having two separate but similar terms. The proposed amendment will apply to all 338 issuers.

iii. Disclosure and Material Mineral Projects

Currently, many disclosure requirements pertaining to scientific and technical information only apply to an issuer's material mineral projects. This includes written and oral statements, disclosure of exploration information, data verification, mineral resources and mineral reserves, and naming the qualified person who prepared or approved the scientific and technical information. In practice, all issuers that disclose scientific and technical information on their non-material mineral projects follow the disclosure requirements regardless of materiality. Given the importance of reliable scientific and technical information to investors we are proposing to amend the Instrument to require that disclosure of scientific and technical information made by issuers about their mineral projects, including non-material mineral projects, must comply with the requirements, including naming the qualified person that prepared or approved the disclosure. The proposed amendment will apply to all 338 issuers.

iv. Producing Issuer

Under the Instrument, issuers that meet the "producing issuer" definition may have their Technical Reports prepared by internal qualified persons. The producing issuer definition is based on the Canadian dollar value of gross revenue from mining over the most recently completed fiscal year and three-year fiscal period which has not been updated since 2001. We propose to update the gross revenue thresholds for "producing issuer" to account for over two decades of inflation. The gross revenue threshold will be increased from $30 million and $90 million for the most recently completed fiscal year to $55 million and $165 million for the most recent three-

year fiscal period. The proposed amendments modernize the threshold value, but we do not expect that the changes will affect any issuers with mineral projects that file Technical Reports.

v. Technical Report

A Technical Report is intended to provide a summary of scientific and technical information about the issuer's material mineral project. The qualified person is responsible for the content of the Technical Report and deciding what information to include. We propose to amend the definition of a "technical report" to replace the phrase "all material scientific and technical information" with "all relevant scientific and technical information" related to the content of a Technical Report as some qualified persons have limited including important information that may not be material to the issuer as a whole but is relevant to the mineral project itself. The proposed amendment will apply to all future Technical Reports. We do not anticipate any impact on compliance costs and we expect the proposed amendment will clarify that the qualified person is not expected to determine materiality but is expected to determine what information is relevant to the mineral project and needs to be disclosed in the Technical Report.

vi. Totaling Inferred Resources

The Instrument currently prohibits adding inferred mineral resource estimates together with other categories of mineral resource estimates to disclose total mineral resources. Canada is the only jurisdiction that has this disclosure restriction which has been in place since 2001. Based on international industry practice and discussions with CIM, we propose to remove this prohibition if individual mineral resource estimate categories are also disclosed separately. The proposed amendment will benefit approximately 106 issuers or 31% of issuers with mineral projects at the mineral resource stage or higher by reducing the time required to report inferred resource estimates separately.

vii. Technical Report Triggers

Several triggers for Technical Reports are no longer relevant due to changes in other National Instruments and Exchange policies. We propose to remove the rights offering circular trigger reflecting changes to the rights offering regime since 2011. We also propose to remove the outdated TSX Venture Exchange short form offering document trigger which has not been used by issuers with mineral projects in over a decade. The proposed amendments will not affect any issuers with mineral projects.

viii. Delayed Personal Inspection

When filing a Technical Report, the Instrument allows for a deferral of the current personal inspection of the material mineral project by the qualified person due to seasonal weather conditions if the personal inspection is conducted as soon as possible and the Technical Report is refiled. This allowance was put in place in 2005 for a unique situation and is now used only rarely. As the current personal inspection is seen as a critical part of the qualified person's verification process, we propose removing the allowance for a delay in a current personal inspection. The proposed amendment will emphasize the importance of the personal inspection requirements and will apply to all future Technical Reports.

ix. Royalty Issuers

Issuers that only hold a royalty or similar interest in a mineral project may be required in certain circumstances to file a Technical Report on their material royalties, but these Technical Reports provide limited information as the qualified person does not have access to the operator's data, no ability to complete a personal inspection, and cannot verify the technical information. The requirement for royalty-only issuers to file a Technical Report has evolved over time and based on CSA staff's reviews and feedback from the Consultation Paper we propose removing the requirement for a royalty-only issuer to file a Technical Report on their material mineral projects. The proposed amendment will benefit approximately 11 issuers or 3% of issuers with mineral projects who have filed a total of 4 Technical Reports over the past four years.

x. Qualified Person

The definition of a "qualified person" under the Instrument has evolved since 2001 to address gaps in the requirements necessary for an individual to act as a qualified person. Based on feedback from the Consultation Paper and reviews by CSA staff, we propose to revise the qualified person definition to better align with the CRIRSCO definition of a "competent person" and to clarify certain requirements including:

(a) Removing the education requirement as this is already covered by the "professional association" definition.

(b) Clarifying that an individual's experience in the minerals industry must be professional experience gained after registration as a geoscientist or engineer with a "professional association".

(c) Including the concept of appropriate experience relevant to the subject matter of the mineral project with guidance on the term appropriate experience provided in the Companion Policy.

The proposed amendments will apply to all 338 issuers providing needed clarity to the industry ensuring that only geoscientists and engineers with appropriate and relevant professional experience can act as a qualified person on behalf of the issuer. We do not anticipate any impact on compliance costs as most issuers already engage a qualified person that meets the proposed amendments to the definition.

xi. Preliminary Economic Assessments

Disclosure of preliminary economic assessments (**PEA**) has been an area of significant non-compliance since 2011 particularly related to disclosure of a PEA after establishing mineral reserves which has led to staff interventions and refiling of Technical Reports. Part of the non-compliance may be due to the term PEA not being well defined in the Instrument. To address this, we propose to replace the term "preliminary economic assessment" with the internationally recognized term of "scoping study" which will be incorporated by reference into the Instrument through the CIM definition standards. CSA staff have worked with CIM to ensure the scoping study definition aligns with CRIRSCO with additional guidance provided for the Canadian context. We are also proposing additional disclosure of certain technical information along with specific cautionary statements to be included to alert investors about the conceptual nature of scoping studies and the use of inferred mineral resources in these studies. The proposed amendments, which reflect international harmonization, will potentially benefit approximately 26 PEA-stage issuers or 8% of issuers with mineral projects by providing needed clarity and potentially reducing the number of staff interventions of Technical Reports that are required to be revised and refiled.

xii. Exploration Target and Life of Mine Plan

The term "exploration target" is not currently defined in the Instrument, although disclosure related to this concept is allowed under the current requirements for issuers with exploration-stage mineral projects. Similarly, the term "life of mine plan" is often used by issuers in production, but this term is also not defined in the Instrument. We propose to incorporate by reference into the Instrument the internationally recognized terms "exploration target" and "life of mine plan" which are aligned with CRIRSCO. This proposed amendment will provide needed clarity to the industry and will also benefit issuers that provide information related to these terms.

xiii. Equivalent Grades

CSA staff have observed deficiencies in the disclosure of issuers when disclosing an equivalent grade. Specifically, issuers fail to incorporate the impact of recoveries of the various metals in the calculation of the equivalent grade. We propose to specifically require issuers to include metal recovery for each metal used in the equivalent grade calculation when disclosing multiple metals as a single equivalent grade. The proposed amendment reflects staff's efforts since 2021 requiring some exploration stage issuers to include metal recoveries when reporting an equivalent grade. Approximately 20, or 13%, of the 156 exploration stage issuers have previously reported equivalent grades without considering metal recoveries, but due to staff's interventions, it is now industry practice to consider recoveries of each metal. The proposed amendments will benefit issuers by clearly stating the requirement for disclosing equivalent grades.

xiv. Renumbering of the Instrument's Sections

To reflect the updated CSA drafting conventions, we are renumbering the Instrument's sections as 1, 2, 3 etc., regardless of the part in which the section is located. The proposed amendments will apply to all 338 issuers, but we do not anticipate any significant effect on compliance costs for issuers, although, it may take time for some issuers to adjust to the renumbering system.

b. Technical Report (Form 43-101F1)

The proposed amendments to the Form are intended to modernize, refresh, and clarify the 2011 requirements to reflect changes in industry practice, investor expectations, and evolving policy considerations. For each Proposed Amendment a brief description is provided along with the approximate number and percentage of future Technical Reports filed by Ontario issuers affected by the proposed changes based on the development stage of Technical Reports.

Based on data related to the development stage of Technical Reports filed on SEDAR+ from 2020 to 2023 there was an average of 180 Technical Reports filed per year by reporting issuers with mineral project that have Ontario as their principal regulator.

These 180 Technical Reports were filed by an average of 120 issuers meaning some issuers file several Technical Reports per year. The 120 issuers that filed a Technical Report in a particular year represents about 36% of the overall population of reporting issuers with mineral projects that have Ontario as their principal regulator.

Below is the approximate breakdown by development stage of the 180 Technical Reports filed per year over the past four years:

- **Production** – 15 Technical Reports (8%)
- **Development (Mineral Reserve)** – 17 Technical Reports (9%)
- **Development (Preliminary Economic Assessment)** – 21 Technical Reports (12%)
- **Mineral Resource** – 53 Technical Reports (29%)
- **Exploration** – 73 Technical Reports (41%)
- **Royalty** – 1 Technical Report (1%)

Below is the approximate breakdown related to the nature of the qualified persons who prepared technical disclosure in the 180 Technical Reports filed per year over the past four years:

- **Qualified Person from Consulting Firms** – 65%
- **Individual qualified person** – 22%
- **Internal qualified person** – 13%

Based on the breakdown above, 87% of Technical Reports filed were prepared by independent qualified persons.

We are proposing several amendments to the Form which include:

i. Instructions

We propose limiting the number of instructions included in the Form to only technical directions related to preparing a Technical Report. To accomplish this, we propose to incorporate some instructions as a disclosure requirement in the Form and move the remaining instruction into the Companion Policy. We do not anticipate any effect on compliance costs for issuers as the majority of the instructions already relate to specific Items in the Form and are considered disclosure requirements.

ii. All Mineral Project Stages

The current Instrument includes definitions of “early-stage exploration property” and “advanced property” which some issuers have used to improperly limit information in Technical Reports for projects that are in production but do not meet the definition of an “advanced property”. We propose streamlining the disclosure requirements in the Form to be suitable for all mineral project stages to capture all relevant scientific and technical information by removing the inaccurate definitions of “early-stage exploration property” and “advanced property”. The proposed amendments will benefit all issuers by providing needed clarity regarding their disclosure requirements and will apply to all Technical Reports filed per year.

iii. Title Page

Several issuers have included the stage of development of the mineral project on the title page of the Technical Report, such as exploration, mineral resource, PEA, prefeasibility study, operations, etc. which provides investors with very useful information. We propose requiring all issuers to state the development stage of the mineral project on the title page for all Technical Reports. The proposed amendment will apply to all Technical Reports filed per year benefiting investors and providing issuers with standardized disclosure requirements.

iv. Current Personal Inspection

The current personal inspection of the mineral project by the qualified person is a critical part of any Technical Report. Currently, information related to the personal inspection by the qualified person is included under a paragraph in the Introduction Item of the Form. We propose including a new standalone Item in the Form for information related to the current personal inspection by each qualified person. The proposed amendment simply relocates the disclosure about the current personal inspection by the qualified persons into a standalone Item in the Form providing clarity about the disclosure requirements. The proposed amendment will apply to all Technical Reports filed per year.

v. Reliance on Other Experts

The Reliance on Other Experts Item of the Form is an area with one of the highest observed incidences of non-compliance. This Item is only for information concerning four specific non-technical matters: legal, political, environmental, and tax where the qualified person may rely on another expert. In some cases, the qualified person also included reliance on others related to technical information which is outside of the four non-technical matters. This Item also provides a seldom used provision for reliance on an expert for diamond and gemstone pricing that we propose to remove. These amendments are intended to benefit all issuers leading to improved compliance with the Reliance on Other Experts Item and potentially reducing the number of Technical Reports requested by regulators to be revised and refiled. The proposed amendments will apply to all Technical Reports filed per year.

vi. Mineral Project and Description

Based on feedback from the Consultation Paper we are proposing to require additional disclosure in the Technical Report related to the issuer's permits or agreements with Indigenous Peoples, rightsholders or communities, in order for the issuer to conduct work on the mineral project. It is our understanding that Indigenous Peoples in Canada and throughout the world are considered rightsholders whose lands often overlap with an issuer's mineral project. We propose to clarify that permits and agreements with rightsholders specifically includes Indigenous Peoples. The ability for an issuer to obtain permits or agreements with rightsholders and Indigenous Peoples to conduct work is now routinely required by many jurisdictions and local governments throughout the world. We also propose to remove the words "to the extent known" before the requirement to discuss royalties, permits, and risk factors affecting access to the mineral project. We have seen instances where these words have been used by the qualified person to not inquire about these important factors. The proposed amendments will clarify the issuer's disclosure obligations and will apply to all Technical Reports filed per year.

vii. Data Verification

Verification of technical data by the qualified person is a critical step for any mineral project along with the qualified person stating their professional opinion that the technical data is suitable for the purpose used in the Technical Report. CSA staff have seen examples of inadequate disclosure of data verification by the qualified person even though the qualified person has in fact verified the data as part of their professional obligation. Some qualified persons have incorrectly interpreted that disclosure of data verification only applies to exploration and drilling activities and not to other technical data, such as metallurgy, mining methods, infrastructure, etc. We propose to clarify the existing requirement for the qualified person to disclose the data verification they conducted regarding the technical information for which they are responsible and to state their professional opinion on the suitability for the data. The proposed amendment will streamline the disclosure requirement and will apply to all Technical Reports filed per year.

viii. Metallurgical Testing

Metallurgical testing of mineralization is important to establish the potential recovery of a saleable product and to support the determination of the cut-off grade of the mineral resource. Mineral processing information is also one of the factors used to support the confidence categories of mineral resources. We propose to remove the words "to the extent known" before the requirement to discuss whether samples are representative of the mineralization and if there are any deleterious elements present. We have seen instances where these words have been used by the qualified person to limit their inquiry about these important factors. The proposed amendment reflects industry practice and will benefit issuers by clarifying the disclosure requirements. The proposed amendment will apply to approximately 106 mineral resource stage or higher Technical Reports, representing approximately 59% of the total Technical Reports filed per year.

ix. Mineral Resource Estimates

Mineral resource estimates represent a significant milestone for all issuers with mineral projects and these estimates are considered the foundation for all subsequent engineering studies used to establish the economic viability of the mineral project. In November 2019, CIM published Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines to assist issuers and qualified persons in preparing mineral resource estimates using current industry practices. In June 2020, we published CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* in which staff noted several observed deficiencies in disclosure of mineral resource estimates. Since 2020, we have generally seen enhanced disclosure by qualified persons in Technical Reports explaining how the mineral resource estimate was determined which we interpret to be due the 2019 CIM Guidelines and the 2020 CSA Staff Notice. We propose to modernize the Technical Report disclosure requirements to reflect current industry practice by requiring information about how reasonable prospects for economic extraction were determined, the classification of the mineral resource

estimate, the issuer's attributable percentage of the estimate, and project-specific risks related to the mineral resource estimate. The proposed amendments will benefit both investors and issuers by updating and aligning the disclosure requirements with industry practice. The proposed amendment will apply to approximately 106 mineral resource stage or higher Technical Reports, representing approximately 59% of total Technical Reports filed per year.

x. Environmental Studies, Permitting and Regional or Local Impact

Over the past decade, CSA staff have seen an increase in public and investor awareness of environmental and social issues impacting mineral projects. However, disclosure requirements related to environmental, permitting, and social matters in a Technical Report have remained largely unchanged since 2001. Proposed amendments include disclosure of the dates and status of government-related environmental studies and local permitting requirements. We understand and appreciate that matters related to rightsholders and environmental and social issues pertaining to the mineral project can change quickly compared to the mineral project's technical information. Since Technical Reports can remain current for several years based on the mineral project's technical information, we are proposing several changes to take this fact into consideration. Rather than requiring a summary of environmental studies and agreements with local communities at a specific point in time when the Technical Report is prepared, we are proposing that the Technical Report will discuss available information on environmental, permitting and other regional or local factors concerning the mineral project, including the source of the information, and the status and dates of any agreements entered into with Indigenous Peoples, rightsholders or communities. The proposed amendment will apply to approximately 53 development stage and production stage Technical Reports, representing approximately 29% of total Technical Reports filed per year.

xi. Capital and Operating Costs

Capital and operating cost assumptions are integral to the financial and economic analysis of development stage mineral projects. Staff have seen examples of mineral projects where cost assumptions have been underestimated due to various factors including poor professional practice. While the Instrument is a disclosure-based regulation, not a professional practice-based requirement, more specific information related to how the cost estimates were determined by the qualified person may be useful for investors to make informed investment decisions. We propose to modernize the disclosure requirements related to cost estimates assumptions, the cost estimate classification system used, the accuracy of each cost element, and costs related to mine closure, remediation, and reclamation. Based on OSC staff's observations, many issuers with development stage or production stage mineral projects already voluntarily provide this type of information related to their cost estimates. The proposed amendments will benefit both investors and issuers by clarifying the disclosure requirements which also reflect current industry practice. The proposed amendments will apply to approximately 53 development stage and production stage Technical Reports, or 29% of Technical Reports, filed per year.

xii. Economic Analysis

The economic analysis Item of the Form provides key metrics for investors related to potential future cash flows, net present value, internal rate of return, and payback period of capital for development stage mineral projects. Staff observe that although this information is already provided by many issuers with development stage mineral projects, we believe further clarification of the disclosure requirements would benefit investors. We propose to update the requirements for issuers to specifically disclose pre-tax and after-tax outcomes of key metrics using a risk-adjusted discount rate rejecting the current economic environment, location of the mineral project, and the mineral project's stage of development. The proposed amendments, which reflect current industry practice, will apply to approximately 38 development stage Technical Reports, or 21% of Technical Reports, filed per year.

xiii. Adjacent Properties

Disclosure in the adjacent properties Item of the Form related to mineralization contained on properties adjacent to the issuer's mineral project is often used for overly promotional disclosure in exploration stage Technical Reports. We propose to remove the adjacent properties Item from the Form since issuers with exploration stage mineral projects can discuss mineralization on adjacent properties in the geological setting and mineralization Item which requires a cautionary statement that this information is not necessarily indicative of mineralization on the issuer's mineral project. Removal of the adjacent properties Item in the Form will benefit all Technical Reports filed per year since the qualified person will not be required to discuss this information in the Technical Report.

c. Companion Policy

Based on feedback for the Consultation Paper we are proposing to provide more comprehensive guidance in the Companion Policy to benefit issuers and qualified person preparing scientific and technical information in compliance with both the Instrument and the Form. In addition to expanding the existing guidance related to the Instrument, we are proposing to include new guidance specific to disclosure in the Form. Based on CSA staff's reviews and inquiries from issuers and their advisors there is a need for guidance related to providing disclosure in accordance with the Form. We expect the expanded and the new guidance in the Companion Policy will benefit all issuers and qualified persons preparing technical disclosure in compliance with the requirements of the Instrument and the Form.

5. Affected Stakeholders

The primary stakeholders that will be impacted by the Modernized Disclosure Requirements are issuers with mineral projects, investors and qualified persons. The Modernized Disclosure Requirements will also impact Indigenous Peoples, rightsholders or communities and other rightsholders with land connections and traditional territories where the mineral project is located.

a. Issuers with Mineral Projects

The Modernized Disclosure Requirements will primarily affect reporting issuers with mineral projects that are required to comply with the disclosure requirements of the Instrument and the Form. Based on preliminary data obtained from stock exchanges, we estimate as of June 30, 2024, there are 338 reporting issuers with mineral projects that have Ontario as their principal regulator. We estimate the breakdown by market capitalization of these 338 issuers is:

- **Greater than $1 billion** (29 issuers) – 9%.
    - The majority are producers and several royalty issuers.
- **From $100 million to $1 billion** (57 issuers) – 17%.
    - These are a mixture of producers, development, and mineral resource issuers.
- **From $10 million to $100 million** (109 issuers) – 32%.
    - These are a mixture of producers, development, and mineral resource issuers.
- **Less than $10 million** (143 issuers) – 42%
    - The majority are exploration issuers.

From a CSA-wide perspective, based on research from September 2024 using Avantis.com, Canadian jurisdictions regulate approximately 1,590 reporting issuers with mineral projects with 70% having the British Columbia Securities Commission as their principal regulator, 21% having the OSC as their principal regulator (338 issuers), 5% having the Quebec Autorité des marchés financiers as their principal regulator, 3% having the Alberta Securities Commission as their principal regulator, and the remaining 1% having another CSA jurisdiction as their principal regulator.

Proposed amendments to the Instrument and the Form are intended to refresh, update, and clarify the current disclosure requirements to reflect changes in industry practice, international harmonization, investor expectations, and evolving policy considerations. Overall, we anticipate that most Ontario reporting issuers with mineral projects will not incur a material increase in compliance costs related to the Modernized Disclosure Requirements, although we recognize there will be implementation and transition costs for issuers to become familiar with the proposed amendments. The regulatory framework of the Instrument and the Form have been in place for over two decades in Canada and the proposed changes mostly relate to modernizing and streamlining the Instrument and the Form reflecting international harmonization and current industry practice. In addition, we think the proposed guidance in the Companion Policy will benefit issuers and qualified persons preparing technical disclosure by potentially lowering the amount of intervention by regulators.

b. Investors

The Modernized Disclosure Requirements are intended to provide investors and their advisors with more comprehensive and decision-useful technical information related to an issuer's mineral projects which should help investors make more informed investment decisions. This in turn will potentially reduce the cost of capital and enhance capital formation. The proposed amendments are also intended to align, where appropriate, the Instrument and the Form disclosure requirements with CRIRSCO-based disclosure standards which may benefit investors' ability to compare and evaluate these disclosures across issuers fostering more efficient investment decisions. Additionally, investors seeking disclosure that may align with their values related to environmental, permitting and other regional or local factors concerning the mineral project, and agreements with Indigenous

Peoples, rightsholders or communities may benefit from the sources of online information provided in the Form. Investors will not incur any direct costs related to the proposed changes.

c. Qualified Person

We are of the view that the Modernized Disclosure Requirements will not negatively affect professional geoscientists and professional engineers who conduct technical work as qualified persons that form the basis for disclosure under the Instrument and in the Form. Based on data from the OSC related to the nature of the qualified persons who prepared technical disclosure in the approximately 180 Technical Reports filed per year, 87% are independent with 65% employed by consulting firms and 22% individual qualified persons (i.e. sole proprietors) with the remining 13% internal qualified persons employed directly by the mining issuer.

The proposed amendments to the definition of a "qualified person" provides needed clarity to the industry and is better aligned with the requirements of the CRIRSCO definition of a competent person. We do however recognize that the proposed amendments may restrict a small number of junior geoscientists and junior engineers with limited professional experience or previously unregistered practitioners from acting as a qualified person. We do not anticipate any increase in compliance costs for issuers as most already engage a qualified person that meets the proposed clarification to the definition.

d. Indigenous Peoples, Rightsholders or Communities

We considered feedback from the Consultation Paper from groups representing Indigenous Peoples in Canada to add the requirement for prescriptive disclosure in the Form related to rights of Indigenous Peoples and the relationship of issuers with Indigenous Peoples. We also considered whether we should require the qualified person or another expert to validate the issuer's disclosure related to its relationship with Indigenous Peoples.

The Instrument is a disclosure-based regime specific to scientific or technical information about an issuer's mineral project. The Instrument does not grant permits or licences for mineral exploration, development, or extraction activities, or directly affect the rights or title of Indigenous Peoples. The permits and licences required to explore, develop, or extract minerals are granted by various governmental agencies in the jurisdiction or country where the mineral project is located.

Technical Reports are milestone driven documents triggered to support an issuer's technical information about their mineral project. Information related to the relationship of Indigenous Peoples, rightsholders or communities with issuers can shift quickly and may be outdated in the previously filed Technical Report if events change before the next Technical Report is triggered to support new technical information. For these reasons, it is staff's view that disclosure of the relationship of Indigenous Peoples with issuers should more appropriately form part of the issuer's ongoing continuous disclosure record.

6. The Modernized Disclosure Requirements and the OSC Mandate

The OSC considers the impact of proposed rulemaking on the OSC's mandate to:

- Provide protection to investors from unfair, improper or fraudulent practices,
- Foster fair, efficient, and competitive capital markets and confidence in the capital markets,
- Foster capital formation, and
- Contribute to the stability of the financial system and the reduction of systemic risk.

The Modernized Disclosure Requirements will impact the capital formation, competition, and efficiency components of the OSC's mandate. Specifically, the proposed amendments facilitate:

- Capital formation by continuing to require issuers provide timely continuous disclosure of material information and offering documents that are accurate, comparable, and complete and facilitating opportunities for investors to assess risks and make informed investment decisions.
- Harmonization by modernizing and streamlining many disclosure requirements to better align with international disclosure standards, changes in industry practices and evolving policy considerations.
- Confidence in capital markets by requiring enhanced disclosure in certain key areas related to mineral projects providing decision-useful information for investors to achieve more efficient capital allocation.
- Efficiency by reducing regulatory burden on issuers related to several areas of disclosure and removing outdated disclosure requirements that are no longer considered relevant.

- Competition by providing standardized disclosures that facilitate peer benchmarking and enhances competition among issuers for capital both across and within industries. Standardized reporting also reduces investors' costs associated with acquiring and processing disclosures by issuers with mining projects.

7. Analysis of the Anticipated Costs and Benefits of the Modernized Disclosure Requirements

The following analysis examines the costs and benefits to the affected stakeholders from the Modernized Disclosure Requirements. In our view, the Modernized Disclosure Requirements will:

- Ensure Canada continues to maintain its leadership role globally in mining capital formation and mineral project disclosure requirements.
- Promote capital formation by modernizing and clarifying the disclosure requirements and providing better alignment with international disclosure standards and current industry practice.
- Streamline disclosure requirements without compromising investor protection.
- Enhance investor protection by providing investors with consistent and comparable, information to make informed investment decisions.

Summary of Anticipated Costs and Benefits

a. Issuers with Mineral Projects

The proposed amendments relate to two elements of the disclosure requirements for issuers with mineral projects. The first element involves proposed amendments to the overall disclosure requirements for scientific and technical information under the Instrument. The second element involves proposed amendments to disclosure requirements under the Form related to an issuer's material mineral projects.

Overall, we anticipate that the Modernized Disclosure Requirements will have minimal effect on existing compliance costs for issuers who already prepare disclosure under the current requirements since the focus of the proposed amendments are to modernize, streamline and clarify the requirements to reflect international harmonization and current industry practice. We acknowledge that issuers with mineral projects will incur some implementation and transition costs to become familiar with the proposed amendments to the Instrument and the Form once they have been published as final amendments and final changes, but we expect any increase in compliance costs will be minimal.

Proposed Changes to Instrument with Minimal Effect on Compliance Costs

Instrument	Number of Issuers	Percentage of Issuers
Foreign Codes	20	6%
Property vs Mineral Project	338	100%
Disclosure and Material Mineral Projects	338	100%
Producing Issuer	0	0%
Technical Report	180	53%
Technical Report Triggers	0	0%
Delayed Personal Inspection	1	0.3%
Qualified Person	338	100%
Exploration Target and Life of Mine Plan	338	100%
Data Verification	338	100%
Equivalent Grades	20	6%
Renumbering Sections	338	100%

Proposed Changes to Form with Minimal Effect on Compliance Costs

Technical Report	Number of Technical Reports Per Year	Percentage of Technical Reports Per Year
Instructions	180	100%
All Mineral Project Stages	180	100%
Title Page	180	100%
Current Personal Inspection	180	100%
Mineral Project and Description	180	100%
Data Verification	180	100%
Metallurgical Testing	106	59%
Mineral Resource Estimates	106	59%
Environmental Studies, Permitting and Regional or Local Impact	53	29%
Capital and Operating Costs	53	29%
Economic Analysis	38	21%

Our estimated costs and savings for reporting issuers with Ontario as their principal regulator to engage qualified persons to prepared technical disclosure is based on an assessment by the OSC's staff of senior geologists with input from other CSA staff geologists and engineers. In addition, OSC staff have benchmarked our estimates based on informal discussions with qualified persons who prepare technical disclosure under the current disclosure requirements. In deriving our estimates, we recognize that the burden and costs as well as the benefits and savings will vary among individual issuers based on several factors, including the stage of development of their mineral projects, the number of mineral projects, the internal technical expertise, and the size and complexity of their operations. The estimates take into consideration two elements of the disclosure requirements, the Instrument and the Form:

- **Instrument** - For the proposed amendments to the Instrument related to overall disclosure requirements, typically completed by the issuer's internal qualified persons, we estimate an average rate of $100/hour.
- **Form** - For the proposed amendments related to the Form, we estimate that 13% of the Forms will be completed by an internal qualified person with an estimated average rate of $100/hour. Approximately 22% of Forms will be prepared by an external sole proprietor qualified person with an estimated average charge rate of $250/hour. The remaining 65% of Forms will be completed by an external qualified person employed by a consulting firm with significant overhead and specialization at an estimated average charge rate of $350/hour.

We recognize that the most significant burden and cost for issuers with mineral projects involves the qualified person preparing a milestone driven Technical Report to support the technical disclosure on the issuer's material mineral projects. The cost of preparing a Technical Report can vary widely depending on several factors including the development stage and complexity of the project, the amount of data to be analyzed, the level of detail required, whether the qualified person is internal, a sole proprietor, or part of a consulting firm, and the extent of involvement of other professionals and experts. We also recognize that if an issuer is requested by a regulator to revise and refile a previously filed Technical Report to address compliance concerns, external legal counsel may be involved. We have estimated an average rate of $405/hour for external legal counsel based on the Law Society of Ontario fee schedule.[1]

(A) Benefits

The primary benefits to issuers with mineral projects will be:

- Enhanced regulatory certainty and clarity – The Modernized Disclosure Requirements reflect international harmonization of the disclosure standards and modernization reflecting current industry practice. We anticipate that clearer rules will generally lead to reduced overall operational and compliance costs to issuers with mineral projects. Regulatory certainty could also facilitate better-informed decision-making by issuers with mineral

[1] Law Society Outside Counsel Fee Schedule. (2025, January 10). https://lso.ca/getdoc/1a17fa67-7a08-4a5b-b945-a3fb6ae45e9d/fee-schedule

projects, allowing them to better assess risk and opportunities and appropriately allocate resources to compliance.

- Reduced information asymmetry and a lower cost of capital – Information asymmetry describes situations where one party has more or better information relevant to an investment decision than the other party. Studies have confirmed that "high quality financial and social disclosures reduce the cost of capital by decreasing information asymmetry".[2] The proposed amendments should lower the cost of capital by enhancing disclosure by issuers with mining projects and reducing information asymmetry between them and investors.

a. Instrument

i. Totaling Inferred Resources

We anticipate the proposed amendment to remove the prohibition of adding inferred mineral resource estimates together with other categories of mineral resource estimates to disclose total mineral resources will potentially benefit approximately 106 issuers. This includes issuers at the mineral resource stage or higher by reducing the time required to report inferred resource estimates separately in their disclosure as well as potentially reducing the review time by legal counsel to check the issuer's disclosure for this prohibition. We anticipate that the benefits and savings associated with this proposed amendment could save 0.5 to 1 hour for internal qualified persons at a rate of $100/hour. We estimate total savings may range from **$5,300 to $10,600** across the industry of Ontario regulated issuers with mineral projects.

ii. Royalty Issuers

We anticipate the proposed amendment to remove of the requirement for royalty issuers to file a Technical Report on their material mineral projects will benefit approximately 11 issuers who have filed a total of four Technical Reports over the past four years. On a yearly basis, we expect that this proposed amendment may reduce the filing of **one** Technical Report prepared by an independent qualified person from a consulting firm at a charge rate of $350/hour. We estimate the savings associated with this could range from **$45,150 to $54,950** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

iii. Preliminary Economic Assessments

We anticipate the proposed amendment to harmonize with international standards by replacing the term "preliminary economic assessment" with "scoping study" and adding clarity to the requirements could potentially reduce the number of staff interventions of Technical Reports that are required to be revised and refiled. The proposed amendment may potentially benefit approximately 26 PEA-stage issuers with mineral projects. We anticipate that the benefits and savings associated with issuers not having to revise and refile disclosure related to PEAs would save 8 to 16 hours to amend a Technical Report at a weighted average hourly charge rate of $325/hour for independent qualified persons and 4 to 6 hours at a rate of $405/hour for external legal counsel review. Based on an overall weighted average of approximately $350/hour, we estimate total savings may range from **$109,200 to $200,200** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

Instrument – Estimated Cost Savings Per Issuer Affected (annual cost savings)

Proposed Amendments	Number of Issuers	Per Issuer		Industry-Wide	
		Reduced Hours	Estimated Cost Savings Per Hour	Total Reduced Hours	Total Estimated Cost Savings
Totaling Inferred Resources	106	0.50 - 1.0	$100	53 - 106	$5.300 - $10,600
Royalty Issuers	1	129 - 157	$350	129 - 157	$45,150 - $54,950

[2] Cuadrado-Ballesteros, B., Garcia-Sanchez, I.-M. and Martinez Ferrero, J. (2016), "How are corporate disclosures related to the cost of capital? The fundamental role of information asymmetry", *Management Decision*, Vol. 54 No. 7, pp. 1669-1701. https://doi.org/10.1108/MD-10-2015-0454

Proposed Amendments	Number of Issuers	Per Issuer		Industry-Wide	
		Reduced Hours	Estimated Cost Savings Per Hour	Total Reduced Hours	Total Estimated Cost Savings
Preliminary Economic Assessments	26	12 - 22	$350	312 - 572	$109,200 - $200,200
Total Estimated Cost Savings	133	142 - 180	$100 - $350	494 - 835	$159,650 - $265,750

We estimate that reporting issuers with mineral projects that are affected by the proposed amendments to the Instrument may experience annual cost savings of approximately **$159,650** to **$265,750** in 2024 dollars across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

b. Technical Report

i. Reliance on Other Experts

We assume the proposed amendments the reliance on other experts Item of the Technical Report with redrafting of the requirements and providing added clarity may lead to improved compliance by issuers and potentially reduce the number of Technical Reports requested by regulators to be revised and refiled. The proposed change will affect all 180 future Technical Reports filed per year and save 4 to 8 hours for an independent qualified person to revise the disclosure using a weighted average rate of $325/hour. We estimate total savings could range from **$234,000 to $468,000** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator

ii. Adjacent Properties

We anticipate the proposed amendment to remove the adjacent properties Item from the Form may potentially benefit all 180 future Technical Reports since the qualified person will not be required to discuss this information in every Technical Report. We estimate this could save 8 to 12 hours for an independent qualified person using a weighted average rate of $325/hour. We estimate total savings could range from **$331,200 to $496,800** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

Technical Report – Estimated Cost Savings Per Technical Report Filed (annual cost savings)

Proposed Amendments	Number of Future Technical Reports Affected Per Year	Per Issuer's Technical Report		Industry-Wide	
		Average Reduced Hours Per Technical Report	Hourly Estimated Cost Savings Per Technical Report	Total Reduced Hours	Total Estimated Cost Savings
Reliance on Other Experts	180	4 - 8	$325	720 - 1,440	$234,000 - $468,000
Adjacent Properties	180	8 - 12	$325	1,440 - 2,160	$468,000 - $702,000
Total Estimated Cost Savings	180	12 - 20	$325	2,160 - 3,600	**$702,000 - $1,170,000**

We estimate that reporting issuers with mineral projects that file a Technical Report may experience annual cost savings of approximately **$702,000** to $**1,170,000** in 2024 dollars based on the proposed amendments to the Form across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

c. Companion Policy

The proposed changes involve substantial revisions to the Companion Policy to include updated guidance related to the Instrument and new guidance specific to disclosure related to the Technical Report. We expect this additional information and guidance will provide clarity that will benefit all issuers and the qualified persons preparing technical disclosure in compliance with the Instrument and the Technical Report.

When staff conduct disclosure reviews of an issuers information either publicly filed on SEDAR+ or posted on an issuer's website that identifies disclosure deficiencies, this may lead to corrective disclosure by the issuer and associated costs for external legal counsel and qualified persons which can potentially be significant.

Based on data from the OSC related to staff interventions, 54 Technical Reports were amended and refiled between 2020 and 2023 representing an average of approximately 14 Technical Reports amended and refiled per year. In addition, based on data from the OSC related to staff interventions, 27 clarifying news releases were filed between 2020 and 2023 representing an average of approximately 7 clarifying news releases per year. While we recognize that the proposed changes to the Companion Policy may not eliminate all refilings and clarifications, we have assumed the numbers above for calculation purposes.

We anticipate that the benefits and savings associated with issuers not having to revise and refile disclosure would save 20 to 40 hours to amend a Technical Report at a weighted average hourly rate of $325/hour for independent qualified persons and 8 to 12 hours at a rate of $405/hour for external legal counsel review. Based on an overall weighted average of approximately $345/hour, we estimate total savings could range from **$135,240 to $251,160** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

We anticipate that the benefits and savings associated with issuers not having to revise and refile disclosure in a clarifying news release would save 8 to 16 hours at an hourly rate of $100/hour for internal qualified persons and 1 to 3 hours at a rate of $405/hour for external legal counsel review. Based on an overall weighted average of approximately $144/hour we estimate total savings could range from **$8,064 to $19,152** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

Companion Policy – Estimated Cost Savings Per Issuer Affected (annual cost savings)

Corrective Disclosure	Number of Issuers	Per Issuer		Industry-Wide	
		Reduced Hours	Estimated Cost Savings Per Hour	Total Reduced Hours	Total Estimated Cost Savings
Amended Technical Report	14	28 - 52	$345	392 - 728	$135,240 - $251,160
Clarifying News Release	7	8 - 19	$144	56 - 133	$8,064 - $19,152
Total Estimated Cost Savings	21	36 - 71	$144 - $345	756 - 1,941	**$143,304 - $270,312**

We estimate that reporting issuers with mineral projects may experience annual cost savings related to the proposed changes to the Companion Policy by not having to revise and refile disclosure including Technical Reports and clarifying news releases of approximately **$143,304** to **$270,312** in 2024 dollars across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

(B) Costs

Overall, we anticipate that the Modernized Disclosure Requirements will have minimal effect on existing compliance costs for issuers with mineral projects who already prepare disclosure under the current requirements. The focus of the proposed amendments is to modernize and streamline the disclosure requirements to reflect international harmonization and current industry practice along with clearer requirements and enhanced guidance.

We acknowledge that issuers with mineral projects will incur some implementation and transition costs to become familiar with the proposed amendments to the Instrument and the Form once they have been published as final amendments, but we expect any increase in compliance costs will be minimal. We anticipate that the minimal costs associated with implementation and transition to the Modernized Disclosure Requirements will vary based on several factors, particularly the reporting issuer's access to internal resources. We have used the reporting issuer's market capitalization as of June 30, 2024 as proxy for this analysis. There are 86 reporting issuers with Ontario as their principal regulator that have a market capitalization greater than $100 million and will generally be at the development or production stage and will typically have access to sufficient internal resources, including in-house legal counsel, to review and become familiar with the proposed amendments to the Instrument and the Form. We estimate it could take 14 to 28 hours at an hourly rate of $250/hour for internal legal counsel review. We estimate total costs could range from **$301,000 to $602,000** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

There are 252 reporting issuers with Ontario as their principal regulator that have a market capitalization less than $100 million and will generally be at the mineral resource or exploration stage and will need additional time to review and familiarize themselves with the proposed amendments to the Instrument and the Form. We anticipate this review could be done by internal qualified persons at an hourly rate of $100/hour and will take between 35 and 80 hours depending on the size of the reporting issuer. We estimate total costs could range from **$882,000 to $2,016,000** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

Implementation - Estimated Costs Per Issuer Affected (one-time transition costs)

Issuer's Market Capitalization	Number of Issuers	Per Issuer		Industry-Wide	
		Increased Hours	Estimated Costs Per Hour	Total Increased Hours	Total Estimated Costs
Greater Than $100 million	86	14 - 28	$250	1,204 - 2,408	$301,000 - $602,000
Less Than $100 Million	252	35 - 80	$100	8,820 - 20,160	$882,000 - $2,016,000
Total Estimated Costs	338	36 - 71	$100 - $250	10,024 - 22,568	**$1,183,000 - $2,618,000**

We estimate that reporting issuers with mineral projects may experience one-time transition costs related to implementation of the Modernized Disclosure Requirements ranging from approximately **$1,183,000** to **$2,618,000** in 2024 dollars across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator.

b. Investors

(A) Benefits

The primary benefits to investors will be:

- Enhanced disclosure that will reduce information asymmetries between issuers with mineral projects and investors.
- Reduced time spent by investors comparing non-standardized disclosure of complex information provided by issuers with mineral projects.
- Additional disclosure related to cost and evaluation information may lead to investment savings by investors who now have enhanced information in these areas.

(B) Costs

Investors will not incur any direct costs related to the Modernized Disclosure Requirements.

c. Qualified Persons

(A) Benefits

The primary benefits to qualified persons will be:

- Enhanced guidance in the Companion Policy to assist qualified persons disclosing technical information in compliance with the Instrument and Form.
- Clarified definition of a “qualified person” for preparing scientific and technical disclosure under the Instrument.

(B) Costs

We anticipate that costs for qualified persons to become familiar with the Modernized Disclosure Requirements will vary based on the nature of the qualified person’s organization. Qualified persons employed by consulting firms will generally have access to internal training, templates and other resources such that an increase in costs will be minimal. Sole proprietor and internal qualified persons may need additional time to review and become familiar with the proposed amendments to the Instrument and the Form. We are not able to quantify these costs, but they are expected to be minimal for qualified persons who have already prepared disclosure under the current Instrument and Form.

d. Indigenous Peoples, Rightsholders or Communities

(A) Benefits

The primary benefits to Indigenous Peoples, rightsholders or communities will be:

- Enhanced disclosure in Technical Reports related to the issuer’s permits and agreements with Indigenous Peoples, rightsholders or communities related to the mineral project.
- Increased transparency regarding the status of the various agreements and negotiations with Indigenous Peoples, rightsholders or communities.

(B) Costs

Indigenous Peoples, rightsholders or communities will not incur any direct costs related to the Modernized Disclosure Requirements.

8. Summary comparison of costs and benefits

We estimate that reporting issuers with mineral projects that have Ontario as their principal regulator will benefit from minimal ongoing annual costs savings ranging from **$1,005,000** to **$1,706,000** related to the Modernized Disclosure Requirements. We estimate that the annual savings per reporting issuer will range from approximately **$3,000** to **$5,050**, although we recognize that savings will vary by reporting issuer based on several factors including the size and complexity of their operations.

We anticipate that the main costs for reporting issuers will be related to implementation and transition to the Modernized Disclosure Requirements and becoming familiar with the proposed amendments to the Instrument and Form. As noted earlier, these one-time transition costs are estimated to range from approximately **$1,183,000** to **$2,618,000** across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator. We acknowledge that the one-time transition cost per reporting issuer will vary based on the reporting issuer’s access to internal resources and the size and complexity of their operations and are estimated to range from approximately **$3,500 to $7,750**.

Overall, we estimate that the costs and benefits related to the Modernized Disclosure Requirements, including the annual savings and the on-time transition costs, will result in a minimal increase on compliance costs ranging from approximately **$178,000** to **$912,000** during the first year of implementation across the industry of reporting issuers with mineral projects that have Ontario as their principal regulator. We estimate that the increase in costs per reporting issuer will range from approximately **$500** to **$2,700** during the first year of implementation.

In summary, we anticipate that the increased international harmonization and modernization of the Modernized Disclosure Requirements reflecting current industry practice along with clearer rules and enhanced guidance will lead to reduced overall compliance costs for reporting issuers with mineral projects. The proposed amendments to the Instrument and the Form will also enable Canada to maintain its leadership role in global mining capital formation and mineral project disclosure standards ensuring that investors are provided with consistent and comparable information to make informed investment decisions.

Instrument and Form - Summary of Estimated Cost Savings Per Issuer Affected (annual cost savings)

Cost Savings	Number of Issuers	Per Issuer		Industry-Wide	
		Reduced Hours	Cost Savings Per Hour	Total Reduced Hours	Total Cost Savings
Instrument - Proposed Amendments	133	142 - 180	$100 - $350	494 - 835	$159,650 - $265,750
Technical Report – Proposed Amendments	180 Technical Reports (120 Issuers)	12 - 20	$325	2,160 - 3,600	$702,000 - $1,170,000
Companion Policy - Proposed Changes	21	36 - 71	$135 - $300	756 - 1,941	$143,304 - $270,312
Total Cost Savings					**$1,004,954 - $1,706,062**

Implementation – Summary of Estimated Costs Per Issuer Affected (one-time transition costs)

Costs	Number of Issuers	Per Issuer		Industry-Wide	
		Increased Hours	Costs Per Hour	Total Increased Hours	Total Costs
Total Estimated Costs	338	36 - 71	$100 - $250	10,024 - 22,568	**$1,183,000 - $2,618,000**

Summary of Estimated Cost and Benefits Per Issuer (annual benefits and one-time costs)

Summary of Costs and Benefits	Per Issuer	Industry Wide (338 Issuers)
Total Cost Savings	**$2,973 to $5,048**	**$1,004,954 to $1,706,062**
Total Costs	**$3,500 to $7,746**	**$1,183,000 to $2,618,000**
Net Costs	**$527 to $2,698**	**$178,000 to $912,000**

9. Rule-Making Authority

In Ontario, the following provisions of the Act provide the Commission with authority to make the Modernized Disclosure Requirements and consequential amendments:

- Paragraph 143(1)22 of the Act, which authorizes the OSC to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act.
- Paragraph 143(1)24 of the Act, which authorizes the OSC to make rules requiring issuers or others to comply, in whole or in part, with Part XVIII (Continuous Disclosure), or rules made under paragraph 22.

Paragraph 143(1)39 of the Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

10. Alternatives Considered

An alternative we considered was not implementing any amendments to the Instrument and Form or changes to the Companion Policy and maintaining the status quo.

We determined that the Modernized Disclosure Requirements was the preferred course as the key objective was to enhance and modernize the Instrument and Form to address feedback received from the Consultation Paper, data gathered by CSA staff reviews and modernize the Instrument and Form to reflect alignment with international disclosure standards, changes in market practice, and evolving policy considerations. We anticipate the Modernized Disclosure Requirements will ensure that Technical Reports continue to provide consistent and comparable information to assist investors to make informed investment decisions ensuring that Canada continues to maintain its important role in mining capital formation and mineral project disclosure.

11. Reliance on Unpublished Studies

The Commission is not relying on any unpublished study, report, or other written material in proposing the Modernized Disclosure Requirements.

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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:
Fidelity Equity Premium Yield ETF Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jun 6, 2025
NP 11-202 Preliminary Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297451

Issuer Name:
MD American Growth Fund
MD American Value Fund
MD Bond Fund
MD Canadian Equity Fund
MD Dividend Growth Fund
MD Equity Fund
MD Fossil Fuel Free Bond Fund
MD Fossil Fuel Free Equity Fund
MD Growth Investments Limited
MD International Growth Fund
MD International Value Fund
MD Money Fund
MD Precision Balanced Growth Index Portfolio
MD Precision Balanced Growth Portfolio
MD Precision Balanced Income Portfolio
MD Precision Canadian Balanced Growth Fund
MD Precision Canadian Moderate Growth Fund
MD Precision Conservative Index Portfolio
MD Precision Conservative Portfolio
MD Precision Maximum Growth Index Portfolio
MD Precision Maximum Growth Portfolio
MD Precision Moderate Balanced Index Portfolio
MD Precision Moderate Balanced Portfolio
MD Precision Moderate Growth Portfolio
MD Short-Term Bond Fund
MD Strategic Opportunities Fund
MD Strategic Yield Fund
MDPIM Canadian Equity Pool
MDPIM US Equity Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06274208

Issuer Name:
Desjardins Target 2028 Investment Grade Bond Fund
Desjardins Target 2029 Investment Grade Bond Fund
Desjardins Target 2030 Investment Grade Bond Fund
Principal Regulator – Quebec
Type and Date:
Preliminary Simplified Prospectus dated Jun 2, 2025
NP 11-202 Preliminary Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06296027

Issuer Name:
CI Galaxy Core Multi-Crypto ETF
CI Solana Fund
CI Galaxy Bitcoin ETF
CI Galaxy Ethereum ETF
CI Galaxy Multi-Crypto ETF
CI Bitcoin Fund
CI Ethereum Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jun 6, 2025
NP 11-202 Preliminary Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297292

Issuer Name:
Mackenzie Canadian High Dividend Yield ETF
Mackenzie Cyclical Tilt ETF
Mackenzie Defensive Tilt ETF
Mackenzie GQE US Alpha Extension ETF
Mackenzie NASDAQ 100 Index ETF
Mackenzie US High Dividend Yield ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Jun 5, 2025
NP 11-202 Preliminary Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297167

Issuer Name:
1832 AM Canadian Dividend LP
1832 AM Canadian Growth LP
1832 AM Global Completion ETF LP
1832 AM Global Low Volatility Equity LP
1832 AM International Equity LP
1832 AM Tactical Asset Allocation ETF LP
1832 AM Total Return Bond LP
1832 AM U.S. Dividend Growers LP
1832 AM U.S. Low Volatility Equity LP
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06266708

Issuer Name:
Franklin FTSE India Index ETF
Franklin U.S. Quality Moat Dividend Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jun 6, 2025
NP 11-202 Preliminary Receipt dated Jun 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297577

Issuer Name:
CC&L Absolute Return Bond Fund
CC&L Diversified Income Fund
CC&L Global Long Short Fund (formerly, CC&L Alternative Canadian Equity Fund)
CC&L Global Market Neutral II Fund (formerly, CC&L Alternative Global Equity Fund)
NS Partners International Equity Focus Fund
PCJ Absolute Return II Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated
NP 11-202 Final Receipt dated Jun 4, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06245223

Issuer Name:
Manulife CQS Multi Asset Credit Fund
Manulife Dividend Income Fund
Manulife Fundamental Balanced Class
Manulife Fundamental Dividend Fund
Manulife Fundamental Equity Fund
Manulife U.S. All Cap Equity Fund
Manulife U.S. Dividend Income Fund
Manulife U.S. Equity Fund
Manulife U.S. Mid-Cap Equity Fund
Manulife World Investment Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jun 4, 2025
NP 11-202 Preliminary Receipt dated Jun 4, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06296759

Issuer Name:
Dividend 15 Split Corp. II
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Jun 6, 2025
NP 11-202 Preliminary Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297546

Issuer Name:
Yorkville Aegon Global Equity Income Class
Yorkville Aegon Investment Grade Global Bond Class
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 9, 2025
Withdrawn on May 2, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06278504

Issuer Name:
Franklin FTSE India Index ETF
Franklin U.S. Quality Moat Dividend Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jun 9, 2025
NP 11-202 Preliminary Receipt dated Jun 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297577

Issuer Name:
Harvest Apple Enhanced High Income Shares ETF
Harvest Brand Leaders Plus Income ETF
Harvest Canadian Equity Income Leaders ETF
Harvest Energy Leaders Plus Income ETF
Harvest Global REIT Leaders Income ETF
Harvest Healthcare Leaders Income ETF
Harvest Tech Achievers Growth & Income ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jun 6, 2025
NP 11-202 Final Receipt dated Jun 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06281073

Issuer Name:
Matco Balanced Fund
Matco Canadian Equity Income Fund
Matco Diversified Income Fund
Matco Global Equity Fund
Matco Opportunities Fund
Principal Regulator – Alberta
Type and Date:
Final Simplified Prospectus dated Jun 3, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06287706

Issuer Name:
BMO Aggregate Bond ETF Fund
BMO Ascent™ Balanced Portfolio
BMO Ascent™ Conservative Portfolio
BMO Ascent™ Equity Growth Portfolio
BMO Ascent™ Growth Portfolio
BMO Ascent™ Income Portfolio
BMO Asian Growth and Income Fund
BMO Asset Allocation Fund
BMO Balanced ETF Portfolio
BMO Brookfield Global Real Estate Tech Fund
BMO Brookfield Global Renewables Infrastructure Fund
BMO Canadian Banks ETF Fund
BMO Canadian Equity ETF Fund
BMO Canadian Equity Fund
BMO Canadian Income & Growth Fund
BMO Canadian Small Cap Equity Fund
BMO Canadian Smart Alpha Equity Fund formerly, BMO Canadian Large Cap Equity Fund
BMO Canadian Stock Selection Fund
BMO Clean Energy ETF Fund
BMO Concentrated Global Balanced Fund
BMO Concentrated Global Equity Fund
BMO Conservative ETF Portfolio
BMO Core Bond Fund
BMO Core Plus Bond Fund
BMO Corporate Bond ETF Fund
BMO Covered Call Canada High Dividend ETF Fund
BMO Covered Call Canadian Banks ETF Fund
BMO Covered Call Energy ETF Fund
BMO Covered Call Europe High Dividend ETF Fund
BMO Covered Call Spread Gold Bullion ETF Fund
BMO Covered Call Technology ETF Fund
BMO Covered Call U.S. High Dividend ETF Fund
BMO Covered Call Utilities ETF Fund
BMO Crossover Bond Fund
BMO Diversified Income Portfolio
BMO Dividend Fund
BMO Emerging Markets Bond Fund
BMO Emerging Markets Fund
BMO Equity Growth ETF Portfolio
BMO European Fund
BMO Fixed Income ETF Portfolio
BMO Global Climate Transition Fund
BMO Global Dividend Fund
BMO Global Dividend Opportunities Fund
BMO Global Energy Fund
BMO Global Enhanced Income Fund
BMO Global Equity Fund
BMO Global Health Care Fund
BMO Global Income & Growth Fund
BMO Global Infrastructure Fund
BMO Global Innovators Fund
BMO Global Low Volatility ETF Fund
BMO Global Monthly Income Fund
BMO Global Quality ETF Fund
BMO Global REIT Fund
BMO Global Small Cap Fund
BMO Global Strategic Bond Fund
BMO Gold Bullion ETF Fund
BMO Greater China Fund
BMO Growth & Income Fund
BMO Growth ETF Portfolio
BMO Growth Opportunities Fund
BMO Income ETF Portfolio
BMO Inflation Opportunities Fund
BMO International Equity ETF Fund
BMO International Equity Fund
BMO International Value Fund
BMO Japan Fund
BMO Long Short U.S. Equity ETF Fund
BMO Low Volatility Canadian Equity ETF Fund
BMO Low Volatility U.S. Equity ETF Fund
BMO Managed Balanced Portfolio (formerly, BMO Fundselect Balanced Portfolio)
BMO Managed Conservative Portfolio (formerly, BMO Fundselect Conservative Portfolio)
BMO Managed Equity Growth Portfolio (formerly, BMO Fundselect Equity Growth Portfolio)
BMO Managed Growth Portfolio (fomerly, BMO Fundselect Growth Portfolio)
BMO Managed Income Portfolio (formerly, BMO Fundselect Income Portfolio)
BMO Money Market Fund
BMO Monthly Dividend Fund Ltd.
BMO Monthly High Income Fund II
BMO Monthly Income Fund
BMO Mortgage and Short-Term Income Fund
BMO Multi-Factor Equity Fund
BMO Nasdaq 100 Equity ETF Fund
BMO North American Dividend Fund
BMO Precious Metals Fund
BMO Premium Yield ETF Fund
BMO Private Strategic Rate Fund I
BMO Resource Fund
BMO Retirement Balanced Portfolio
BMO Retirement Conservative Portfolio
BMO Retirement Income Portfolio
BMO Risk Reduction Equity Fund
BMO Risk Reduction Fixed Income Fund
BMO SelectTrust® Balanced Portfolio
BMO SelectTrust® Conservative Portfolio
BMO SelectTrust® Equity Growth Portfolio
BMO SelectTrust® Fixed Income Portfolio
BMO SelectTrust® Growth Portfolio
BMO SelectTrust® Income Portfolio
BMO SIA Focused Canadian Equity Fund
BMO SIA Focused North American Equity Fund
BMO Strategic Equity Yield Fund
BMO Strategic Fixed Income Yield Fund
BMO Sustainable Balanced Portfolio (formerly, BMO Principle Balanced Portfolio)
BMO Sustainable Bond Fund
BMO Sustainable Conservative Portfolio (formerly, BMO Principle Conservative Portfolio)
BMO Sustainable Equity Growth Portfolio
BMO Sustainable Global Balanced Fund (formerly, BMO Global Balanced Fund)
BMO Sustainable Global Multi-Sector Bond Fund (formerly, BMO Global Multi-Sector Bond Fund)
BMO Sustainable Growth Portfolio (formerly, BMO Principle Growth Portfolio)
BMO Sustainable Income Portfolio (formerly BMO Principle Income Portfolio)
BMO Sustainable Opportunities Canadian Equity Fund
BMO Sustainable Opportunities Global Equity Fund

BMO Tactical Balanced ETF Fund
BMO Tactical Dividend ETF Fund
BMO Tactical Global Asset Allocation ETF Fund
BMO Tactical Global Equity ETF Fund
BMO Tactical Global Growth ETF Fund
BMO Target Education 2025 Portfolio
BMO Target Education 2030 Portfolio
BMO Target Education 2035 Portfolio
BMO Target Education 2040 Portfolio
BMO Target Education 2045 Portfolio
BMO Target Education Income Portfolio
BMO U.S. All Cap Equity Fund
BMO U.S. Corporate Bond Fund
BMO U.S. Dividend Fund
BMO U.S. Dollar Balanced Fund
BMO U.S. Dollar Dividend Fund
BMO U.S. Dollar Equity Index Fund
BMO U.S. Dollar Money Market Fund
BMO U.S. Dollar Monthly Income Fund
BMO U.S. Equity ETF Fund
BMO U.S. Equity Fund
BMO U.S. Equity Plus Fund
BMO U.S. High Yield Bond Fund
BMO U.S. Small Cap Fund
BMO Ultra Short-Term Bond ETF Fund
BMO USD Balanced ETF Portfolio
BMO USD Conservative ETF Portfolio
BMO USD Income ETF Portfolio
BMO Women in Leadership Fund
BMO World Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 28, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06273052

Issuer Name:
Ninepoint Global Select Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jun 3, 2025
NP 11-202 Preliminary Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06296512

Issuer Name:
Hamilton Enhanced Canadian Equity DayMAX™ ETF
Hamilton Enhanced Technology DayMAX™ ETF
Hamilton Enhanced U.S. Equity DayMAX™ ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jun 3, 2025
NP 11-202 Preliminary Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06296511

Issuer Name:
MDPIM Bond Pool
MDPIM Canadian Equity Pool
MDPIM Dividend Pool
MDPIM Emerging Markets Equity Pool
MDPIM International Equity Index Pool
MDPIM International Equity Pool
MDPIM S&P 500 Index Pool
MDPIM S&P/TSX Capped Composite Index Pool
MDPIM Short-Term Bond Pool
MDPIM Strategic Opportunities Pool
MDPIM Strategic Yield Pool
MDPIM US Equity Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 4, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06274192

Issuer Name:
Canadian Banc Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Jun 6, 2025
NP 11-202 Preliminary Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06297588

Issuer Name:
BetaPro -3x Nasdaq-100 Daily Leveraged Bear Alternative ETF
BetaPro -3x Russell 2000 Daily Leveraged Bear Alternative ETF
BetaPro -3x S&P 500 Daily Leveraged Bear Alternative ETF
BetaPro 3x Nasdaq-100 Daily Leveraged Bull Alternative ETF
BetaPro 3x Russell 2000 Daily Leveraged Bull Alternative ETF
BetaPro 3x S&P 500 Daily Leveraged Bull Alternative ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06268496

Issuer Name:
ATB Emerging Markets Equity Fund
ATB Global Equity Pool
ATB International Disciplined Equity Fund
ATB International Equity Income Fund
ATB Monthly Income Portfolio
ATB US Large Cap Equity Fund
Principal Regulator – Alberta
Type and Date:
Final Simplified Prospectus dated Jun 6, 2025
NP 11-202 Final Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06277544

Issuer Name:
1832 AM Emerging Markets Equity Pool
1832 AM Fundamental Canadian Equity Pool
1832 AM Global Credit Pool
1832 AM International Growth Equity Pool
1832 AM Investment Grade Canadian Corporate Bond Pool
1832 AM Quantitative Canadian All Cap Equity Pool
1832 AM Quantitative Global Mega Cap Equity Pool
1832 AM Tactical Asset Allocation PLUS Pool
1832 AM U.S. $ Investment Grade U.S. Corporate Bond Pool
1832 AM U.S. Core Equity Pool
Pinnacle Balanced Portfolio
Scotia Canadian Balanced Fund
Scotia Canadian Bond Index Fund
Scotia Canadian Dividend Class
Scotia Canadian Dividend Fund
Scotia Canadian Equity Blend Class
Scotia Canadian Equity Fund
Scotia Canadian Equity Index Fund
Scotia Canadian Growth Fund
Scotia Canadian Income Fund
Scotia Canadian Small Cap Fund
Scotia Diversified Balanced Fund
Scotia Diversified Monthly Income Fund
Scotia Dividend Balanced Fund
Scotia Essentials Balanced Portfolio
Scotia Essentials Growth Portfolio
Scotia Essentials Income Portfolio
Scotia Essentials Maximum Growth Portfolio
Scotia Global Balanced Fund
Scotia Global Bond Fund
Scotia Global Dividend Class
Scotia Global Dividend Fund
Scotia Global Equity Fund
Scotia Global Growth Fund
Scotia Global Small Cap Fund
Scotia Income Advantage Fund
Scotia India Equity Fund
Scotia INNOVA Balanced Growth Portfolio
Scotia INNOVA Balanced Growth Portfolio Class
Scotia INNOVA Balanced Income Portfolio
Scotia INNOVA Balanced Income Portfolio Class
Scotia INNOVA Growth Portfolio
Scotia INNOVA Growth Portfolio Class
Scotia INNOVA Income Portfolio
Scotia INNOVA Income Portfolio Class
Scotia INNOVA Maximum Growth Portfolio
Scotia INNOVA Maximum Growth Portfolio Class
Scotia International Equity Fund
Scotia International Equity Index Fund
Scotia Low Carbon Canadian Fixed Income Fund
Scotia Low Carbon Global Balanced Fund
Scotia Low Carbon Global Equity Fund
Scotia Money Market Fund
Scotia Mortgage Income Fund
Scotia Nasdaq Index Fund
Scotia Partners Balanced Growth Portfolio
Scotia Partners Balanced Growth Portfolio Class
Scotia Partners Balanced Income Portfolio
Scotia Partners Balanced Income Portfolio Class
Scotia Partners Growth Portfolio

Scotia Partners Growth Portfolio Class
Scotia Partners Income Portfolio
Scotia Partners Maximum Growth Portfolio
Scotia Partners Maximum Growth Portfolio Class
Scotia Resource Fund
Scotia Selected Balanced Growth Portfolio
Scotia Selected Balanced Income Portfolio
Scotia Selected Growth Portfolio
Scotia Selected Income Portfolio
Scotia Selected Maximum Growth Portfolio
Scotia U.S. $ Balanced Fund
Scotia U.S. $ Bond Fund
Scotia U.S. $ Money Market Fund
Scotia U.S. Dividend Fund
Scotia U.S. Equity Blend Class
Scotia U.S. Equity Fund
Scotia U.S. Equity Index Fund
Scotia U.S. Opportunities Fund
Scotia Wealth American Core-Plus Bond Pool
Scotia Wealth Canadian Bond Pool
Scotia Wealth Canadian Core Bond Pool
Scotia Wealth Canadian Corporate Bond Pool
Scotia Wealth Canadian Equity Pool
Scotia Wealth Canadian Growth Pool
Scotia Wealth Canadian Small Cap Pool
Scotia Wealth Canadian Value Pool
Scotia Wealth Credit Absolute Return Pool
Scotia Wealth Emerging Markets Pool
Scotia Wealth Floating Rate Income Pool
Scotia Wealth Focus International Value Pool
Scotia Wealth Focus U.S. Growth Pool
Scotia Wealth Focus U.S. Value Pool
Scotia Wealth Fundamental International Equity Pool
Scotia Wealth Global Equity Pool
Scotia Wealth Global High Yield Pool
Scotia Wealth Global Infrastructure Pool
Scotia Wealth Global Real Estate Pool
Scotia Wealth High Yield Bond Pool
Scotia Wealth High Yield Income Pool
Scotia Wealth Income Pool
Scotia Wealth International Core Equity Pool
Scotia Wealth International Equity Pool
Scotia Wealth International Small to Mid Cap Value Pool
Scotia Wealth North American Dividend Pool
Scotia Wealth Premium Payout Pool
Scotia Wealth Quantitative Canadian Small Cap Equity Pool
Scotia Wealth Quantitative Global Small Cap Equity Pool
Scotia Wealth Real Estate Income Pool
Scotia Wealth Short Term Bond Pool
Scotia Wealth Short-Mid Government Bond Pool
Scotia Wealth Strategic Balanced Pool
Scotia Wealth Total Return Bond Pool
Scotia Wealth U.S. Dividend Pool
Scotia Wealth U.S. Large Cap Growth Pool
Scotia Wealth U.S. Mid Cap Value Pool
Scotia Wealth U.S. Value Pool
Scotia Wealth World Infrastructure Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06266705

Issuer Name:
CC&L Absolute Return Bond Fund
CC&L Diversified Income Fund
CC&L Global Long Short Fund (formerly, CC&L Alternative Canadian Equity Fund)
CC&L Global Market Neutral II Fund (formerly, CC&L Alternative Global Equity Fund)
NS Partners International Equity Focus Fund
PCJ Absolute Return II Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated May 30, 25
NP 11-202 Final Receipt dated Jun 4, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06245223

Issuer Name:
Mackenzie Global Core Plus Bond Fund (formerly Mackenzie Global Tactical Bond Fund)
Principal Regulator – Ontario
Type and Date:
Amendment No. 3 to Final Simplified Prospectus dated May 29, 2025
NP 11-202 Final Receipt dated Jun 5, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06162237

Issuer Name:
Mackenzie Global Core Plus Bond Fund (formerly Mackenzie Global Tactical Bond Fund)
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated May 29, 2025
NP 11-202 Final Receipt dated Jun 5, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06191102

Issuer Name:
RBC PH&N Short Term Canadian Bond ETF
RBC Quant Emerging Markets Dividend Leaders ETF
RBC U.S. Banks Yield (CAD Hedged) Index ETF
RBC U.S. Banks Yield Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Long Form Prospectus dated June 5, 2025
NP 11-202 Final Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06240455

Issuer Name:
Mackenzie Canadian Strategic Fixed Income ETF (formerly Mackenzie Core Plus Canadian Fixed Income ETF)
Principal Regulator – Ontario
Type and Date:
Amendment No. 3 to Final Long Form Prospectus dated May 29, 2025
NP 11-202 Final Receipt dated Jun 5, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06141772

Issuer Name:
NEI Canadian Equity RS Fund (formerly NEI Ethical Canadian Equity Fund)
NEI Canadian Impact Bond Fund
NEI Clean Infrastructure Fund
NEI Environmental Leaders Fund
NEI Global Corporate Leaders Fund
NEI Global Dividend RS Fund (formerly NEI Ethical Global Dividend Fund)
NEI Global Equity RS Fund (formerly NEI Ethical Global Equity Fund)
NEI Global High Yield Bond Fund (formerly NEI Northwest Specialty Global High Yield Bond Fund)
NEI Global Impact Bond Fund
NEI Global Total Return Bond Fund
NEI Long Short Equity Fund
NEI U.S. Equity RS Fund (formerly NEI Ethical U.S. Equity Fund)
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated June 4, 2025
NP 11-202 Final Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06245912

Issuer Name:
Hamilton Canadian Financials Index ETF
Hamilton Canadian Financials YIELD MAXIMIZER™ ETF
HAMILTON CHAMPIONS™ Canadian Dividend Index ETF
HAMILTON CHAMPIONS™ Enhanced Canadian Dividend ETF
HAMILTON CHAMPIONS™ Enhanced U.S. Dividend ETF
HAMILTON CHAMPIONS™ U.S. Dividend Index ETF
Hamilton Energy YIELD MAXIMIZER™ ETF
Hamilton Enhanced Canadian Financials ETF
Hamilton Enhanced U.S. Covered Call ETF
Hamilton Gold Producer YIELD MAXIMIZER™ ETF
Hamilton Healthcare YIELD MAXIMIZER™ ETF
Hamilton U.S. Financials YIELD MAXIMIZER™ ETF
Principal Regulator – Ontario
Type and Date:
Amended and Restated to Final Long Form Prospectus dated June 2, 2025
NP 11-202 Final Receipt dated Jun 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06218595

Issuer Name:
BMO All-Equity ETF
BMO Balanced ETF
BMO Conservative ETF
BMO Growth ETF
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated May 30, 2025
NP 11-202 Final Receipt dated Jun 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06218232

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NON-INVESTMENT FUNDS

Issuer Name:
Ag Growth International Inc.
Principal Regulator – Manitoba
Type and Date:
Final Short Form Prospectus dated June 4, 2025
NP 11-202 Final Receipt dated June 4, 2025
Offering Price and Description:
$85,000,000 – 7.50% Senior Subordinated Unsecured Debentures
Price: $1,000 per Debenture
Filing # 06288979

Issuer Name:
U.S. Gold Corp.
Principal Regulator – Ontario
Type and Date:
Final MJDS Prospectus dated June 2, 2025
NP 11-202 Final Receipt dated June 3, 2025
Offering Price and Description:
$150,000,000 – Common Stock, Preferred Stock, Warrants, Units
Filing # 06280521

Issuer Name:
Arizona Sonoran Copper Company Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 6, 2025
NP 11-202 Preliminary Receipt dated June 6, 2025
Offering Price and Description:
$45,000,000 – 22,500,000 Common Shares
Filing # 06296242

Issuer Name:
Laurentian Bank of Canada
Principal Regulator – Quebec
Type and Date:
Final Shelf Prospectus dated June 6, 2025
NP 11-202 Final Receipt dated June 6, 2025
Offering Price and Description:
Debt Securities (subordinated indebtedness), Common Shares, Class A Preferred Shares, Subscription Receipts, Warrants
Filing # 06297416

Issuer Name:
Medicenna Therapeutics Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 4, 2025
NP 11-202 Final Receipt dated June 5, 2025
Offering Price and Description:
$75,000,000 – Common Shares, Preferred Shares, Subscription Receipts, Warrants, Units
Filing # 06279995

Issuer Name:
River Road Resources Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated May 30, 2025
NP 11-202 Preliminary Receipt dated June 3, 2025
Offering Price and Description:
2,500,000 – Common Shares
Price: $0.15 per Common Share
Filing # 06295688

Issuer Name:
FinEx Metals Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary and Amendment to Preliminary Long Form Prospectus dated June 3, 2025
NP 11-202 Preliminary Receipt dated June 4, 2025
Offering Price and Description:
19,800,000 Common Shares and 9,900,000 Warrants issuable upon deemed exercise of 19,800,000 outstanding Subscription Receipts and 317,553 Finder Warrants
Filing # 06282635

Issuer Name:
FinEx Metals Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary and Amendment to Preliminary Long Form Prospectus dated June 3, 2025
NP 11-202 Amendment to Preliminary Receipt dated June 4, 2025
Offering Price and Description:
19,800,000 Common Shares and 9,900,000 Warrants issuable upon deemed exercise of 19,800,000 outstanding Subscription Receipts and 317,553 Finder Warrants
Filing # 06282635

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Sartorial Wealth Inc.	Portfolio Manager	June 9, 2025

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 TSX Inc. and Alpha Exchange Inc. – Minimum Interaction Size and Minimum Quantity Features – Notice of Approval

TSX INC. AND ALPHA EXCHANGE INC.

NOTICE OF APPROVAL

MINIMUM INTERACTION SIZE AND MINIMUM QUANTITY FEATURES

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto for recognized exchanges, each of TSX Inc. ("**TSX**") and Alpha Exchange Inc. ("**Alpha**") will adopt, and the Ontario Securities Commission has approved, certain amendments to the functionality of the Minimum Interaction Size and Minimum Quantity features on each of TSX and Alpha, as set out in the Notice of Proposed Amendments and Request for Comment (the "**Request for Comments**") published by TSX and Alpha (the "**Amendments**").

Capitalized terms used and not otherwise defined in the Notice of Approval shall have the meaning ascribed to them in the Request for Comments.

Summary of the Amendments

A copy of the Amendments can be found here.

Amendments to the TSX Rule Book or Alpha Trading Policy Manual are not required to reflect the Amendments.

Comments Received

On April 3, 2025, TSX and Alpha published the Request for Comments and no comment letters were received.

Effective Date

The Amendments will be effective on June 23, 2025.

B.11.3 Clearing Agencies

B.11.3.1 Fundserv Inc. (Fundserv) – Proposed Amendments to Fundserv Fees – Distributor Fees – Notice of Commission Approval

FUNDSERV INC. (FUNDSERV)

NOTICE OF COMMISSION APPROVAL

PROPOSED AMENDMENTS TO FUNDSERV FEES – DISTRIBUTOR FEES

Introduction

In accordance with the Rule Protocol Regarding the Review and Approval of Fundserv Inc. ("**Fundserv**") Rules contained in Fundserv's recognition order dated April 10, 2012, the Ontario Securities Commission approved amendments to Fundserv's fee schedule related to distributor fees (the "**Fee Schedule**") on June 5, 2025.

Summary of Proposed Amendments

Fundserv proposed to amend its Fee Schedule to increase the monthly network fee for distributors, and to increase the one-time network connectivity fee for each new distributor code issued by Fundserv.

Comments Received

The proposed amendments were published for comment on May 1, 2025, and one comment letter was received. A summary of the comment submitted, together with Fundserv's response, is attached as Appendix A.

Effective Date

The amended Fee Schedule will take effect as follows:

- effective December 1, 2025, the $100 monthly minimum fee will be eliminated for distributors;
- effective December 1, 2025, the monthly minimum fee will be replaced with the monthly fixed fee of $100 per month for distributors;
- effective December 1, 2025, the $500 one-time network connectivity fee for new distributor codes will be increased to $1,000; and
- effective December 1, 2026, the $100 monthly fixed fee will be increased to $200 per month for all distributors.

Appendix A

Summary of Comments and Responses

Commenters

IDC Worldsource Insurance Network Inc.

Comment	Fundserv Response
Fundserv has put in significant resources in improving and updating industry standards for us. We feel that the nominal increase is totally justified. We are in support of this proposal.	Fundserv acknowledges IDC Worldsource Insurance Network Inc.'s (**IDC**) comment and thanks IDC for providing its feedback during the comment period for the Proposed Fee Change.

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Index