The Ontario Securities Commission

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Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of September 30, 2017 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
23-318	Withdrawal of Proposed Amendments Regarding Best Execution Disclosure under National Instrument 23-101 Trading Rules	***Published July 6, 2017***
94-101	National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives – Amendments	***Commission approval published July 6, 2017***
25-101	Designated Rating Organizations – Amendments	***Published for comment July 6, 2017***
21-101	Marketplace Operation – Amendments	***Published for comment July 6, 2017***
31-103	Registration Requirements – Amendments	***Published for comment July 6, 2017***
33-109	Registration Information – Amendments	***Published for comment July 6, 2017***
41-101	General Prospectus Requirements – Amendments	***Published for comment July 6, 2017***
44-101	Short Form Prospectus Distributions – Amendments	***Published for comment July 6, 2017***
44-102	Shelf Distributions – Amendments	***Published for comment July 6, 2017***
45-106	Prospectus Exemptions – Amendments	***Published for comment July 6, 2017***
51-102	Continuous Disclosure Obligations – Amendments	***Published for comment July 6, 2017***
81-102	Investment Funds – Amendments	***Published for comment July 6, 2017***
81-106	Investment Fund Continuous Disclosure – Amendments	***Published for comment July 6, 2017***

New Instruments

Instrument	Title	Status
33-506	(Commodity Futures Act) Registration Information – Amendments	***Published for comment July 6, 2017***
24-101	Institutional Trade Matching and Settlement – Amendments	***Ministerial approval published July 13, 2017***
33-748	Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisers and Investment Fund Managers	***Published July 13, 2017***
31-349	Change to Standard Form Reports for Close Supervision and Strict Supervision Terms and Conditions	***Published July 13, 2017***
33-320	The Requirement for True and Complete Applications for Registration	***Published July 13, 2017***
11-739	Policy Reformulation Table of Concordance and List of New Instruments (Revised)	***Published July 13, 2017***
31-103	Registration Requirements, Exemptions and Ongoing Registrant Obligations – Amendments	***Commission approval published July 27, 2017***
33-109	Registration Information – Amendments	***Commission approval published July 27, 2017***
33-506	(Commodity Futures Act) Registration Information – Amendments	***Commission approval published July 27, 2017***
61-302	Staff Review and Commentary on Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions	***Published July 27, 2017***
51-351	Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2017	***Published July 27, 2017***
46-307	Cryptocurrency Offerings	***Published August 24, 2017***
81-102	Investment Funds – Amendments	***Commission approval published August 31, 2017***
51-728	Corporate Finance Branch 2016-2017 Annual Report	***Published September 21, 2017***
91-102	Prohibition of Binary Options	***Commission approval published October 6, 2017***

For further information, contact:
Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

October 12, 2017

1.5 Notices from the Office of the Secretary

1.5.1 Khalid Walid Jawhari

FOR IMMEDIATE RELEASE
October 5, 2017

IN THE MATTER OF
KHALID WALID JAWHARI

TORONTO – Take notice that the Commission will hold a hearing on October 10, 2017 at 9:30 a.m. at the offices of the Ontario Securities Commission located at 20 Queen Street West, 17th Floor, Toronto, for an appearance in the above named matter.

A copy of the Order dated September 26, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 VM Holding S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 43-101 – Applicant granted relief from the requirements of Section 2.2 of NI 43-101 to permit the Filer to include disclosure of certain prior estimates in its initial public offering prospectus and its technical reports which prior estimates do not meet the definition of "historical estimate" as defined in Section 1.1 of NI 43-101.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, s. 2.2.

September 21, 2017

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
VM HOLDING S.A.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption (the **Exemption Sought)** from the requirements of Section 2.2 of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("**NI 43-101**") to permit the Filer to include disclosure of certain prior estimates in its prospectus and its technical reports which prior estimates do not meet the definition of "historical estimate" as defined in Section 1.1 of NI 43-101 as the Filer owned the relevant properties at the relevant time when the applicable prior estimates were prepared.

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

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

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

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (i) the date on which the Filer publicly discloses the granting of the Exemption Sought; (ii) the date on which the Filer obtains a receipt for a preliminary long form prospectus

relating to the proposed initial public offering of the Filer (the **IPO**); (iii) the date on which the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and (iv) the date that is 90 days after the date of this decision (the **Confidentiality Sought**).

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* 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 public limited liability company (société anonyme) organized under the laws of Luxembourg.

2. The registered office of the Filer is located at 26 28 rue Edward Steichen, L 2540 Luxembourg, Grand Duchy of Luxembourg.

3. The Filer is, and through its predecessor entities has been, a large scale, low cost integrated zinc producer with over 60 years of experience developing and operating mining assets in Latin America. Of relevance to this application are five mines that are owned and operated by the Filer, three located in the Central Andes of Peru and two located in the state of Minas Gerais in Brazil.

4. The Filer is, and through its predecessor entities has been for many years, a "producing issuer" for the purposes of NI 43-101.

5. The Filer is contemplating (i) a concurrent initial public offering of its common shares in the United States, and in each of the Jurisdictions and (ii) a concurrent listing of its common shares on the New York Stock Exchange and the Toronto Stock Exchange.

6. Following its IPO, in the Jurisdictions the Filer will be a "SEC foreign issuer" as such term is defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Private Issuers*, and in the United States the Filer will be a "foreign private issuer" within the meaning of Rule 405 under the *Securities Exchange Act of 1934*, as amended, of the United States of America.

7. The Filer is not currently a reporting issuer in any of the Jurisdictions.

8. Among other mining and development properties, the Filer owns and operates the following (each a "**Property**" and collectively the "**Properties**"):

    a. the Cerro Lindo mine, Chavin District, Chincha Province, Peru;

    b. the El Porvenir mine, Pasco, Peru;

    c. the Atacocha mine, Pasco, Peru;

    d. the Vazante mine, Minas Gerais State, Brazil; and

    e. the Morro Agudo mine, Minas Gerais State, Brazil.

9. Each of the Properties is either a primarily underground mining operation or includes underground mining operations.

10. As prescribed by applicable prospectus form requirements and NI 43-101, the Filer intends to include in its Prospectus disclosure relating to each of the Properties, which will be supported by an independent technical report prepared in accordance with NI 43-101.

11. Mineral resource and ore reserve estimates (the "**prior estimates**") for each of the Properties were prepared by staff of the Filer using the confidence categories set out in the 2004 edition of the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, Joint Ore Reserves Committee (JORC) Code. The Filer will not be treating such prior estimates as current estimates.

12. In respect of the requirements under Section 2.2 of NI 43-101 relating to disclosure of information about a mineral resource or mineral reserve, Section 2.4 of NI 43-101 permits issuers to disclose a "historical estimate" using the original terminology provided the requirements of Subsections 2.4 (a) to (g) are satisfied.

13. Pursuant to Section 4.3 of NI 43-101, a technical report that is required to be filed under Part 4 of NI 43-101 must be filed in accordance with Form 43-101F1 – *Technical Report* ("**Form 43-101F1**"). Item 6(c) of Form 43-101F1 requires disclosure of any significant historical mineral resource and mineral reserve estimates in accordance with Section 2.4 of NI 43-101. Item 24 of Form 43-101 requires disclosure of additional information necessary to make the technical report understandable and not misleading.

14. A "historical estimate" is defined in Section 1.1 of NI 43-101 as an "estimate of the quantity, grade, or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve, and which was prepared before the issuer acquiring, or entering into an agreement to acquire, an interest in the property that contains the deposit".

15. The prior estimates proposed to be disclosed by the Filer pertaining to Properties were not prepared prior to the Filer "acquiring, or entering into an agreement to acquire, an interest in the properties" but rather were prepared in all cases when the Properties were owned by the Filer.

16. The prior estimates meet the definition of historical estimate in Section 1.1 of NI 43-101 but for the ownership by the Issuer of the Properties at the time the historical estimates were prepared. Furthermore, the disclosure of the prior estimates will otherwise comply with the exemption under Section 2.4 of NI 43-101, as the prospectus and the technical reports will:

    a. identify the source and date of the prior estimate, including any existing technical report;

    b. comment on the relevance and reliability of the historical estimate;

    c. to the extent known, provide the key assumptions, parameters, and methods used to prepare the prior estimate;

    d. state whether the prior estimate uses categories other than the ones set out in Sections 1.2 and 1.3 of NI 43-101 and, if so, include an explanation of the differences;

    e. include any more recent estimates or data available to the Filer;

    f. comment on what work needs to be done to upgrade or verify the prior estimate as current mineral resources or mineral reserves; and

    g. state with equal prominence that:

        i. a qualified person has not done sufficient work to classify the prior estimate as current mineral resources or mineral reserves; and

        ii. the Filer is not treating the prior estimate as current mineral resources or mineral reserves.

17. The Filer will include current estimates of mineral reserves and resources for the Properties in compliance with NI 43-101. However, given the geological nature (i.e., narrow vein or tabular bodies of mineralization) of the Properties and the practical and economic limitations associated with surface and underground drilling, both of which result in meaningful limitations on the total amount of mineral reserves and mineral resources that can practically be defined by the Filer, the Filer submits that its current estimates of mineral reserves and resources as estimated under NI 43-101 represent incomplete disclosure without the benefit of the historical context provided by the prior estimates. In this regard, the Filer considers the prior estimates to be useful disclosure for investors for the purpose of illustrating the Filer's past ability to replenish and in some cases grow mineral reserves and mineral resources depleted through normal course mining activities over time, which replenishment is consistent with the Filer's understanding and the understanding of the independent authors of the technical reports, of the geological nature of the mineralization underlying the Properties.

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 disclosure relating to the prior estimates in the prospectus and the technical reports complies with Section 2.4 (a) through (g) of NI 43-101.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.1.2 Taiga Building Products Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from prospectus requirements with respect to common shares issued pursuant to an offer to redeem notes in exchange for the common shares, subject to conditions – the exchange offer does not meet the definition of an issuer bid under the legislation and no exemption from the prospectus requirement is available; the issuer will treat the exchange offer as if it were an issuer bid and comply with the requirements under securities legislation applicable to issuer bids.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1).

September 22, 2017

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

AND

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

AND

IN THE MATTER OF
TAIGA BUILDING PRODUCTS LTD.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

(a) the prospectus requirements under the Legislation (the Prospectus Requirements) do not apply to distributions by the Filer of common shares (Common Shares) and/or new notes (New Notes) in connection with an exchange offer (the Exchange Offer) by the Filer to the holders of 14% subordinated unsecured notes of the Filer (the Existing Notes) to purchase the Existing Notes in exchange for Common Shares and/or New Notes (the Exemption Sought); and

(b) this decision and accompanying application (the Confidential Material) be kept confidential and not be made public until the earlier of:

(i) the date that the Filer publicly announces the mailing of its management information circular in respect of a special meeting for the purposes of seeking the Minority Approval (as defined below),

(ii) the date that the Filer advises the Decision Maker that there is no longer any need for the Confidential Material to remain confidential, and

(iii) the date that is 90 days after the date of this order

(the Confidentiality Relief).

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

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

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

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

Interpretation

2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

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

1. the Filer is a company formed under the laws of British Columbia; the Filer's head office is located at 4710 Kingsway, Burnaby, British Columbia, V5H 4M2;

2. the Filer is a reporting issuer in the Jurisdictions and each of the provinces of Canada, other than Québec, and is not in default of any requirement of the securities legislation in any of these jurisdictions;

3. the Filer currently has 32,414,278 Common Shares and $128,834,218 aggregate principal amount of Existing Notes outstanding;

4. the Common Shares and Existing Notes are listed and posted for trading through the facilities of the Toronto Stock Exchange (the TSX) under the symbols "TBL" and "TBL.NT", respectively;

5. the Existing Notes became redeemable at par commencing September 1, 2017;

6. in order to provide the Filer with increased financial flexibility, lower cost of capital and long-term stability to its overall capital structure, the Filer wishes to commence the Exchange Offer for all of the Existing Notes under which a holder of Existing Notes would receive, in exchange for Existing Notes: (a) an equivalent principal amount of New Notes, (b) Common Shares at a share exchange price within the permitted range under TSX policies, or (c) a combination of New Notes and Common Shares;

7. the Exchange Offer will involve the potential issuance of securities to certain related parties of the Filer that own Existing Notes and elect to participate in the Exchange Offer (the Interested Parties); the issuance of Common Shares to the Interested Parties in connection with the Exchange Offer would constitute a related party transaction under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101);

8. but for the fact that the Existing Notes are debt securities that are not convertible into securities other than debt securities, the Exchange Offer would constitute an issuer bid under National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104);

9. notwithstanding that the Exchange Offer is not an issuer bid, the Filer intends to treat the Exchange Offer as if it were an issuer bid; in particular, the Filer intends to comply with the requirements relating to issuer bids under NI 62-104, including, but not limited to, notice requirements, the delivery of a circular in accordance with the prescribed form of issuer bid circular to holders of Existing Notes and the provision of withdrawal rights;

10. participation in the Exchange Offer by holders of Existing Notes is optional and at the sole discretion of such holders; holders of Existing Notes that elect not to participate in the Exchange Offer will continue to hold such Existing Notes, which will mature on the applicable maturity date, unless earlier redeemed, and continue to be entitled to all rights and privileges under the instrument governing their terms; holders of Existing Notes that elect to participate in the Exchange Offer will receive: (a) a cash payment representing accrued and unpaid interest (if any) to, but not including, the date of take up of the Existing Notes, and (b) consideration consisting of either New Notes, Common Shares or a combination thereof, as elected by such holder;

11. the Filer will not treat the Exchange Offer as an issuer bid exempt from the Legislation or the securities legislation of a Local Jurisdiction, except to the extent that such exemption is evidenced by a decision document from the Decision Makers or a securities regulatory authority in a Local Jurisdiction, as applicable;

12. section 2.16 of National Instrument 45-106 *Prospectus Exemptions* provides that the Prospectus Requirements do not apply in respect of a trade in a security in connection with an issuer bid; accordingly, if the Exchange Offer constituted an issuer bid, the New Notes and/or Common Shares that would be distributed in connection with the Exchange Offer would be exempt from the Prospectus Requirements; and

13. in accordance with MI 61-101, the Filer will seek minority shareholder approval (the Minority Approval) in respect of the potential issuance of Common Shares to the Interested Parties in connection with the Exchange Offer, as such issuance will constitute a related party transaction and no exemption is available; such minority shareholder approval shall exclude votes cast by the Interested Parties to the extent they hold Common Shares at the meeting of shareholders convened for such purpose; the Filer will prepare and mail to its shareholders an information circular in respect of a special meeting for the purposes of seeking the Minority Approval that will comply with the disclosure requirements in MI 61-101 in respect of related party transactions.

Decision

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

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted, provided that:

(a) the Filer treats the Exchange Offer as if it were an issuer bid and complies with the requirements of the Legislation applicable to issuer bids; and

(b) the first trade of any Common Shares or New Notes issuable in connection with the Exchange Offer will be a distribution unless

(i) the Filer has filed on SEDAR a circular in accordance with the prescribed form of issuer bid circular relating to the Exchange Offer;

(ii) the trade is not a "control distribution" as defined in National Instrument 45-102 *Resale of Securities*; and

(iii) the Filer was a reporting issuer on the date the Existing Notes were first taken up under the Exchange Offer.

It is also the decision of the Decision Makers that the Confidentiality Relief is granted.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

2.1.3 Samco Gold Limited

Headnote

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirement to call a shareholders' meeting to consider a proposed related party transaction and to send an information circular to such shareholders – proposed transaction pursuant to which, among other things, a wholly-owned subsidiary will be transferred to a related party and persons acting jointly with the related party, and the shares of the issuer held by the related party and persons acting jointly with the related party will be acquired by the issuer for cancellation, constitutes a related party transaction subject to the minority approval requirement under MI 61-101 – issuer disclosed the details of the proposed related party transaction in a material change report and disclosure document filed on SEDAR, both of which contained the applicable information required by MI 61-101 – issuer has received comfort from disinterested shareholders holding a majority of the common shares of the issuer eligible to be counted in determining minority approval under Part 8 of MI 61-101 that they will provide signed written consents to the proposed related party transaction – disclosure document was provided to each shareholder from whom consent is being sought – exemption sought granted, subject to conditions, including that the issuer will not close the proposed transaction unless and until (i) the consenting parties have had 14 days to review the disclosure document, and (ii) 14 days have elapsed from the date the last of the disclosure document, form of written consent and material change report was filed on SEDAR.

Statutes Cited

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions , ss. 5.3, 5.6, 8.1 and 9.1(2).
Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, s. 3.1.

October 4, 2017

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
SAMCO GOLD LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) exempting the Filer from the requirement in subsection 5.3(2) of MI 61-101 to call a meeting of holders of common shares of the Filer (the **Common Shares**, and such holders, the **Shareholders**) to consider a proposed related party transaction and to send an information circular to such holders (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation existing under the laws of the British Virgin Islands. The head office of the Filer is located at 3 Hanover Square, 4th Floor, London, England, W1S 1HD.

2. The Filer is a reporting issuer in the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador and is not in default of securities legislation in any such jurisdiction.

3. The authorized capital of the Filer consists of an unlimited number of Common Shares, each of which carries the right to one vote at all meetings of Shareholders. As at September 13, 2017, a total of 65,076,075 Common Shares were issued and outstanding. The Common Shares are listed and posted for trading on the TSX Venture Exchange (the TSXV) under the symbol "SGA".

4. On September 13, 2017, the Filer announced that it entered into a definitive agreement with Ricardo Auriemma, María Amalia Leguizamón (**Ms. Leguizamón**), Estanislao Auriemma, Martin Auriemma, Facundo Auriemma, Anoki Venture Ltd., and Safyre Management Ltd. (collectively, the **Auriemma Shareholders**) pursuant to which (a) the Filer will dispose of all of the shares of its wholly-owned Argentinean subsidiary, 5R S.A. (such shares, the **5R Shares**), which is the registered titleholder of the Filer's El Dorrado Monserrat properties in Santa Cruz, Argentina (the **EDM Properties**), (b) all of the Common Shares held by the Auriemma Shareholders will be returned to the Filer for cancellation (the **Share Cancellation**), (c) the Litigation Claims (as defined below) will be withdrawn, and the parties to the Litigation Claims will release each other from all claims in connection therewith, and (d) the Filer will retain a 1.5% net smelter return royalty over the EDM Properties (such transactions collectively, the **Proposed Transaction**).

5. One of the conditions of the Proposed Transaction is the amendment of the participation and option agreement dated January 10, 2014 between Ricardo Auriemma and the Filer (the **PO Agreement**) such that, *inter alia*, the quantum of expenses payable by Ricardo Auriemma to the Filer pursuant to the PO Agreement, which had been the subject of dispute between the parties, be fixed at US$200,000.

6. A material change report in respect of the Proposed Transaction that contains the information required by section 5.2 of MI 61-101 (the **Material Change Report**) was filed on the System for Electronic Document Analysis and Retrieval (SEDAR) on September 19, 2017.

7. Estanislao Auriemma was the President of two wholly-owned subsidiaries of the Filer, 5R S.A. and of Samco Gold S.A. (**SGSA**), until his dismissal from such positions in June 2016 and May 2016, respectively. In September 2016, Estanislao Auriemma filed a lawsuit against the Filer in Argentina for loss of office claiming an unspecified amount for unpaid salaries, fines and damages (the **Estanislao Litigation**).

8. Each of Martin Auriemma and Facundo Auriemma were employed by SGSA to provide technical geological services until their termination in October 2015. In August 2016, Martin Auriemma and Facundo Auriemma filed a lawsuit in Argentina against the Filer alleging wrongful dismissal and claiming damages of approximately US$400,000 in the aggregate (the **Martin and Facundo Litigation**, and together with the Estanislao Litigation, the **Litigation Claims**).

9. The Filer deemed the Litigation Claims to be without merit and took actions to defend such claims in the Argentinean courts. Notwithstanding the Filer's position on the merits of the Litigation Claims, the Filer engaged in settlement discussions with the Auriemma Shareholders in an attempt to arrive at an acceptable and expedient resolution of the Litigation Claims, which discussions culminated in the Proposed Transaction.

10. At a meeting of the board of directors of the Filer (the **Board**) held on April 14, 2017, management of the Filer presented the Proposed Transaction (including a draft letter of intent describing the material terms of the Proposed Transaction (the **Letter of Intent**)) to the Board. Michel Marier, an employee of Sentient Executive GP IV, Limited (**Sentient**), the general partner of Sentient Global Resources Fund IV, L.P. (the **Sentient Fund**), which will own or control more than 20% of the outstanding Common Shares and become a "Control Person" of the Filer (as that term is defined in the policies of the TSXV) as a result of the Share Cancellation, declared his interest in the Proposed Transaction and abstained from voting on the resolution authorizing the Filer to proceed with the Proposed Transaction (the **Transaction Resolution**). Charles Koppel (**Mr. Koppel**), Executive Chairman and Chief Executive Officer of the

Filer, also abstained from voting on the Transaction Resolution in light of the possibility that, when aggregated with other transactions then contemplated by the Filer but which were ultimately not pursued, the Proposed Transaction could result in him owning or controlling greater than 20% of the outstanding Common Shares. Accordingly, John Hick (**Mr. Hick**) and Kevin Tomlinson, the remaining independent directors of the Filer, neither of whom are interested parties in respect of the Proposed Transaction, considered, voted upon and approved the Transaction Resolution and authorized and directed the Letter of Intent to be delivered to the Auriemma Shareholders in the form presented to the Board.

11. The definitive agreement evidencing the Proposed Transaction is substantially the same as the Letter of Intent, with no material changes having been made to the terms set out in the Letter of Intent, and was negotiated by Mr. Hick, in his capacity as chair of the Filer's audit committee, with the advice of legal counsel to the Filer.

12. The Auriemma Shareholders have represented to the Filer that they have beneficial ownership of, or control or direction over, 18,450,000 Common Shares, representing approximately 28.4% of the issued and outstanding Common Shares.

13. The Share Cancellation is not an "issuer bid" under the Legislation as none of the Auriemma Shareholders is resident in any province or territory of Canada.

14. Ms. Leguizamón, one of the Auriemma Shareholders, directly or indirectly, beneficially owns, or has control or direction over, an aggregate of 14,500,000 Common Shares, representing approximately 22.3% of the issued and outstanding Common Shares. Accordingly, Ms. Leguizamón is a "control person" of the Filer under the Legislation and a related party of the Filer for the purposes of MI 61-101. The Filer believes that the Auriemma Shareholders are acting jointly or in concert with each other.

15. As one of the Auriemma Shareholders is a related party of the Filer, the Proposed Transaction constitutes a related party transaction for the purposes of MI 61-101, requiring the provision of a formal valuation and the receipt of minority approval in the absence of exemptions therefrom.

16. The Proposed Transaction is exempt from the formal valuation requirement set out in section 5.4 of MI 61-101 pursuant to paragraph 5.5(b) of MI 61-101. However, there are no exemptions available from the minority approval requirement set out in 5.6 of MI 61-101 in respect of the Proposed Transaction. Accordingly, the Filer is required by section 5.6 of MI 61-101 to obtain minority approval for the Proposed Transaction in accordance with Part 8 of MI 61-101 (the **Minority Approval**).

17. Subsection 5.3(2) of MI 61-101 requires that issuers proposing to carry out a related party transaction in respect of which minority approval is required under section 5.6 of MI 61-101 call a meeting of holders of the affected securities and send an information circular to those holders.

18. The Filer will obtain Minority Approval in respect of the Proposed Transaction by way of written consent as opposed to at a meeting of Shareholders.

19. As at September 13, 2017, 46,626,075 Common Shares, or approximately 71.6% of the issued and outstanding Common Shares, were held by persons who are not interested parties, related parties of interested parties, or joint actors with interested parties or related parties of interested parties in respect of the Proposed Transaction.

20. Mr. Koppel has beneficial ownership of, or control or direction over, 8,373,085 Common Shares. Sentient, as general partner of the Sentient Fund, has beneficial ownership of, or control or direction over, 12,949,200 Common Shares. The Filer has received comfort from Mr. Koppel and Sentient, as well as one other Shareholder with beneficial ownership of, or control or direction over, 4,200,000 Common Shares (such party together with Mr. Koppel and Sentient, the **Consenting Parties** and each a **Consenting Party**) that each of them will consent to the Proposed Transaction and will evidence such consent by executing the form of written consent (the **Consent**) accompanying the Disclosure Document (as defined below).

21. No Consenting Party is: (a) an interested party; (b) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more entities that are neither interested parties nor issuer insiders of the Filer; or (c) a joint actor with a person or company referred to in (a) or (b) above in respect of the Proposed Transaction.

22. No Consenting Party (including those Consenting Parties that are not related parties of the Filer) has received, or will receive, any collateral benefit in respect of the Proposed Transaction or in connection with agreeing to execute the Consent.

23. In aggregate, the Consenting Parties have beneficial ownership of, or control or direction over, 25,522,285 Common Shares, representing approximately 39.2% of the issued and outstanding Common Shares on a non-diluted basis and approximately 54.7% of the issued and outstanding Common Shares held by Shareholders eligible to provide the Minority Approval required for the Proposed Transaction, which exceeds the simple majority requirement set out in MI 61-101 for such approval.

24. Each of the Consenting Parties whose consent for the Proposed Transaction is being sought was provided with a copy of the Consent and a news release pertaining to the Proposed Transaction whose contents satisfy and comply with the disclosure requirements set out in subsection 5.3(3) of MI 61-101 (the **Disclosure Document**). The Disclosure Document and Consent set out the relevant details of the Proposed Transaction and included an acknowledgement from the Consenting Party that such Consenting Party has had a minimum of 14 days to review the Disclosure Document.

25. In addition to the Minority Approval, the Proposed Transaction will also require:

    (a) the approval of a majority of Shareholders pursuant to section 175 of the *Business Companies Act, 2004* (British Virgin Islands) (the **BVI Approval**);

    (b) the approval of disinterested Shareholders pursuant to TSXV Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* on the basis that (i) the Proposed Transaction constitutes a sale of more than 50% of the Filer's assets to one or more "Non-Arm's Length Party" and to "associates" of such Non-Arm's Length Party (as those terms are defined in the TSXV Corporate Finance Manual), and (ii) satisfactory evidence of value in the form required by the TSXV was not provided to the TSXV in connection with the Proposed Transaction (together, the **TSXV Disposition Approval**); and

    (c) the approval of disinterested Shareholders pursuant to TSXV Policy 3.2 – *Filing Requirements and Continuous Disclosure* on the basis that, as a result of the Proposed Transaction, Sentient will own or control more than 20% of the outstanding Common Shares, which will constitute a change of control of the Filer within the meaning of that term under the policies of the TSXV (the **TSXV Change of Control Approval**, and together with the TSXV Disposition Approval, the **TSXV Approvals**).

26. The BVI Approval may be evidenced by written consent of a majority of Shareholders and the Filer has obtained comfort that it will obtain written consents sufficient to satisfy the BVI Approval. In accordance with the requirements of the *Business Companies Act, 2004* (British Virgin Islands), the Filer will provide a copy of the form of resolution used for the purposes of the BVI Approval to all Shareholders, including those from whom written consent was not sought.

27. The TSXV has confirmed to the Filer that the TSXV Approvals may be evidenced by the written consent of a majority of Shareholders excluding (a) the Auriemma Shareholders, in the case of the TSXV Disposition Approval, and (b) Sentient, in the case of the TSXV Change of Control Approval. The Filer has obtained comfort that it will obtain written consents sufficient to satisfy each of the TSXV Approvals.

28. On September 13, 2017, the Filer filed copies of the Disclosure Document and form of Consent on SEDAR. The Filer will send a copy of the Disclosure Document to any Shareholder who requests a copy.

29. The Filer will not close the Proposed Transaction unless and until (a) the Consenting Parties have had 14 days to review the Disclosure Document, and (b) 14 days have elapsed from the date the latest of the Disclosure Document, Consent and Material Change Report was filed on SEDAR.

Decision

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

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

    (a) the Filer has received executed Consents from Shareholders representing a majority of Shareholders eligible to provide the Minority Approval required for the Proposed Transaction;

    (b) each Consenting Party received a copy of the Consent and Disclosure Document;

    (c) the Disclosure Document contains the information required pursuant to section 5.3 of MI 61-101 and also discloses that:

(i) the Filer will be obtaining Minority Approval by way of written consent;

(ii) written consent will be obtained from the Consenting Parties; and

(iii) the Filer has applied for the Exemption Sought;

(d) no Consenting Party (including those Consenting Parties that are not related parties of the Filer) has received, or will receive, any collateral benefit in respect of the Proposed Transaction or in connection with agreeing to execute the Consent;

(e) the Filer will not close the Proposed Transaction unless and until (i) the Consenting Parties have had 14 days to review the Disclosure Document, and (ii) 14 days have elapsed from the date the latest of the Disclosure Document, Consent and Material Change Report was filed on SEDAR;

(f) a copy of the Disclosure Document will be sent to any Shareholder who requests a copy;

(g) each Consenting Party receives a copy of this decision;

(h) the Filer has obtained written consents sufficient to satisfy the BVI Approval and a copy of the form of resolution used for the purposes of the BVI Approval will be delivered to all Shareholders in accordance with the laws of the British Virgin Islands, including those Shareholders from whom written consent was not sought;

(i) the Filer has obtained written consents sufficient to satisfy each of the TSXV Approvals; and

(j) there are no other approvals required in respect of the Proposed Transaction which must be obtained at a meeting of Shareholders and are not permitted to be evidenced by written consent.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2 Orders

2.2.1 Sandvine Corporation

Headnote

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

Applicable Legislative Provisions

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

October 5, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
SANDVINE CORPORATION
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 National Bank of Canada and Canadian Imperial Bank of Commerce – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – issuer proposes to purchase, pursuant to a repurchase program and at a discounted purchase price, up to a specified number of its common shares under its normal course issuer bid from a third party – the third party will abide by the requirements governing normal course issuer bids as though it was the issuer, subject to certain modifications, including that the third party will not make any purchases under the program pursuant to a pre-arranged trade – common shares delivered to the issuer for cancellation will be common shares from the third party's existing inventory – due to the discounted purchase price, the common shares cannot be acquired through the TSX trading system – but for the fact that the common shares cannot be acquired through the TSX trading system, the Issuer could otherwise acquire such shares in accordance with TSX rules and in reliance upon the issuer bid exemption available under section 4.8 of NI 62-104 – the third party will purchase common shares under the program on the same basis as if the issuer had conducted the bid in reliance on the normal course issuer bid exemptions set out in securities legislation – no adverse economic impact on, or prejudice to the issuer or its security holders – acquisition of securities exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the number of common shares transferred by the third party from its existing inventory to the issuer for purchase under the program be equivalent to the number of common shares that the third party has purchased, or had purchased on its behalf, on Canadian markets.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

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

AND

IN THE MATTER OF
NATIONAL BANK OF CANADA AND
CANADIAN IMPERIAL BANK OF COMMERCE

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of National Bank of Canada (the "**Issuer**") and Canadian Imperial Bank of Commerce ("**CIBC**", and together with the Issuer, the "**Filers**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 1,000,000 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from CIBC pursuant to a share repurchase program (the "**Program**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1, 2, 3, 4, 10 to 20, inclusive, 22 to 29, inclusive, 33, 35, 37, 38, 39, 41 and 42;

AND UPON CIBC and CIBC World Markets Inc. ("**CIBCWI**", and together with CIBC, the "**CIBC Entities**") having represented to the Commission the matters set out in paragraphs 5, 6, 7, 8, 9, 20 to 23, inclusive, 28, 30 to 34, inclusive, 36, 40, 42 and 43 as they relate to the CIBC Entities;

1. The Issuer is a Schedule I bank governed by the *Bank Act* (Canada).

2. The registered and head office of the Issuer is located at 600 de La Gauchetière Street West, 4th Floor, Montréal, Quebec, H3B 4L2.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "NA". The Issuer is not in default of any requirement of the securities legislation of the Jurisdictions.

4. The authorized share capital of the Issuer consists of: (a) an unlimited number of Common Shares; (b) an unlimited number of first preferred shares without par value, issuable for a maximum aggregate consideration of $5,000,000,000,

or the equivalent thereof in foreign currencies, issuable in series; and (c) 15,000,000 second preferred shares without par value, and issuable for a maximum aggregate consideration of $300,000,000. As of August 31, 2017, the Issuer had the following shares outstanding:

	Number of shares outstanding
Common Shares	341,201,990
First preferred shares, Series 28	8,000,000
First preferred shares, Series 30	14,000,000
First preferred shares, Series 32	12,000,000
First preferred shares, Series 34	16,000,000
First preferred shares, Series 36	16,000,000
First preferred shares, Series 38	16,000,000

5. CIBC is a Schedule I bank governed by the *Bank Act* (Canada). The head office of CIBC is located in the Province of Ontario.

6. CIBCWI is registered as an investment dealer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon, the Northwest Territories and Nunavut. It is also registered as a futures commission merchant under the *Commodity Futures Act* (Ontario), as a derivatives dealer under the *Derivatives Act* (Québec), and as a dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). CIBCWI is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of CIBCWI is located in Toronto, Ontario.

7. CIBC does not own, directly or indirectly, more than 5% of the issued and outstanding Common Shares.

8. CIBC is the beneficial owner of at least 1,000,000 Common Shares, none of which were acquired by, or on behalf of, CIBC in anticipation or contemplation of resale to the Issuer (such Common Shares over which CIBC has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by CIBC in the Province of Ontario, and all purchases of Inventory Shares by the Issuer from CIBC will be executed and settled in the Province of Ontario. No Common Shares were purchased by, or on behalf of, CIBC on or after August 19, 2017, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares by CIBC to the Issuer.

9. CIBC is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the "**Act**"). CIBC is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

10. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") which was accepted by the TSX effective June 1, 2017, the Issuer is permitted to make a normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase for cancellation, during the 12-month period beginning on June 5, 2017 and ending on June 4, 2018, up to 6,000,000 Common Shares, representing approximately 1.76% of the issued and outstanding Common Shares as of the date specified in the Notice. The Notice specifies that purchases under the Normal Course Issuer Bid will be conducted through the facilities of the TSX or any other exchange or alternative trading system in Canada, or by such other means as may be permitted by the TSX, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"), by a securities regulatory authority, or under applicable securities laws and regulations, including under automatic trading plans and by private agreements or share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities.

11. The Normal Course Issuer Bid is being conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of NI 62-104 (the "**Designated Exchange Exemption**").

12. The Normal Course Issuer Bid is also being conducted in the normal course on other permitted published markets in Canada (the "**Canadian Other Published Markets**") in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the "**Other Published Markets Exemption**", and together with the Designated Exchange Exemption, the "**Exemptions**").

13. Pursuant to the TSX Rules, the Issuer has appointed National Bank Financial Inc. as its designated broker in respect of the Normal Course Issuer Bid (the "**Responsible Broker**").

14. The Issuer may, from time to time, appoint a non-independent purchasing agent (a "**Plan Trustee**") to purchase Common Shares on the open market to fulfill requirements for the delivery of Common Shares under the Issuer's security-based compensation plans (the "**Plan Trustee Purchases**"). A Plan Trustee has not been appointed by the Issuer, no Plan Trustee will be appointed by the Issuer during the Program Term (as defined below) and no Plan Trustee Purchases will be required or made during the Program Term.

15. The Notice states that the Issuer may implement an automatic repurchase plan (an "**ARP**") to permit the Issuer to make purchases under the Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in its securities, including regularly scheduled quarterly blackout periods and other internal blackout periods (each such time, a "**Blackout Period**"). No ARP has been implemented at this time and no ARP will be implemented or operative during the Program Term (as defined below).

16. The maximum number of Common Shares that the Issuer is permitted to repurchase under the Normal Course Issuer Bid will be reduced by the number of Plan Trustee Purchases and the number of Common Shares purchased under an ARP, if any.

17. To the best of the Issuer's knowledge, the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at August 31, 2017 consisted of 340,512,699 Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the Universal Market Integrity Rules ("**UMIR**").

18. On July 19, 2017, the Commission granted the Issuer and The Toronto-Dominion Bank ("**TD**") an order pursuant to section 6.1 of NI 62-104 exempting the Issuer from the Issuer Bid Requirements in connection with the proposed purchases by the Issuer of up to 500,000 Common Shares from TD pursuant to a share repurchase program (the "**TD Program**"). The Issuer purchased 500,000 Common Shares under the TD Program, which terminated on July 28, 2017.

19. As at September 13, 2017, the Issuer has purchased 500,000 Common Shares pursuant to the Normal Course Issuer Bid.

20. The Filers wish to participate in the Program during, and as part of, the Normal Course Issuer Bid to enable the Issuer to purchase from CIBC, and for CIBC to sell to the Issuer, that number of Common Shares equal to the Program Maximum.

21. Pursuant to the terms of the Program Agreement (as defined below), CIBCWI has been retained by CIBC to acquire Common Shares through the facilities of the TSX and on Canadian Other Published Markets (collectively with the TSX, the "**Canadian Markets**") under the Program. No Common Shares will be acquired under the Program on a market that is not a Canadian Market.

22. The Program will be governed by, and conducted in accordance with, the terms and conditions of a Share Repurchase Program Agreement (the "**Program Agreement**") that will be entered into among the Filers and CIBCWI prior to the commencement of the Program, a copy of which will be delivered by the Filers to the Commission promptly thereafter.

23. The Program will begin on or after October 10, 2017 and will terminate on the earlier of December 31, 2017 and the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the CIBC Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder, or a change in law or announced change in law that would have adverse consequences to the transactions under the Program or to the Issuer or either of the CIBC Entities.

24. At least two clear Trading Days (as defined below) prior to the commencement of the Program, the Issuer will issue and file a press release that has been pre-cleared by the TSX that: (a) describes the material features of the Program, including the Program Term; (b) discloses the Issuer's intention to participate in the Program during the Normal Course Issuer Bid; (c) states that it is the Issuer's current intention to purchase the Program Maximum, but that the number of Common Shares purchased pursuant to the Program may be less than the Program Maximum; (d) provides an explanation as to why less than the Program Maximum may be purchased; and (e) states that, immediately following the Program Term, the Issuer will issue and file the Completion Press Release (as defined below) (the "**Commencement Press Release**").

25. The Program Maximum is less than the number of Common Shares remaining that the Issuer is entitled to acquire under the Normal Course Issuer Bid, calculated as at the date of the Program Agreement.

26. The Program Term will not include a Blackout Period. In the event that a Blackout Period should arise during the Program Term, purchasing under the Program will cease immediately and will not recommence until following the expiration of the Blackout Period.

27. The TSX has: (a) been advised of the Issuer's intention to enter into the Program; (b) been provided with a copy of the Program Agreement and a draft of the Commencement Press Release; and (c) confirmed that it has no objection to the Issuer conducting the Program as part of the Normal Course Issuer Bid.

28. During the Program Term, CIBCWI will purchase Common Shares on the applicable Trading Day (as defined below) in accordance with instructions received by CIBCWI from the Issuer prior to the opening of trading on such Trading Day, which instructions will be the same instructions that the Issuer would have given to the Responsible Broker if the Issuer was conducting the Normal Course Issuer Bid in reliance on the Exemptions.

29. The Issuer will not give purchase instructions in respect of the Program to CIBCWI at any time that the Issuer is aware of Undisclosed Information (as defined below).

30. All Common Shares acquired for the purposes of the Program by CIBCWI on a day during the Program Term on which Canadian Markets are open for trading (each, a "**Trading Day**") must be acquired on Canadian Markets in accordance with the TSX Rules and any by-laws, rules, regulations or policies of any Canadian Markets upon which purchases are carried out (collectively, the "**NCIB Rules**") that would be applicable to the Issuer in connection with the Normal Course Issuer Bid, provided that:

    (a) the aggregate number of Common Shares to be acquired on Canadian Markets by CIBCWI on each Trading Day shall not exceed the maximum daily limit that is imposed upon the Normal Course Issuer Bid pursuant to the TSX Rules, determined with reference to an average daily trading volume that is based on the trading volume of the Common Shares on all Canadian Markets rather than being limited to the trading volume on the TSX only (the "**Modified Maximum Daily Limit"**), it being understood that the aggregate number of Common Shares to be acquired on the TSX by CIBCWI on each Trading Day will not exceed the maximum daily limit that is imposed on the Normal Course Issuer Bid pursuant to the TSX Rules; and

    (b) notwithstanding the block purchase exception provided for in the TSX Rules, no purchases will be made by CIBCWI on any Canadian Markets pursuant to any pre-arranged trade.

31. The aggregate number of Common Shares to be acquired by CIBCWI in connection with the Program:

    (a) shall not exceed the Program Maximum; and

    (b) on Canadian Other Published Markets shall not exceed that number of Common Shares remaining eligible for purchase by the Issuer pursuant to the Other Published Markets Exemption, calculated as at the date of the Program Agreement.

32. On every Trading Day, CIBCWI will purchase the Number of Common Shares. The "**Number of Common Shares**" will be no greater than the least of:

    (a) the maximum number of Common Shares that can be purchased using the Canadian dollar amount provided in the instructions received by CIBCWI from the Issuer prior to the opening of trading on such Trading Day;

    (b) the Program Maximum less the aggregate number of Common Shares previously purchased by CIBCWI under the Program;

    (c) on a Trading Day where trading ceases on the TSX or some other event that would impair CIBCWI's ability to acquire Common Shares on Canadian Markets occurs (a "**Market Disruption Event**"), the number of Common Shares acquired by CIBCWI on such Trading Day up until the time of the Market Disruption Event; and

    (d) the Modified Maximum Daily Limit.

    The "**Discounted Price**" per Common Share will be equal to: (i) the volume weighted average price of the Common Shares on the Canadian Markets on the Trading Day on which purchases were made less an agreed upon discount; or

(ii) upon the occurrence of a Market Disruption Event, the volume weighted average price of the Common Shares on the Canadian Markets at the time of the Market Disruption Event less an agreed upon discount.

33. CIBC will deliver to the Issuer that number of Inventory Shares equal to the number of Common Shares purchased by CIBCWI on a Trading Day under the Program on the second Trading Day thereafter, and the Issuer will pay CIBC, upon delivery, a purchase price equal to the Discounted Price for each such Inventory Share. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer.

34. CIBC will not sell any Inventory Shares to the Issuer unless CIBCWI has purchased the equivalent number of Common Shares on Canadian Markets under the Program. The number of Common Shares that are purchased by CIBCWI on Canadian Markets under the Program on a Trading Day will be equal to the Number of Common Shares for such Trading Day. CIBCWI will provide the Issuer with a daily written report of CIBCWI's purchases, which report will indicate, *inter alia*, the aggregate number of Common Shares acquired under the Program, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit.

35. During the Program Term, the Issuer will: (a) not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); and (b) prohibit the Responsible Broker from acquiring any Common Shares on its behalf.

36. All purchases of Common Shares under the Program will be made by CIBCWI and neither of the CIBC Entities will engage in any hedging activity in connection with the conduct of the Program.

37. The Issuer will report its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules. In addition, immediately following the end of the Program Term, the Issuer will: (a) report the total number of Common Shares acquired under the Program to the TSX and the Commission; and (b) issue and file a press release that announces the completion of the Program and sets out the number of Common Shares acquired under the Program and the aggregate dollar amount paid for such Common Shares (the "**Completion Press Release**").

38. The Issuer is of the view that: (a) it will be able to purchase Common Shares from CIBC at a lower price than the price at which it would be able to purchase an equivalent quantity of Common Shares under the Normal Course Issuer Bid in reliance on the Exemptions; and (b) the purchase of Common Shares pursuant to the Program is in the best interests of the Issuer and constitutes a desirable use of the Issuer's funds.

39. The entering into of the Program Agreement, the purchase of Common Shares by CIBCWI in connection with the Program, and the sale of Inventory Shares by CIBC to the Issuer will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect control of the Issuer.

40. The sale of Inventory Shares to the Issuer by CIBC will not be a "distribution" (as defined in the Act).

41. The Issuer will be able to acquire the Inventory Shares from CIBC without the Issuer being subject to the dealer registration requirements of the Act.

42. At the time that the Issuer and the CIBC Entities enter into the Program Agreement, neither the Issuer, nor any member of the Equity Derivatives Trading Group of CIBC, nor any personnel of either of the CIBC Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) with respect to the Issuer or the Common Shares that has not been generally disclosed (the "**Undisclosed Information**").

43. Each of the CIBC Entities:

    (a) has policies and procedures in place to ensure that the Program will be conducted in accordance with, among other things, the Program Agreement and this Order, and to preclude those persons responsible for administering the Program from acquiring any Undisclosed Information during the conduct of the Program; and

    (b) will, prior to entering into the Program Agreement: (i) ensure that its systems are capable of adhering to, and performing in accordance with, the requirements of the Program and this Order; and (ii) provide all necessary training and take all necessary actions to ensure that the persons administering and executing the purchases under the Program are aware of, and understand the terms of this Order.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in respect of the purchase of Inventory Shares from CIBC pursuant to the Program, provided that:

(a) at least two clear Trading Days prior to the commencement of the Program, the Issuer issues and files the Commencement Press Release;

(b) all purchases of Common Shares under the Program are made on Canadian Markets by CIBCWI, and are:

(i) made in accordance with the NCIB Rules applicable to the Normal Course Issuer Bid, as modified by paragraph 30 of this Order;

(ii) taken into account by the Issuer when calculating the maximum annual aggregate limits that are imposed upon the Normal Course Issuer Bid in accordance with the TSX Rules, with those Common Shares purchased on Canadian Other Published Markets being taken into account by the Issuer when calculating the maximum aggregate limits that are imposed upon the Issuer in accordance with the Other Published Markets Exemption;

(iii) marked with such designation as would be required by the applicable marketplace and UMIR for trades made by an agent of the Issuer; and

(iv) monitored by the CIBC Entities on a continual basis for the purposes of ensuring compliance with the terms of this Order, NCIB Rules, and applicable securities law;

(c) during the Program Term: (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); and (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker;

(d) the number of Inventory Shares transferred by CIBC to the Issuer for purchase under the Program in respect of a particular Trading Day is equal to the number of Common Shares purchased by CIBCWI on Canadian Markets under the Program in respect of the Trading Day;

(e) no hedging activity is engaged in by the CIBC Entities in connection with the conduct of the Program;

(f) at the time that the Program Agreement is entered into by the Filers and CIBCWI:

(i) the Common Shares are “highly-liquid securities”, as that term is defined in section 1.1 of OSC Rule 48-501 and section 1.1 of UMIR; and

(ii) none of the Issuer, any member of the Equity Derivatives Trading Group of CIBC, or any personnel of either of the CIBC Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, was aware of any Undisclosed Information;

(g) no purchase instructions in respect of the Program are given by the Issuer to CIBCWI at any time that the Issuer is aware of Undisclosed Information;

(h) no purchases of Common Shares under the Program occur during a Blackout Period;

(i) the CIBC Entities maintain records of all purchases of Common Shares that are made by CIBCWI pursuant to the Program, which will be available to the Commission and IIROC upon request; and

(j) in addition to reporting its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules, immediately following the end of the Program Term, the Issuer will: (i) report the total number of Common Shares acquired under the Program to the TSX and the Commission; and (ii) issue and file the Completion Press Release.

DATED at Toronto, Ontario, this 4th day of October, 2017.

“Naizam Kanji”
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.3 The Toronto-Dominion Bank and The Bank of Nova Scotia – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – issuer proposes to purchase, pursuant to a repurchase program and at a discounted purchase price, up to a specified number of its common shares under its normal course issuer bid from a third party – the third party will abide by the requirements governing normal course issuer bids as though it was the issuer, subject to certain modifications, including that the third party will not make any purchases under the program pursuant to a pre-arranged trade – common shares delivered to the issuer for cancellation will be common shares from the third party's existing inventory – the third party will purchase common shares under the program on the same basis as if the Issuer had conducted the bid in reliance on the normal course issuer bid exemptions set out in securities legislation – no adverse economic impact on, or prejudice to, the Issuer or its security holders – acquisition of securities exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the number of common shares transferred by the third party from its existing inventory to the issuer for purchase under the program be equivalent to the number of common shares that the third party has purchased, or had purchased on its behalf, on Canadian markets.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK AND
THE BANK OF NOVA SCOTIA

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of The Toronto-Dominion Bank (the "**Issuer**") and The Bank of Nova Scotia ("**BNS**", and together with the Issuer, the "**Filers**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 4,400,000 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from BNS pursuant to a share repurchase program (the "**Program**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1 to 4, inclusive, 7, 11 to 19, inclusive, 21 to 30, inclusive, 33, 35, 37 to 43, inclusive, as they relate to the Issuer;

AND UPON BNS and Scotia Capital Inc. ("**SCI**" and together with BNS, the "**Scotia Entities**") having, together, represented to the Commission the matters set out in paragraphs 5 to 10 inclusive, 18, 20 to 22 inclusive, 26, 30 to 34 inclusive, 36, 40, 42 and 43 as they relate to the Scotia Entities, as applicable;

1. The Issuer is a Schedule I bank governed by the *Bank Act* (Canada).

2. The Issuer maintains its registered office at Toronto-Dominion Centre, Toronto, Ontario, M5K 1A2.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation of the Jurisdictions.

4. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of Class A First Preferred Shares which may be issued in one or more series. As at August 31, 2017, 1,848,896,530 Common Shares, 5,387,491 Series S Class A First Preferred Shares, 4,612,509 Series T Class A First Preferred Shares, 5,481,853 Series Y Class A First Preferred Shares, 4,518,147 Series Z Class A First Preferred Shares, 20,000,000 Series 1 Class A First Preferred Shares, 20,000,000 Series 3 Class A First Preferred Shares, 20,000,000 Series 5 Class A First Preferred Shares, 14,000,000 Series 7 Class A First Preferred Shares, 8,000,000 Class 9 Series A First Preferred Shares, 6,000,000 Series 11 Class A First Preferred Shares, 28,000,000 Series 12

Class A First Preferred Shares, 40,000,000 Series 14 Class A First Preferred Shares and 14,000,000 Series 16 Class A First Preferred Shares were issued and outstanding.

5. BNS is a Schedule I bank governed by the *Bank Act* (Canada). The corporate headquarters of BNS is located in Toronto, Canada.

6. SCI is registered as an investment dealer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Yukon, the Northwest Territories and Nunavut. It is also registered as a futures commission merchant under the *Commodity Futures Act* (Ontario), as a derivatives dealer under the *Derivatives Act* (Québec), and as dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). SCI is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of SCI is located in Toronto, Ontario.

7. Each proposed purchase will be executed and settled in the Province of Ontario.

8. BNS does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

9. BNS is the beneficial owner of at least 4,400,000 Common Shares, none of which were acquired by, or on behalf of, BNS in anticipation or contemplation of resale to the Issuer (such Common Shares over which BNS has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by BNS in the Province of Ontario. No Common Shares were purchased by, or on behalf of, BNS on or after August 20, 2017, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares by BNS to the Issuer.

10. BNS is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the "**Act**"). BNS is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Original Notice**") which was accepted by the TSX effective March 16, 2017, the Issuer was permitted to make a normal course issuer bid (the "NCIB") to purchase up to 15,000,000 Common Shares (excluding purchases by non-independent trustees) representing approximately 0.9% of the Issuer's then outstanding Common Shares. As of April 20, 2017, the Issuer had completed the repurchase of the entire 15,000,000 Common Shares pursuant to the Original Notice. On September 19, 2017, the TSX accepted an amendment (the "**Amendment**" together with the Original Notice, the "**Notice**") to permit the Issuer to purchase an additional 20,000,000 Common Shares (the "**Additional Common Shares**") pursuant to the NCIB, for an aggregate of 35,000,000 Common Shares representing approximately 1.9% of the Issuer's then outstanding Common Shares. In accordance with the Notice, the NCIB is conducted through the facilities of the TSX or alternative Canadian trading platforms, or such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**") or by such other means as may be permitted by a securities regulatory authority, including private agreements or share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities.

12. The NCIB is being conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of NI 62-104 (the "**Designated Exchange Exemption**").

13. The NCIB is also being conducted in the normal course on other permitted published markets in Canada (the "**Other Published Markets**") in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the "**Other Published Markets Exemption**", and together with the Designated Exchange Exemption, the "**Exemptions**").

14. Pursuant to the TSX Rules, the Issuer has appointed TD Securities Inc. as its designated broker in respect of the NCIB (the "**Responsible Broker**").

15. Any automatic share repurchase plan established by the Issuer in connection with the NCIB prior to the commencement of the Program Term (as defined below) will not be in effect during the Program Term. Any automatic share repurchase plan established by the Issuer in connection with the NCIB prior to the commencement of the Program Term (as defined below) has been completed and no other automatic share repurchase plans will be implemented or operative during the Program Term.

16. During the course of the NCIB, Common Shares may be purchased by trustees or administrators that are not independent of the Issuer pursuant to the TSX Rules (a "**Plan Trustee**") in the open market to satisfy net requirements of certain employee plans ("**Plan Trustee Purchases**").

17. Pursuant to relief granted by the TSX on March 28, 2017, certain of the Issuer's broadly-based, market-sourced, employee-directed employee share purchase plans were exempted from the provisions of the TSX Rules that would deem the plans to have non-independent trustees (the "**Exempted Plans**"). Other than purchases made under the Exempted Plans ("**Exempted Plan Trustee Purchases**"), no Plan Trustee Purchases will be made during the Program Term (as defined below).

18. The Filers wish to participate in the Program during, and as part of, the NCIB to enable the Issuer to purchase from BNS, and for BNS to sell to the Issuer, that number of Common Shares equal to the Program Maximum.

19. To the best of the Issuer's knowledge the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at August 31, 2017 represented more than 99.0% of all issued and outstanding Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the Universal Market Integrity Rules ("**UMIR**").

20. Pursuant to the terms of the Program Agreement (as defined below), SCI will acquire Common Shares through the facilities of the TSX and on Other Published Markets in Canada (each, a "**Canadian Other Published Market**" and collectively with the TSX, the "**Canadian Markets**") under the Program. No Common Shares will be acquired under the Program on any other published markets other than Canadian Other Published Markets.

21. The Program will be governed by, and conducted in accordance with, the terms and conditions of a Share Repurchase Program Agreement (the "**Program Agreement**") that will be entered into among the Filers and SCI prior to the commencement of the Program and a copy of which will be delivered by the Filers to the Commission promptly thereafter.

22. The Program will commence on the Trading Day (defined below) following completion or termination of the BMO Program (defined below) and will terminate on the earlier of December 1, 2017 and the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the Scotia Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder or a change in law or announced change in law that would have adverse consequences to the transactions under the Program or the Issuer or either of the Scotia Entities.

23. Concurrently with this Application, the Issuer has filed an additional application with the Commission for exemptive relief from the Issuer Bid Requirements in connection with the proposed purchase by the Issuer of up to 3,580,000 Common Shares ("**BMO Program Maximum**") from BMO Nesbitt Burns Inc. pursuant to a share repurchase program (the "**BMO Program**", and together with the Program, the "**Programs**"). The BMO Program will begin on a date determined by the Issuer and will terminate on the earlier of December 1, 2017 and the date on which the Issuer will have purchased the BMO Program Maximum (the "**BMO Program Term**").

24. At least two clear Trading Days prior to the commencement of the BMO Program, the Issuer will issue and file a press release (the "**Commencement Press Release**") that will have been pre-cleared by the TSX that (a) describes the material features of the Programs, including the Program Term and the BMO Program Term; (b) discloses the Issuer's intention to participate in the Programs during the NCIB; (c) states that it is the Issuer's current intention to purchase the Program Maximum and the BMO Program Maximum, but that the number of Common Shares purchased pursuant to the Programs may be less than the Program Maximum and the BMO Program Maximum, respectively; (d) provides an explanation as to why less than the Program Maximum and the BMO Program Maximum may be purchased; and (e) states that, immediately following the completion of the Program, the Issuer will issue and file the Completion Press Release (as defined below).

25. The Program Maximum will not exceed the number of Common Shares remaining that the Issuer is entitled to acquire under the NCIB, calculated as at the date of the Program Agreement.

26. The Program will:

    (a) be an "automatic securities purchase plan" as defined in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (as applied, *mutatis mutandis*, to purchases made by an issuer) and SCI will conduct the Program in its sole discretion, in accordance with the irrevocable instructions to be established by the Issuer, and conveyed by the Issuer to SCI, pursuant to the Program Agreement (the "**Irrevocable Instructions**"); and

(b) comply with applicable securities regulatory requirements and guidance, including, *inter alia*, clause 175(2) of Regulation 1015 of the Act, OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* and similar rules and regulations regarding automatic acquisitions of securities under Canadian securities laws.

27. The Program Agreement will be entered into, and the Irrevocable Instructions will be given, at a time when the Issuer is not (i) in a regularly scheduled quarterly blackout period that is imposed by the Issuer on its directors, executive officers and other insiders pursuant to the Issuer's internal insider trading policy, or (ii) aware of Undisclosed Information (as defined below).

28. The TSX has been advised of the Issuer's intention to enter into the Program and has confirmed that it has no objection to the Issuer conducting the Program as part of the NCIB. The TSX will be provided with a copy of the Program Agreement.

29. The Irrevocable Instructions will be of the same nature as the instructions that the Issuer would have given to the Responsible Broker, if the Issuer was conducting the NCIB in reliance on the Exemptions.

30. All Common Shares acquired for the purposes of the Program by SCI on a day during the Program Term on which Canadian Markets are open for trading (each, a "**Trading Day**") must be acquired on Canadian Markets in accordance with the TSX Rules and any by-laws, rules, regulations or policies of any Canadian Markets upon which purchases are carried out (collectively, the "**NCIB Rules**") that would be applicable to the Issuer in connection with the NCIB, provided that:

(a) the aggregate number of Common Shares to be acquired on Canadian Markets by SCI on each Trading Day shall not exceed the maximum daily limit that is imposed upon the NCIB pursuant to the TSX Rules, determined with reference to an average daily trading volume that is based on the trading volume of the Common Shares on all Canadian Markets rather than being limited to the trading volume on the TSX only (the "**Modified Maximum Daily Limit**"), it being understood that the aggregate number of Common Shares to be acquired on the TSX by SCI on each Trading Day will not exceed the maximum daily limit that is imposed on the NCIB pursuant to the TSX Rules; and

(b) notwithstanding the block purchase exception provided for in the TSX Rules, no purchases will be made by SCI on any Canadian Markets pursuant to any pre-arranged trade.

31. The aggregate number of Common Shares acquired by SCI in connection with the Program:

(a) shall not exceed the Program Maximum; and

(b) on Canadian Other Published Markets, shall not exceed that number of Common Shares remaining eligible for purchase by the Issuer pursuant to the Other Published Markets Exemption, calculated as at the date of the Program Agreement.

32. On every Trading Day, SCI will purchase the Number of Common Shares. The "**Number of Common Shares**" will be no greater than the least of:

(a) the maximum number of Common Shares established in the instructions set out in the Program Agreement;

(b) the Program Maximum less the aggregate number of Common Shares previously purchased by SCI under the Program;

(c) on a Trading Day where trading ceases on the TSX or some other event that would impair SCI's ability to acquire Common Shares on Canadian Markets occurs (a "**Market Disruption Event**"), the number of Common Shares acquired by SCI on such Trading Day up until the time of the Market Disruption Event; and

(d) the Modified Maximum Daily Limit.

The "**Discounted Price**" per Common Share will be equal to (i) the volume weighted average price of the Common Shares on the Canadian Markets on the Trading Day on which purchases were made less an agreed upon discount, or (ii) upon the occurrence of a Market Disruption Event, the volume weighted average price of the Common Shares on the Canadian Markets at the time of the Market Disruption Event less an agreed upon discount.

33. BNS will deliver to the Issuer that number of Inventory Shares equal to the number of Common Shares purchased by SCI on a Trading Day under the Program no later than the third Trading Day thereafter, and the Issuer will pay BNS a

purchase price equal to the Discounted Price for each such Inventory Share. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer.

34. BNS will not sell any Inventory Shares to the Issuer unless SCI has purchased the equivalent number of Common Shares on Canadian Markets under the Program. The number of Common Shares that are purchased by SCI on Canadian Markets on a Trading Day under the Program will be equal to the Number of Common Shares for such Trading Day. SCI will provide the Issuer with a daily written report of SCI's purchases, which report will indicate, *inter alia*, the aggregate number of Common Shares acquired under the Program, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit.

35. During the Program Term, the Issuer will: (a) not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (b) prohibit the Responsible Broker from acquiring any Common Shares on its behalf; and (c) prohibit any Plan Trustee from undertaking any Plan Trustee Purchases, other than Exempted Plan Trustee Purchases.

36. All purchases of Common Shares under the Program will be made by SCI and neither of the Scotia Entities will engage in any hedging activity in connection with the conduct of the Program.

37. The Issuer will report its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules. In addition, immediately following the completion of the Program, the Issuer will: (a) report the total number of Common Shares acquired under the Program to the TSX and the Commission; and (b) issue and file a press release that announces the completion of the Program and sets out the number of Common Shares acquired under the Program and the aggregate dollar amount paid for such Common Shares (the "**Completion Press Release**").

38. The Issuer is of the view that: (a) it will be able to purchase Common Shares from BNS at a lower price than the price at which it would be able to purchase an equivalent quantity of Common Shares under the NCIB in reliance on the Exemptions; and (b) the purchase of Common Shares pursuant to the Program is in the best interests of the Issuer and constitutes a desirable use of the Issuer's funds.

39. The entering into of the Program Agreement, the purchase of Common Shares by SCI in connection with the Program, and the sale of Inventory Shares by BNS to the Issuer will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect control of the Issuer.

40. The sale of Inventory Shares to the Issuer by BNS will not be a "distribution" (as defined in the Act).

41. The Issuer will be able to acquire the Inventory Shares from BNS without the Issuer being subject to the dealer registration requirements of the Act.

42. At the time the Issuer and the Scotia Entities enter into the Program Agreement, neither the Issuer, nor any member of the Global Equity Derivatives group of BNS, nor any personnel of either of the Scotia Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) with respect to the Issuer or the Common Shares that has not been generally disclosed (the "**Undisclosed Information**").

43. The Issuer and each of the Scotia Entities:

    (a) has policies and procedures in place to ensure that the Program will be conducted in accordance with, among other things, the Program Agreement and this Order, and to preclude those persons responsible for administering the Program from acquiring any Undisclosed Information during the conduct of the Program; and

    (b) will, prior to entering into the Program Agreement, (i) ensure that its systems are capable of adhering to, and performing in accordance with, the requirements of the Program and this Order, and (ii) provide all necessary training and take all necessary actions to ensure that the persons administering and executing the purchases under the Program are aware of, and understand the terms of this Order.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in respect of the purchase of Inventory Shares from BNS pursuant to the Program, provided that:

(a) at least two clear Trading Days prior to the commencement of the BMO Program the Issuer issues and files the Commencement Press Release;

(b) all purchases of Common Shares under the Program are made on Canadian Markets by SCI, and are:

(i) made in accordance with the NCIB Rules applicable to the NCIB, as modified by paragraph 30 of this Order;

(ii) taken into account by the Issuer when calculating the maximum annual aggregate limits that are imposed upon the NCIB in accordance with the TSX Rules, with those Common Shares purchased on Canadian Other Published Markets being taken into account by the Issuer when calculating the maximum aggregate limits that are imposed upon the Issuer in accordance with the Other Published Markets Exemption;

(iii) marked with such designation, as would be required by the applicable marketplace and UMIR for trades made by an agent of the Issuer; and

(iv) monitored by the Scotia Entities on a continual basis for the purposes of ensuring compliance with the terms of this Order, the NCIB Rules, and applicable securities law;

(c) during the Program Term, (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program), (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker and (iii) no Plan Trustee Purchases (other than Exempted Plan Trustee Purchases) are undertaken by any Plan Trustee;

(d) the number of Inventory Shares transferred by BNS to the Issuer for purchase under the Program in respect of a particular Trading Day is equal to the number of Common Shares purchased by SCI under the Program on Canadian Markets in respect of the Trading Day;

(e) no hedging activity is engaged in by the Scotia Entities in connection with the conduct of the Program;

(f) at the time of the commencement of the Program Term:

(i) the Common Shares are “highly liquid securities”, as that term is defined in section 1.1 of OSC Rule 48-501 and section 1.1 of UMIR; and

(ii) none of the Issuer, any member of the Global Equity Derivatives group of BNS, or any personnel of either of the Scotia Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, was aware of any Undisclosed Information;

(g) no purchase instructions in respect of the Program are given by the Issuer to SCI and no automatic securities purchase plan is entered into in respect of the Program at any time that the Issuer is aware of Undisclosed Information;

(h) the Scotia Entities maintain records of all purchases of Common Shares that are made by SCI pursuant to the Program, which will be available to the Commission and IIROC upon request; and

(i) in addition to reporting its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules, immediately following the completion of the Program, the Issuer will: (i) report the total number of Common Shares acquired under the Program to the TSX and the Commission, and (ii) issue and file the Completion Press Release.

DATED at Toronto, Ontario, this 4th day of October, 2017.

“Naizam Kanji”
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.4 The Toronto-Dominion Bank and BMO Nesbitt Burns Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – issuer proposes to purchase, pursuant to a repurchase program and at a discounted purchase price, up to a specified number of its common shares under its normal course issuer bid from a third party – the third party will abide by the requirements governing normal course issuer bids as though it was the issuer, subject to certain modifications, including that the third party will not make any purchases under the program pursuant to a pre-arranged trade – common shares delivered to the issuer for cancellation will be common shares from the third party's existing inventory – the third party will purchase common shares under the program on the same basis as if the Issuer had conducted the bid in reliance on the normal course issuer bid exemptions set out in securities legislation – no adverse economic impact on, or prejudice to, the Issuer or its security holders – acquisition of securities exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the number of common shares transferred by the third party from its existing inventory to the issuer for purchase under the program be equivalent to the number of common shares that the third party has purchased, or had purchased on its behalf, on Canadian markets.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK AND
BMO NESBITT BURNS INC.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of The Toronto-Dominion Bank (the "**Issuer**") and BMO Nesbitt Burns Inc. ("**BMO Nesbitt**", and together with the Issuer, the "**Filers**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 3,580,000 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from BMO Nesbitt pursuant to a share repurchase program (the "**Program**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1 to 4, inclusive, 7, 11 to 19, inclusive, 21 to 30, inclusive, 33, 35, 37 to 43, inclusive, as they relate to the Issuer;

AND UPON BMO Nesbitt and Bank of Montreal ("**BMO**", and together with BMO Nesbitt, the "**BMO Entities**") having, together, represented to the Commission the matters set out in paragraphs 5 to 10 inclusive, 18, 20 to 22 inclusive, 26, 30 to 34 inclusive, 36, 40, 42 and 43 as they relate to the BMO Entities, as applicable;

1. The Issuer is a Schedule I bank governed by the *Bank Act* (Canada).

2. The Issuer maintains its registered office at Toronto-Dominion Centre, Toronto, Ontario, M5K 1A2.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation of the Jurisdictions.

4. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of Class A First Preferred Shares which may be issued in one or more series. As at August 31, 2017, 1,848,896,530 Common Shares, 5,387,491 Series S Class A First Preferred Shares, 4,612,509 Series T Class A First Preferred Shares, 5,481,853 Series Y Class A First Preferred Shares, 4,518,147 Series Z Class A First Preferred Shares, 20,000,000 Series 1 Class A First Preferred Shares, 20,000,000 Series 3 Class A First Preferred Shares,

20,000,000 Series 5 Class A First Preferred Shares, 14,000,000 Series 7 Class A First Preferred Shares, 8,000,000 Class 9 Series A First Preferred Shares, 6,000,000 Series 11 Class A First Preferred Shares, 28,000,000 Series 12 Class A First Preferred Shares, 40,000,000 Series 14 Class A First Preferred Shares and 14,000,000 Series 16 Class A First Preferred Shares were issued and outstanding.

5. BMO is a Schedule I bank governed by the *Bank Act* (Canada). The corporate headquarters of BMO is located in the Province of Ontario.

6. BMO Nesbitt is registered as an investment dealer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Yukon, the Northwest Territories and Nunavut. It is also registered as a futures commission merchant under the *Commodity Futures Act* (Ontario), as a derivatives dealer under the *Derivatives Act* (Québec), and as dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). BMO Nesbitt is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of BMO Nesbitt is located in Toronto, Ontario.

7. Each proposed purchase will be executed and settled in the Province of Ontario.

8. BMO Nesbitt does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

9. BMO Nesbitt is the beneficial owner of at least 3,580,000 Common Shares, none of which were acquired by, or on behalf of, BMO Nesbitt in anticipation or contemplation of resale to the Issuer (such Common Shares over which BMO Nesbitt has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by BMO Nesbitt in the Province of Ontario. No Common Shares were purchased by, or on behalf of, BMO Nesbitt on or after August 16, 2017, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares by BMO Nesbitt to the Issuer.

10. BMO Nesbitt is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the "*Act*"). BMO Nesbitt is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Original Notice**") which was accepted by the TSX effective March 16, 2017, the Issuer was permitted to make a normal course issuer bid (the "**NCIB**") to purchase up to 15,000,000 Common Shares (excluding purchases by non-independent trustees) representing approximately 0.9% of the Issuer's then outstanding Common Shares. As of April 20, 2017, the Issuer had completed the repurchase of the entire 15,000,000 Common Shares pursuant to the Original Notice. On September 19, 2017, the TSX accepted an amendment (the "**Amendment**" together with the Original Notice, the "**Notice**") to permit the Issuer to purchase an additional 20,000,000 Common Shares (the "**Additional Common Shares**") pursuant to the NCIB, for an aggregate of 35,000,000 Common Shares representing approximately 1.9% of the Issuer's then outstanding Common Shares. In accordance with the Notice, the NCIB is conducted through the facilities of the TSX or alternative Canadian trading platforms, or such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**") or by such other means as may be permitted by a securities regulatory authority, including private agreements or share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities.

12. The NCIB is being conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of NI 62-104 (the "**Designated Exchange Exemption**").

13. The NCIB is also being conducted in the normal course on other permitted published markets in Canada (the "**Other Published Markets**") in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the "**Other Published Markets Exemption**", and together with the Designated Exchange Exemption, the "**Exemptions**").

14. Pursuant to the TSX Rules, the Issuer has appointed TD Securities Inc. as its designated broker in respect of the NCIB (the "**Responsible Broker**").

15. Any automatic share repurchase plan established by the Issuer in connection with the NCIB prior to the commencement of the Program Term (as defined below) will not be in effect during the Program Term. Any automatic share repurchase plan established by the Issuer in connection with the NCIB prior to the commencement of the Program Term (as defined below) has been completed and no other automatic share repurchase plans will be implemented or operative during the Program Term.

16. During the course of the NCIB, Common Shares may be purchased by trustees or administrators that are not independent of the Issuer pursuant to the TSX Rules (a "**Plan Trustee**") in the open market to satisfy net requirements of certain employee plans ("**Plan Trustee Purchases**").

17. Pursuant to relief granted by the TSX on March 28, 2017, certain of the Issuer's broadly-based, market-sourced, employee-directed employee share purchase plans were exempted from the provisions of the TSX Rules that would deem the plans to have non-independent trustees (the "**Exempted Plans**"). Other than purchases made under the Exempted Plans ("**Exempted Plan Trustee Purchases**"), no Plan Trustee Purchases will be made during the Program Term (as defined below).

18. The Filers wish to participate in the Program during, and as part of, the NCIB to enable the Issuer to purchase from BMO Nesbitt, and for BMO Nesbitt to sell to the Issuer, that number of Common Shares equal to the Program Maximum.

19. To the best of the Issuer's knowledge the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at August 31, 2017 represented more than 99.0% of all issued and outstanding Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the Universal Market Integrity Rules ("UMIR").

20. Pursuant to the terms of the Program Agreement (as defined below), BMO has retained BMO Nesbitt to acquire Common Shares through the facilities of the TSX and on Other Published Markets in Canada (each, a "**Canadian Other Published Market**" and collectively with the TSX, the "**Canadian Markets**") under the Program. No Common Shares will be acquired under the Program on any other published markets other than Canadian Other Published Markets.

21. The Program will be governed by, and conducted in accordance with, the terms and conditions of a Share Repurchase Program Agreement (the "**Program Agreement**") that will be entered into among the Filers and BMO prior to the commencement of the Program and a copy of which will be delivered by the Filers to the Commission promptly thereafter.

22. The Program will commence on a date to be determined by the Issuer and will terminate on the earlier of December 1, 2017 and the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the BMO Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder or a change in law or announced change in law that would have adverse consequences to the transactions under the Program or the Issuer or either of the BMO Entities.

23. Concurrently with this Application, the Issuer has filed an additional application with the Commission for exemptive relief from the Issuer Bid Requirements in connection with the proposed purchase by the Issuer of up to 4,400,000 Common Shares ("**BNS Program Maximum**") from The Bank of Nova Scotia pursuant to a share repurchase program (the "**BNS Program**", and together with the Program, the "**Programs**"). The BNS Program will begin on the Trading Day (as defined below) following completion or termination of the Program and will terminate on the earlier of December 1, 2017 and the date on which the Issuer will have purchased the BNS Program Maximum (the "**BNS Program Term**").

24. At least two clear Trading Days prior to the commencement of the Program, the Issuer will issue and file a press release (the "**Commencement Press Release**") that will have been pre-cleared by the TSX that (a) describes the material features of the Programs, including the Program Term and the BNS Program Term; (b) discloses the Issuer's intention to participate in the Programs during the NCIB; (c) states that it is the Issuer's current intention to purchase the Program Maximum and the BNS Program Maximum, but that the number of Common Shares purchased pursuant to the Programs may be less than the Program Maximum and the BNS Program Maximum, respectively; (d) provides an explanation as to why less than the Program Maximum and the BNS Program Maximum may be purchased; and (e) states that, immediately following the completion of the Program, the Issuer will issue and file the Completion Press Release (as defined below).

25. The Program Maximum will not exceed the number of Common Shares remaining that the Issuer is entitled to acquire under the NCIB, calculated as at the date of the Program Agreement.

26. The Program will:

    (a) be an "automatic securities purchase plan" as defined in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (as applied, *mutatis mutandis*, to purchases made by an issuer) and BMO will

conduct the Program in its sole discretion, in accordance with the irrevocable instructions to be established by the Issuer, and conveyed by the Issuer to BMO, pursuant to the Program Agreement (the "**Irrevocable Instructions**"); and

(b) comply with applicable securities regulatory requirements and guidance, including, *inter alia*, clause 175(2) of Regulation 1015 of the Act, OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* and similar rules and regulations regarding automatic acquisitions of securities under Canadian securities laws.

27. The Program Agreement will be entered into, and the Irrevocable Instructions will be given, at a time when the Issuer is not (i) in a regularly scheduled quarterly blackout period that is imposed by the Issuer on its directors, executive officers and other insiders pursuant to the Issuer's internal insider trading policy, or (ii) aware of Undisclosed Information (as defined below).

28. The TSX has been advised of the Issuer's intention to enter into the Program and has confirmed that it has no objection to the Issuer conducting the Program as part of the NCIB. The TSX will be provided with a copy of the Program Agreement.

29. The Irrevocable Instructions will be of the same nature as the instructions that the Issuer would have given to the Responsible Broker, if the Issuer was conducting the NCIB in reliance on the Exemptions.

30. All Common Shares acquired for the purposes of the Program by BMO Nesbitt on a day during the Program Term on which Canadian Markets are open for trading (each, a "**Trading Day**") must be acquired on Canadian Markets in accordance with the TSX Rules and any by-laws, rules, regulations or policies of any Canadian Markets upon which purchases are carried out (collectively, the "**NCIB Rules**") that would be applicable to the Issuer in connection with the NCIB, provided that:

(a) the aggregate number of Common Shares to be acquired on Canadian Markets by BMO Nesbitt on each Trading Day shall not exceed the maximum daily limit that is imposed upon the NCIB pursuant to the TSX Rules, determined with reference to an average daily trading volume that is based on the trading volume of the Common Shares on all Canadian Markets rather than being limited to the trading volume on the TSX only (the "**Modified Maximum Daily Limit**"), it being understood that the aggregate number of Common Shares to be acquired on the TSX by BMO Nesbitt on each Trading Day will not exceed the maximum daily limit that is imposed on the NCIB pursuant to the TSX Rules; and

(b) notwithstanding the block purchase exception provided for in the TSX Rules, no purchases will be made by BMO on any Canadian Markets pursuant to any pre-arranged trade.

31. The aggregate number of Common Shares acquired by BMO Nesbitt in connection with the Program:

(a) shall not exceed the Program Maximum; and

(b) on Canadian Other Published Markets, shall not exceed that number of Common Shares remaining eligible for purchase by the Issuer pursuant to the Other Published Markets Exemption, calculated as at the date of the Program Agreement.

32. On every Trading Day, BMO Nesbitt will purchase the Number of Common Shares. The "**Number of Common Shares**" will be no greater than the least of:

(a) the maximum number of Common Shares established in the instructions set out in the Program Agreement;

(b) the Program Maximum less the aggregate number of Common Shares previously purchased by BMO Nesbitt under the Program;

(c) on a Trading Day where trading ceases on the TSX or some other event that would impair BMO Nesbitt's ability to acquire Common Shares on Canadian Markets occurs (a "**Market Disruption Event**"), the number of Common Shares acquired by BMO Nesbitt on such Trading Day up until the time of the Market Disruption Event; and

(d) the Modified Maximum Daily Limit.

The "**Discounted Price**" per Common Share will be equal to (i) the volume weighted average price of the Common Shares on the Canadian Markets on the Trading Day on which purchases were made less an agreed upon discount, or

(ii) upon the occurrence of a Market Disruption Event, the volume weighted average price of the Common Shares on the Canadian Markets at the time of the Market Disruption Event less an agreed upon discount.

33. BMO Nesbitt will deliver to the Issuer that number of Inventory Shares equal to the number of Common Shares purchased by BMO Nesbitt on a Trading Day under the Program no later than the fourth Trading Day thereafter, and the Issuer will pay BMO Nesbitt a purchase price equal to the Discounted Price for each such Inventory Share. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer.

34. BMO Nesbitt will not sell any Inventory Shares to the Issuer unless BMO Nesbitt has purchased the equivalent number of Common Shares on Canadian Markets under the Program. The number of Common Shares that are purchased by BMO Nesbitt on Canadian Markets on a Trading Day under the Program will be equal to the Number of Common Shares for such Trading Day. BMO Nesbitt will provide the Issuer with a daily written report of BMO Nesbitt's purchases, which report will indicate, *inter alia*, the aggregate number of Common Shares acquired under the Program, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit.

35. During the Program Term, the Issuer will: (a) not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (b) prohibit the Responsible Broker from acquiring any Common Shares on its behalf; and (c) prohibit any Plan Trustee from undertaking any Plan Trustee Purchases, other than Exempted Plan Trustee Purchases.

36. All purchases of Common Shares under the Program will be made by BMO Nesbitt and neither of the BMO Entities will engage in any hedging activity in connection with the conduct of the Program.

37. The Issuer will report its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules. In addition, immediately following the completion of the Program, the Issuer will: (a) report the total number of Common Shares acquired under the Program to the TSX and the Commission; and (b) issue and file a press release that announces the completion of the Program and sets out the number of Common Shares acquired under the Program and the aggregate dollar amount paid for such Common Shares (the "**Completion Press Release**").

38. The Issuer is of the view that: (a) it will be able to purchase Common Shares from BMO Nesbitt at a lower price than the price at which it would be able to purchase an equivalent quantity of Common Shares under the NCIB in reliance on the Exemptions; and (b) the purchase of Common Shares pursuant to the Program is in the best interests of the Issuer and constitutes a desirable use of the Issuer's funds.

39. The entering into of the Program Agreement, the purchase of Common Shares by BMO Nesbitt in connection with the Program, and the sale of Inventory Shares by BMO Nesbitt to the Issuer will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect control of the Issuer.

40. The sale of Inventory Shares to the Issuer by BMO Nesbitt will not be a "distribution" (as defined in the Act).

41. The Issuer will be able to acquire the Inventory Shares from BMO Nesbitt without the Issuer being subject to the dealer registration requirements of the Act.

42. At the time the Issuer and the BMO Entities enter into the Program Agreement, neither the Issuer, nor any member of the Trading Products Group of BMO Nesbitt, nor any personnel of either of the BMO Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) with respect to the Issuer or the Common Shares that has not been generally disclosed (the "**Undisclosed Information**").

43. The Issuer and each of the BMO Entities:

(a) has policies and procedures in place to ensure that the Program will be conducted in accordance with, among other things, the Program Agreement and this Order, and to preclude those persons responsible for administering the Program from acquiring any Undisclosed Information during the conduct of the Program; and

(b) will, prior to entering into the Program Agreement, (i) ensure that its systems are capable of adhering to, and performing in accordance with, the requirements of the Program and this Order, and (ii) provide all necessary training and take all necessary actions to ensure that the persons administering and executing the purchases under the Program are aware of, and understand the terms of this Order.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in respect of the purchase of Inventory Shares from BMO Nesbitt pursuant to the Program, provided that:

(a) at least two clear Trading Days prior to the commencement of the Program the Issuer issues and files the Commencement Press Release;

(b) all purchases of Common Shares under the Program are made on Canadian Markets by BMO Nesbitt, and are:

(i) made in accordance with the NCIB Rules applicable to the NCIB, as modified by paragraph 30 of this Order;

(ii) taken into account by the Issuer when calculating the maximum annual aggregate limits that are imposed upon the NCIB in accordance with the TSX Rules, with those Common Shares purchased on Canadian Other Published Markets being taken into account by the Issuer when calculating the maximum aggregate limits that are imposed upon the Issuer in accordance with the Other Published Markets Exemption;

(iii) marked with such designation, as would be required by the applicable marketplace and UMIR for trades made by an agent of the Issuer; and

(iv) monitored by the BMO Entities on a continual basis for the purposes of ensuring compliance with the terms of this Order, NCIB Rules, and applicable securities law;

(c) during the Program Term, (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program), (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker and (iii) no Plan Trustee Purchases (other than Exempted Plan Trustee Purchases) are undertaken by any Plan Trustee;

(d) the number of Inventory Shares transferred by BMO Nesbitt to the Issuer for purchase under the Program in respect of a particular Trading Day is equal to the number of Common Shares purchased by BMO Nesbitt under the Program on Canadian Markets in respect of the Trading Day;

(e) no hedging activity is engaged in by the BMO Entities in connection with the conduct of the Program;

(f) at the time of the commencement of the Program Term:

(i) the Common Shares are “highly liquid securities”, as that term is defined in section 1.1 of OSC Rule 48-501 and section 1.1 of UMIR; and

(ii) none of the Issuer, any member of the Trading Products Group of BMO Nesbitt, or any personnel of either of the BMO Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Common Shares, was aware of any Undisclosed Information;

(g) no purchase instructions in respect of the Program are given by the Issuer to the BMO Entities and no automatic securities purchase plan is entered into in respect of the Program at any time that the Issuer is aware of Undisclosed Information;

(h) the BMO Entities maintain records of all purchases of Common Shares that are made by BMO Nesbitt pursuant to the Program, which will be available to the Commission and IIROC upon request; and

(i) in addition to reporting its purchases of Common Shares under the Program to the TSX in accordance with the TSX Rules, immediately following the completion of the Program, the Issuer will: (i) report the total number of Common Shares acquired under the Program to the TSX and the Commission, and (ii) issue and file the Completion Press Release.

DATED at Toronto, Ontario, this 4th day of October, 2017.

“Naizam Kanji”
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.5 Avnel Gold Mining Limited

Headnote

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

Applicable Legislative Provisions

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

October 6, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
AVNEL GOLD MINING LIMITED
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Sonny Randhawa"
Deputy Director
Corporate Finance Branch

2.2.6 Asiamet Resources Limited

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act, s. 1(10) – Cease to be a reporting issuer in Ontario – The issuer's securities are traded only on a market or exchange outside of Canada – Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of UK securities laws, and all shareholders receive the same disclosure.

Applicable Legislative Provisions

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

October 6, 2017

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

AND

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

AND

IN THE MATTER OF
ASIAMET RESOURCES LIMITED
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and

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

Interpretation

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

Representations

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

1. the Filer is governed by the *Bermuda Companies Act 1981* and its registered office is located in Bermuda, its head office is located in Australia and its operations offices are in Indonesia; the Filer's records office is located at Unit 1 – 15782 Marine Drive, White Rock, British Columbia;

2. the Filer is a reporting issuer in British Columbia, Alberta and Ontario (the Reporting Jurisdictions);

3. the Filer is a mineral exploration company active in Indonesia through Indonesian subsidiaries holding mineral exploration licenses in Indonesia;

4. the Filer has no operations, employees, assets or premises in Canada, other than that its records office is located in Canada;

5. the Filer's main nexus to Canada is that one of the Filer's directors is resident in Canada (Canadian Director) and the Filer's Corporate Secretary and Chief Financial Officer is resident in Canada (Canadian Officer); after the Filer ceases to be a reporting issuer in Canada the Corporate Secretary office will be performed by a United Kingdom resident and the Chief Financial Officer function will be performed by an Australian resident;

6. the authorized share capital of the Filer consists of 1,000,000,000 common shares (Shares), each with a par value of US$0.01;

7. the Filer's Shares are listed and posted for trading as depository interests through CREST (Depository Interests) on the Alternative Investment Market (AIM) of the London Stock Exchange under the symbol "ARS"; the Filer has been trading on the AIM since 2008;

8. the Shares were listed on the TSX Venture Exchange (TSXV) under the trading symbol "ARS" but, at the request of the Filer, were voluntarily delisted from the TSXV effective at the close of trading on February 28, 2017 (the Delisting Date);

9. the Filer is a designated foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and is subject to the securities laws of the United Kingdom and the rules of the AIM;

10. the Filer is not in default of any of its obligations under the securities laws of the United Kingdom or the rules of the AIM;

11. the Filer is not in default of any of its obligations under the securities laws of the Reporting Jurisdictions;

12. in support of the representations set forth in paragraphs 13 to 16 below concerning the percentage of outstanding securities and the total number of security holders in Canada, the Filer sought and obtained information from the Filer's registrar, Computershare Investor Services (Bermuda) Limited (Share Registrar), Computershare Investor Services PLC (Depository Interest Registrar) and analysis of the nominee holders provided by Orient Capital Corporation; the Filer undertook a thorough and diligent examination of the Filer's share register and Depository Interest register for the purposes of determining the number, holdings, identity and geographic location of the direct and indirect holders of its outstanding Shares; the Filer believes that these inquiries were reasonable, given that its share register and the Depository Interest Registrar and the Registrar are the only official source of information on the Filer's security holders;

13. based upon the searches conducted by the Share Registrar and the Depository Interest Registrar, as of August 31, 2017, the Filer had:

    (a) 854,889,186 Shares outstanding to a total of 10,260 holders worldwide;

    (b) 35,082,200 share purchase options (Options) outstanding to purchase 35,082,200 Shares; and

    (c) 11,031,344 share purchase warrants (Warrants) outstanding to purchase 11,031,344 Shares;

14. based on the searches described in paragraph 12, at August 31, 2017, the Filer had:

    (a) 87 holders of Shares in Canada directly or indirectly beneficially holding 13,563,396 Shares, representing 1.6% of the issued and outstanding Shares and less than 0.01% of the total holders of Shares worldwide;

    (b) two holders of Options in Canada, the Canadian Director and the Canadian Officer, holding an aggregate of 3,450,000 Options, representing 9.8% of the issued and outstanding Options and 8.0% of the total holders of Options worldwide;

15. none of the Warrants are held by Canadian residents;

16. based on the foregoing, as of August 31, 2017, assuming full exercise of the Options held in Canada, residents of Canada do not:

    (a) directly or indirectly, beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide; and

    (b) directly or indirectly, comprise more than 2% of the total number of security holders of the Filer worldwide.

17. the Filer is subject to all applicable requirements of (i) the corporate laws of Bermuda; (ii) the securities laws of the United Kingdom; and (iii) the rules and reporting requirements of the AIM;

18. in the last twelve months, the Filer has not conducted a prospectus offering in Canada, and since the Delisting Date, has not taken steps to create a market for its securities in Canada; the Filer does not intend to conduct any offerings of its securities in Canada or to trade its securities in Canada on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

19. the issuer only attracted a *de minimis* number of Canadian investors; during the twelve months prior to the Delisting Date, the daily average volume of trading of the Shares on the TSXV accounted for 1.12% of the worldwide daily average volume of trading of the Shares on the TSXV and the AIM;

20. the Filer disseminated a news release dated September 12, 2017 announcing that it had submitted an application to the Decision Makers for a decision that it is not a reporting issuer in the Reporting Jurisdictions and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction of Canada;

21. none of the Filer's securities, including debt securities, are traded on a marketplace or listed or quoted on any other market or exchange in Canada, and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada;

22. the Shares of the Filer will remain listed on the AIM, and the Filer will be subject to the periodic and timely disclosure requirements under the securities laws of the United Kingdom and the rules of the AIM; and

23. the Filer has provided an undertaking to the securities regulatory authority or regulator in each of the Reporting Jurisdictions to concurrently deliver to its Canadian security holders all disclosure the Filer is required to deliver to United Kingdom-resident security holders under the securities laws of the United Kingdom and the rules of the AIM.

Order

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

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

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

2.2.7 Sandvine Corporation – s. 1(6) of the OBCA

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

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

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

AND

IN THE MATTER OF
SANDVINE CORPORATION
(THE "APPLICANT")

ORDER
Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

1. the Applicant is an "offering corporation" as defined in the OBCA and has an authorized capital consisting of an unlimited number of common shares ("**Common Shares**"), of which 120,566,638 Common Shares are outstanding;

2. the Applicant's registered address is located at 408 Albert Street, Waterloo, Ontario, N2L 3V3;

3. on September 21, 2017, all of the issued and outstanding Common Shares of the Applicant were purchased by PNI Canada Acquireco Corp. ("**PNI**") by way of a plan of arrangement (the "**Arrangement**") entered into on July 17, 2017;

4. as a result of the Arrangement, all of the issued and outstanding Common Shares are beneficially owned, directly or indirectly, by PNI and no other securities, including debt securities, of the Applicant are currently issued and outstanding;

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

6. the Applicant's Common Shares were de-listed from the TSX effective the close of trading on September 22, 2017; and

7. on October 5, 2017, the Applicant was granted an order pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest;

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

DATED at Toronto on this 6th day of October, 2017.

"Janet Leiper"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

Chapter 4

Cease Trading Orders

4.1.1 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
Easy Technologies Inc.	05 October 2017	
Kerr Mines Inc.	04 October 2017	
Paladin Energy Ltd.	04 October 2017	
Sears Canada Inc.	03 October 2017	
ZoomMed Inc.	05 October 2017	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse

THERE IS NOTHING TO REPORT THIS WEEK.

4.2.2 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
Katanga Mining Limited	15 August 2017	
Canada House Wellness Group Inc.	13 September 2017	

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Chapter 6

Request for Comments

6.1.1 Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Proposed Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 94-101
Mandatory Central Counterparty Clearing of Derivatives
and Proposed Changes to Companion Policy 94-101
Mandatory Central Counterparty Clearing of Derivatives

October 12, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following, for a 90-day comment period expiring on January 10, 2018:

- proposed amendments (the **Proposed Rule Amendments**) to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument**), and
- proposed changes (the **Proposed CP Changes**) to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**).

Together, the Proposed Rule Amendments and the Proposed CP Changes are referred to as the **Proposed Amendments**. We are issuing this notice to solicit comments on the Proposed Amendments.

Background

The CSA is proposing the Proposed Amendments based on consultations with and feedback from various market participants, and in order to more effectively and efficiently promote the underlying policy aims of the National Instrument.

The National Instrument was published on January 19, 2017 and came into force on April 4, 2017 (with the exception of Saskatchewan where it came into force on April 5, 2017). The purpose of the National Instrument is to reduce counterparty risk in the over-the-counter (**OTC**) derivatives market by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty (the **Clearing requirement**).

The Clearing requirement became effective for certain counterparties on the coming into force date of the National Instrument, and was initially scheduled to become effective for certain other counterparties on October 4, 2017. To facilitate the rule-making process for the Proposed Amendments, including this publication for comment, the CSA jurisdictions (except Ontario) have exempted from the Clearing requirement until August 20, 2018 those counterparties that would have been subject to the Clearing requirement on October 4, 2017.[1] In Ontario, the Ontario Securities Commission has amended the National Instrument to extend the effective date of the Clearing requirement for those counterparties until August 20, 2018.[2]

Substance and Purpose of the Proposed Amendments

The purpose of the Proposed Amendments is to refine the scope of counterparties to which the Clearing requirement applies and the types of derivatives that are subject to the Clearing requirement.

The Proposed CP Changes correspond to the Proposed Rule Amendments.

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1 Blanket Order 94-501, available on the website of the securities regulatory authority in the local jurisdiction.

2 See, in Ontario, Ontario Securities Commission, Amendment to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, published July 6, 2017.

Summary of the Proposed Rule Amendments

Subsection 3(1) of the National Instrument currently requires a local counterparty to a transaction in a mandatory clearable derivative to submit it for clearing to a regulated clearing agency if one or more of the following apply:

- under paragraph 3(1)(a), the counterparty is a participant of the regulated clearing agency and subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;
- under paragraph 3(1)(b), the counterparty is an affiliated entity of a participant referred to in paragraph 3(1)(a) and has a month-end gross notional amount under all outstanding derivatives exceeding $1 billion, excluding derivatives to which paragraph 7(1)(a) applies;
- under paragraph 3(1)(c), the counterparty is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph 3(1)(b) applies, and has had a month-end gross notional amount exceeding $500 billion combined with each affiliated entity that is a local counterparty in Canada, excluding derivatives to which paragraph 7(1)(a) applies.

Paragraphs 3(1)(b) and (c) are the subject of the Ontario amendment to the relevant effective date and the Blanket Order exemptions in all other jurisdictions, discussed above.

The proposed amendments to paragraphs 3(1)(b) and (c) of the National Instrument would exclude from the Clearing requirement a trust or an investment fund that is an affiliated entity of either (i) a participant of a regulated clearing agency who subscribes to the clearing services in respect of a mandatory clearable derivative, or (ii) a local counterparty whose month-end gross notional amount under all outstanding derivatives, combined with each Canadian affiliated entity, exceeds $500 billion. As a result, those investment funds and trusts would not be subject to the Clearing requirement.

Further, in calculating the gross notional amount outstanding for the purpose of the $500 billion threshold under paragraph 3(1)(c), the gross notional amount outstanding of an investment fund or a trust would no longer be aggregated with other affiliated entities.

In addition, the Clearing requirement under paragraph 3(1)(c) would no longer apply to a local counterparty with a gross notional amount of outstanding derivatives of $1 billion or less excluding the notional amount of mandatory clearable derivatives to which paragraph 7(1)(a) applies.

Finally, the proposed amendments relating to Appendix A of the National Instrument would remove overnight index swaps with variable notional type and forward rate agreements with variable notional type from the list of mandatory clearable derivatives as those are not currently offered for clearing by regulated clearing agencies.

Local Matters

Annex E to this notice is being published in any local jurisdiction where any additional information is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A	Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives
Annex B	Blackline of National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives showing the Proposed Rule Amendments
Annex C	Proposed Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives
Annex D	Blackline of Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives showing the Proposed CP Changes
Annex E	Local Matters

Request for Comments

Please provide your comments in writing by January 10, 2018. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Questions

Please refer your questions to any of:

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Senior Director, Derivatives Oversight
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Financial and Consumer Affairs Authority of Saskatchewan
306-787-5871
liz.kutarna@gov.sk.ca

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

1. National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives is amended by this Instrument.

2. Subsection 1(1) is amended by adding the following definition:

"investment fund" has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;***.***

3. Subsection 3(1) is amended by

(a) replacing paragraph (b) with the following:

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a),

(ii) is not an investment fund or a trust, and

(iii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies;***, and***

(b) replacing paragraph (c) with the following:

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada,

(ii) is not an investment fund or a trust,

(iii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is not an investment fund or a trust and that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies, and

(iv) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies.***.***

4. Section 5 is amended by replacing "all***" with "***both***".***

5. Subsection 7(1) is amended

(a) by deleting "the application of***", and***

(b) in paragraph (a) by replacing "if***" with "***and***".***

6. Section 8 is amended

(a) by deleting "the application of***", and***

(b) in paragraph (e) by replacing "is***" with "***was***".***

7. Section 12 is amended by replacing "offers***" with "***offered***".***

8. Section 13 is amended

(a) by replacing "paragraphs***" with "***paragraph***".***

(b) by replacing "(3)(1)(a)***" with "***3(1)(a)***".***

9. Appendix A is replaced with the following:

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

MANDATORY CLEARABLE DERIVATIVES
(Subsection 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant

10. This Instrument comes into force on [*insert date here*].

ANNEX B

BLACKLINE OF NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES* SHOWING THE PROPOSED RULE AMENDMENTS

NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

This Annex sets out a blackline showing the Proposed Rule Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as set out in Annex A.

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"investment fund" has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"local counterparty" means a counterparty to a derivative if, at the time of execution of the transaction, either of the following applies:

(a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

(b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is liable for all or substantially all the liabilities of the counterparty;

"mandatory clearable derivative" means a derivative within a class of derivatives listed in Appendix A;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"regulated clearing agency" means,

(a) in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a person or company recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada,

(b) in British Columbia, Manitoba and Ontario, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction, and

(c) in Québec, a person recognized or exempted from recognition as a clearing house;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency or clearing house.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and a trustee of the trust is the first party.

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. This Instrument applies to,

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of *Regulation 91-506 respecting derivatives determination*, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

3. (1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, if one or more of the following applies to each counterparty:

(a) the counterparty

(i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and

(ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a),

(ii) is not an investment fund or a trust, and

(iii) ~~(ii)~~ has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies;

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada, ~~other than a counterparty to which paragraph (b) applies, and~~

(ii) is not an investment fund or a trust,

(iii) ~~(ii)~~ has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is not an investment fund or a trust and that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies~~.~~, and

(iv) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies.

(2) Unless paragraph (1)(a) applies, a local counterparty to which paragraph (1)(b) or (1)(c) applies is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency if the transaction in the mandatory clearable derivative was executed before the 90th day after the end of the month in which the month-end gross notional amount first exceeded the amount specified in subparagraph (1)(b)(ii) or (1)(c)(ii), as applicable.

(3) Unless subsection (2) applies, a local counterparty to which subsection (1) applies must submit a mandatory clearable derivative for clearing no later than

(a) the end of the day of execution if the transaction is executed during the business hours of the regulated clearing agency, or

(b) the end of the next business day if the transaction is executed after the business hours of the regulated clearing agency.

(4) A local counterparty to which subsection (1) applies must submit the mandatory clearable derivative for clearing in accordance with the rules of the regulated clearing agency, as amended from time to time.

(5) A counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of "local counterparty" in section 1 is exempt from this section if the mandatory clearable derivative is submitted for clearing in accordance with the law of a foreign jurisdiction to which the counterparty is subject, set out in Appendix B.

Notice of rejection

4. If a regulated clearing agency rejects a mandatory clearable derivative submitted for clearing, the regulated clearing agency must immediately notify each local counterparty to the mandatory clearable derivative.

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must do ~~all~~both of the following:

(a) publish a list of each derivative or class of derivatives for which the regulated clearing agency offers clearing services and state whether each derivative or class of derivatives is a mandatory clearable derivative;

(b) make the list accessible to the public at no cost on its website.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. This Instrument does not apply to the following counterparties:

(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) a crown corporation for which the government of the jurisdiction where the crown corporation was constituted is liable for all or substantially all the liabilities;

(c) a person or company wholly owned by one or more governments referred to in paragraph (a) if the government or governments are liable for all or substantially all the liabilities of the person or company;

(d) the Bank of Canada or a central bank of a foreign jurisdiction;

(e) the Bank for International Settlements;

(f) the International Monetary Fund.

Intragroup exemption

7. (1) A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative, if all of the following apply:

(a) the mandatory clearable derivative is between a counterparty and an affiliated entity of the counterparty ~~if~~and each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with "accounting principles" as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(b) both counterparties to the mandatory clearable derivative agree to rely on this exemption;

(c) the mandatory clearable derivative is subject to a centralized risk management program reasonably designed to assist in monitoring and managing the risks associated with the derivative between the counterparties through evaluation, measurement and control procedures;

(d) there is a written agreement between the counterparties setting out the terms of the mandatory clearable derivative between the counterparties.

(2) No later than the 30th day after a local counterparty first relies on subsection (1) in respect of a mandatory clearable derivative with a counterparty, the local counterparty must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption*.

(3) No later than the 10th day after a local counterparty becomes aware that the information in a previously delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must deliver or cause to be delivered electronically to the regulator or securities regulatory authority an amended Form 94-101F1 *Intragroup Exemption*.

Multilateral portfolio compression exemption

8. A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise, if all of the following apply:

(a) the mandatory clearable derivative is entered into as a result of more than 2 counterparties changing or terminating and replacing existing derivatives;

(b) the existing derivatives do not include a mandatory clearable derivative entered into after the effective date on which the class of derivatives became a mandatory clearable derivative;

(c) the existing derivatives were not cleared by a clearing agency or clearing house;

(d) the mandatory clearable derivative is entered into by the same counterparties as the existing derivatives;

(e) the multilateral portfolio compression exercise ~~is~~was conducted by an independent third-party.

Recordkeeping

9. (1) A local counterparty to a mandatory clearable derivative that relied on section 7 or 8 with respect to a mandatory clearable derivative must keep records demonstrating that the conditions referred to in those sections, as applicable, were satisfied.

(2) The records required to be maintained under subsection (1) must be kept in a safe location and in a durable form for a period of

(a) except in Manitoba, 7 years following the date on which the mandatory clearable derivative expires or is terminated, and

(b) in Manitoba, 8 years following the date on which the mandatory clearable derivative expires or is terminated.

PART 4
MANDATORY CLEARABLE DERIVATIVES

Submission of information on derivatives clearing services provided by a regulated clearing agency

10. No later than the 10th day after a regulated clearing agency first offers clearing services for a derivative or class of derivatives, the regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying the derivative or class of derivatives.

PART 5
EXEMPTION

Exemption

11. (1) The regulator or the securities regulatory authority may grant an exemption to 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 an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6
TRANSITION AND EFFECTIVE DATE

Transition – regulated clearing agency filing requirement

12. No later than May 4, 2017, a regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it offersoffered clearing services on April 4, 2017.

Transition – certain counterparties' submission for clearing

13. A counterparty specified in paragraphsparagraph (3)(1)(b) or (c) to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017.

Effective date

14. (1) This Instrument comes into force on April 4, 2017.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after April 4, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

MANDATORY CLEARABLE DERIVATIVES
(Subsection 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant ~~or variable~~

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant ~~or variable~~
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant ~~or variable~~
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant ~~or variable~~

APPENDIX B
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
United States of America	Clearing Requirement and Related Rules, 17 C.F.R. pt. 50

FORM 94-101F1
INTRAGROUP EXEMPTION

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Information on the entity delivering this Form

1. Provide the following information with respect to the entity delivering this Form:

   Full legal name:
   Name under which it conducts business, if different:

   Head office
   Address:
   Mailing address (if different):
   Telephone:
   Website:

   Contact employee
   Name and title:
   Telephone:
   Email:

   Other offices
   Address:
   Telephone:
   Email:

   Canadian counsel (if applicable)
   Firm name:
   Contact name:
   Telephone:
   Email:

2. In addition to providing the information required in item 1, if this Form is delivered for the purpose of reporting a name change on behalf of the entity referred to in item 1, provide the following information:

   Previous full legal name:
   Previous name under which the entity conducted business:

Section 2 – Combined notification on behalf of counterparties within the group to which the entity delivering this Form belongs

1. For the mandatory clearable derivatives to which this Form relates, provide all of the following information in the table below:

   (a) the legal entity identifier of each counterparty in the same manner as required under the following instruments:

      (i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,

      (ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,

      (iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and

      (iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*;

(b) whether each counterparty is a local counterparty in a jurisdiction of Canada.

Pairs	LEI of counterparty 1	Jurisdiction(s) of Canada in which counterparty 1 is a local counterparty	LEI of counterparty 2	Jurisdiction(s) of Canada in which counterparty 2 is a local counterparty
1				

2. Describe the ownership and control structure of the counterparties identified in item 1.

Section 3 – Certification

I certify that I am authorized to deliver this Form on behalf of the entity delivering this Form and on behalf of the counterparties identified in Section 2 of this Form and that the information in this Form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

_____
(Email)

_____
(Phone number)

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Regulated clearing agency information

1. Full name of regulated clearing agency:

2. Contact information of person authorized to deliver this form

   Name and title:
   Telephone:
   Email:

Section 2 – Description of derivatives

1. Identify each derivative or class of derivatives for which the regulated clearing agency offers clearing services in respect of which a Form 94-101F2 has not previously been delivered.

2. For each derivative or class of derivatives referred to in item 1, describe all significant attributes of the derivative or class of derivatives including

   (a) the standard practices for managing life-cycle events associated with the derivative or class of derivatives, as defined in the following instruments:

      (i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*;

      (ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

      (iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

      (iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*,

   (b) the extent to which the transaction is confirmable electronically,

   (c) the degree of standardization of the contractual terms and operational processes,

   (d) the market for the derivative or class of derivatives, including its participants, and

   (e) the availability of pricing and liquidity of the derivative or class of derivatives within Canada and internationally.

3. Describe the impact of providing clearing services for each derivative or class of derivatives referred to in item 1 on the regulated clearing agency's risk management framework and financial resources, including the protection of the regulated clearing agency on the default of a participant and the effect of the default on the other participants.

4. Describe the impact, if any, on the regulated clearing agency's ability to comply with its regulatory obligations should the regulator or securities regulatory authority determine a derivative or class of derivatives referred to in item 1 to be a mandatory clearable derivative.

5. Describe the clearing services offered for each derivative or class of derivatives referred to in item 1.

6. If applicable, attach a copy of every notice the regulated clearing agency provided to its participants for consultation on the launch of the clearing service for a derivative or class of derivatives referred to in item 1 and a summary of concerns received in response to the notice.

Section 3 – Certification

CERTIFICATE OF REGULATED CLEARING AGENCY

I certify that I am authorized to deliver this form on behalf of the regulated clearing agency named below and that the information in this form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of regulated clearing agency)

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

ANNEX C

PROPOSED CHANGES TO
COMPANION POLICY 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

1. Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives is changed by this Document.

2. Subsection 3(1) is replaced with the following:

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction (as discussed in subsection 1(1) above), that derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty clearing requirement but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time. For a complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase “cause to be submitted” to refer to the local counterparty’s obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties meet the criteria under paragraph (b).

An investment fund or a trust would not be subject to the Instrument unless the investment fund or the trust is a participant under paragraph (a).

A local counterparty that has not had a month-end gross notional amount of outstanding derivatives exceeding the $1 billion threshold in subparagraph (b)(iii) or (c)(iv), for any month following the entry into force of the Instrument, would not be subject to the Instrument.

Pursuant to paragraph (c) a local counterparty that is not an investment fund or a trust and that has had a month-end gross notional amount of outstanding derivatives that exceeds the $500 billion threshold in subparagraph (c)(iii) must clear a mandatory clearable derivative entered into with another counterparty that meets the criteria under paragraph (a), (b) or (c). In order to determine whether the $500 billion threshold in subparagraph (c)(iii) is exceeded, a local counterparty must add the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own. However, investments funds and trusts that are affiliated entities of the local counterparty are not included in the calculation.

Where a local counterparty is a member of a group of affiliated entities that exceeds the $500 billion threshold but that local counterparty is not itself over the $1 billion threshold in subparagraph (c)(iv), it is not required to clear.

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities whose financial statements are prepared on a consolidated basis.

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing. To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the Instrument came into effect, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c) unless there is a material amendment to the derivative.

3. These changes become effective on [*insert date here*].

ANNEX D
BLACKLINE OF COMPANION POLICY 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES
SHOWING THE PROPOSED CP CHANGES

COMPANION POLICY 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

This Annex sets out a blackline showing the Proposed Changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as set out in Annex C.

GENERAL COMMENTS

Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the "CSA" or "we") interpret or apply the provisions of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* ("NI 94-101" or the "Instrument") and related securities legislation.

The numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 94-101. Any specific guidance on sections in NI 94-101 appears immediately after the section heading. If there is no guidance for a section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

SPECIFIC COMMENTS

Unless defined in NI 94-101 or explained in this Companion Policy, terms used in NI 94-101 and in this Companion Policy have the meaning given to them in the securities legislation of the jurisdiction including National Instrument 14-101 Definitions.

In this Companion Policy, "Product Determination Rule" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,
>
> in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and
>
> in Québec, *Regulation 91-506 respecting Derivatives Determination*.

In this Companion Policy, "TR Instrument" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,
>
> in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and
>
> in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*.

PART 1
DEFINITIONS AND INTERPRETATION

Subsection 1(1) – Definition of "participant"

A "participant" of a regulated clearing agency is bound by the rules and procedures of the regulated clearing agency due to the contractual agreement with the regulated clearing agency.

Subsection 1(1) – Definition of "regulated clearing agency"

It is intended that only a "regulated clearing agency" that acts as a central counterparty for over-the-counter derivatives be subject to the Instrument. The purpose of paragraph (a) of this definition is to allow, for certain enumerated jurisdictions, a mandatory clearable derivative involving a local counterparty in one of the listed jurisdictions to be submitted to a clearing agency that is not yet recognized or exempted in the local jurisdiction, but that is recognized or exempted in another jurisdiction of Canada. Paragraph (a) does not supersede any provision of the securities legislation of a local jurisdiction with respect to any recognition requirements for a person or company that is carrying on the business of a clearing agency in the local jurisdiction.

Subsection 1(1) – Definition of "transaction"

The Instrument uses the term "transaction" rather than the term "trade" in part to reflect that "trade" is defined in the securities legislation of some jurisdictions as including the termination of a derivative. We do not think the termination of a derivative should trigger mandatory central counterparty clearing. Similarly, the definition of transaction in NI 94-101 excludes a novation resulting from the submission of a derivative to a clearing agency or clearing house as this is already a cleared transaction. Finally, the definition of "transaction" is not the same as the definition found in the TR Instrument as the latter does not include a material amendment since the TR Instrument expressly provides that an amendment must be reported.

In the definition of "transaction", the expression "material amendment" is used to determine whether there is a new transaction, considering that only new transactions will be subject to mandatory central counterparty clearing under NI 94-101. If a derivative that existed prior to the coming into force of NI 94-101 is materially amended after NI 94-101 is effective, that amendment will trigger the mandatory central counterparty clearing requirement, if applicable, as it would be considered a new transaction. A material amendment is one that changes information that would reasonably be expected to have a significant effect on the derivative's attributes, including its notional amount, the terms and conditions of the contract evidencing the derivative, the trading methods or the risks related to its use, but excluding information that is likely to have an effect on the market price or value of its underlying interest. We will consider several factors when determining whether a modification to an existing derivative is a material amendment. Examples of a modification to an existing derivative that would be a material amendment include any modification which would result in a significant change in the value of the derivative, differing cash flows, a change to the method of settlement or the creation of upfront payments.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction (as discussed in subsection 1(1) above), that derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty clearing requirement but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time. For a complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase "cause to be submitted" to refer to the local counterparty's obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties ~~respect~~meet the criteria under paragraph (b).

An investment fund or a trust would not be subject to the Instrument unless the investment fund or the trust is a participant under paragraph (a).

A local counterparty that has not had a month-end gross notional amount of outstanding derivatives exceeding the 1 billion threshold in ~~paragraphs~~subparagraph (b)(iii) or (c)(iv), for any month following the entry into force of the Instrument, would not be subject to the Instrument.

Pursuant to paragraph (c) a local counterparty that is not an investment fund or a trust and that has had a month-end gross notional amount of outstanding derivatives that exceeds the 500 billion threshold in subparagraph (c)(iii) must clear ~~all its subsequent transactions in~~ a mandatory clearable derivative entered into with another counterparty that meets the criteria under ~~one or more of~~ paragraph~~s~~ (a), (b)~~,~~ or (c). In order to determine whether the 500 billion threshold in subparagraph (c)(iii) is exceeded, a local counterparty must add the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own. However, investments funds and trusts that are affiliated entities of the local counterparty are not included in the calculation.

Where a local counterparty is a member of a group of affiliated entities that exceeds the 500 billion threshold but that local counterparty is not itself over the 1 billion threshold in subparagraph (c)(iv), it is not required to clear.

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities whose financial statements are prepared on a consolidated basis~~, which would be exempted under section 7 if they were mandatory clearable derivatives~~.~~In addition, a local counterparty determines whether it exceeds the threshold in paragraph (c) by adding the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own.~~

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing. To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the Instrument came into effect, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c) unless there is a material amendment to the derivative.

Subsection 3(2) – 90-day transition

This subsection provides that only transactions in mandatory clearable derivatives executed on or after the 90th day after the end of the month in which the local counterparty first exceeded the threshold are subject to subsection 3(1). We do not intend that transactions executed between the 1st day on which the local counterparty became subject to subsection 3(1) and the 90th day be back-loaded after the 90th day.

Subsection 3(3) – Submission to a regulated clearing agency

We would expect that a transaction subject to mandatory central counterparty clearing be submitted to a regulated clearing agency as soon as practicable, but no later than the end of the day on which the transaction was executed or if the transaction occurs after business hours of the regulated clearing agency, the next business day.

Subsection 3(5) – Substituted compliance

Substituted compliance is only available to a local counterparty that is a foreign affiliated entity of a counterparty organized under the laws of the local jurisdiction or with a head office or principal place of business in the local jurisdiction and that is responsible for all or substantially all the liabilities of the affiliated entity. The local counterparty would still be subject to the Instrument, but its mandatory clearable derivatives, as per the definition under the Instrument, may be cleared at a clearing agency pursuant to a foreign law listed in Appendix B if the counterparty is subject to and compliant with that foreign law.

Despite the ability to clear pursuant to a foreign law listed in Appendix B, the local counterparty is still required to fulfill the other requirements in the Instrument, as applicable. These include the retention period for the record keeping requirement and the submission of a completed Form 94-101F1 *Intragroup Exemption* to the regulator or securities regulatory authority in a jurisdiction of Canada when relying on an exemption regarding mandatory clearable derivatives entered into with an affiliated entity.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Section 6 – Non-application

A mandatory clearable derivative involving a counterparty that is an entity referred to in section 6 is not subject to the requirement under section 3 to submit a mandatory clearable derivative for clearing even if the other counterparty is otherwise subject to it.

The expression “government of a foreign jurisdiction” in paragraph (a) is interpreted as including sovereign and sub-sovereign governments.

Section 7 – Intragroup exemption

The Instrument does not require an outward-facing transaction in a mandatory clearable derivative entered into by a foreign counterparty that meets paragraph 3(1)(a) or (b) to be cleared in order for the foreign counterparty and its affiliated entity that is a local counterparty subject to the Instrument to rely on this exemption. However, we would expect a local counterparty to not abuse this exemption in order to evade mandatory central counterparty clearing. It would be considered evasion if the local counterparty uses a foreign affiliated entity or another member of its group to enter into a mandatory clearable derivative with a foreign counterparty that meets paragraph 3(1)(a) or (b) and then do a back-to-back transaction or enter into the same derivative relying on the intragroup exemption where the local counterparty would otherwise have been required to clear the mandatory clearable derivative if it had entered into it directly with the non-affiliated counterparty.

Subsection 7(1) – Requisite conditions for intragroup exemption

The intragroup exemption is based on the premise that the risk created by mandatory clearable derivatives entered into between counterparties in the same group is expected to be managed in a centralized manner to allow for the risk to be identified and managed appropriately.

This subsection sets out the conditions that must be met for the counterparties to use the intragroup exemption for a mandatory clearable derivative.

The expression “consolidated financial statements” in paragraph (a) is interpreted as financial statements in which the assets, liabilities, equity, income, expenses and cash flows of each of the counterparty and the affiliated entity are consolidated as part of a single economic entity.

Affiliated entities may rely on paragraph (a) for a mandatory clearable derivative as soon as they meet the criteria to consolidate their financial statements together. Indeed, we would not expect affiliated entities to wait until their next financial statements are produced to benefit from this exemption if they will be consolidated.

If the consolidated financial statements referred to in paragraph 7(1)(a) are not prepared in accordance with IFRS, Canadian GAAP or U.S. GAAP, we would expect that the consolidated financial statements be prepared in accordance with the generally

accepted accounting principles of a foreign jurisdiction where one or more of the affiliated entities has a significant connection, such as where the head office or principal place of business of one or both of the affiliated entities, or their parent, is located.

Paragraph (c) refers to a system of risk management policies and procedures designed to monitor and manage the risks associated with a mandatory clearable derivative. We expect that such procedures would be regularly reviewed. We are of the view that counterparties relying on this exemption may structure their centralized risk management according to their unique needs, provided that the program reasonably monitors and manages risks associated with non-centrally cleared derivatives. We would expect that, for a risk management program to be considered centralized, the evaluation, measurement and control procedures would be applied by a counterparty to the mandatory clearable derivative or an affiliated entity of both counterparties to the derivative.

Paragraph (d) refers to the terms governing the trading relationship between the affiliated entities for the mandatory clearable derivative that is not cleared as a result of the intragroup exemption. We would expect that the written agreement be dated and signed by the affiliated entities. An ISDA master agreement, for instance, would be acceptable.

Subsection 7(2) – Submission of Form 94-101F1

Within 30 days after two affiliated entities first rely on the intragroup exemption in respect of a mandatory clearable derivative, a local counterparty must deliver, or cause to be delivered, to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption* ("Form 94-101F1") to notify the regulator or securities regulatory authority that the exemption is being relied upon. The information provided in the Form 94-101F1 will aid the regulator or securities regulatory authority in better understanding the legal and operational structure allowing counterparties to benefit from the intragroup exemption. The parent or the entity responsible to perform the centralized risk management for the affiliated entities using the intragroup exemption may deliver the completed Form 94-101F1 on behalf of the affiliated entities. For greater clarity, a completed Form 94-101F1 could be delivered for the group by including each pairing of counterparties that seek to rely on the intragroup exemption. One completed Form 94-101F1 is valid for every mandatory clearable derivative between any pair of counterparties listed on the completed Form 94-101F1 provided that the requirements set out in subsection (1) are complied with.

Subsection 7(3) – Amendments to Form 94-101F1

Examples of changes to the information provided that would require an amended Form 94-101F1 include: (i) a change in the control structure of one or more of the counterparties listed in Form 94-101F1, and (ii) the addition of a new local jurisdiction for a counterparty. This form may also be delivered by an agent.

Section 8 – Multilateral portfolio compression exemption

A multilateral portfolio compression exercise involves more than two counterparties who wholly change or terminate some or all of their existing derivatives submitted for inclusion in the exercise and replace those derivatives with, depending on the methodology employed, other derivatives whose combined notional amount, or some other measure of risk, is less than the combined notional amount, or some other measure of risk, of the derivatives replaced by the exercise.

The purpose of a multilateral portfolio compression exercise is to reduce operational or counterparty credit risk by reducing the number or notional amounts of outstanding derivatives between counterparties and the aggregate gross number or notional amounts of outstanding derivatives.

Under paragraph (c), the existing derivatives submitted for inclusion in the exercise were not cleared either because they did not include a mandatory clearable derivative or because they were entered into before the class of derivatives became a mandatory clearable derivative or because the counterparty was not subject to the Instrument.

We would expect a local counterparty involved in a multilateral portfolio compression exercise to comply with its credit risk tolerance levels. To do so, we expect a participant to the exercise to set its own counterparty, market and cash payment risk tolerance levels so that the exercise does not alter the risk profiles of each participant beyond a level acceptable to the participant. Consequently, we would expect existing derivatives that would be reasonably likely to significantly increase the risk exposure of the participant to not be included in the multilateral portfolio compression exercise in order for this exemption to be available.

We would generally expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives.

Section 9 – Recordkeeping

We would generally expect that reasonable supporting documentation kept in accordance with section 9 would include complete records of any analysis undertaken by the local counterparty to demonstrate it satisfies the conditions necessary to rely on the intragroup exemption under section 7 or the multilateral portfolio compression exemption under section 8, as applicable.

A local counterparty subject to the mandatory central counterparty clearing requirement is responsible for determining whether, given the facts available, an exemption is available. Generally, we would expect a local counterparty relying on an exemption to retain all documents that show it properly relied on the exemption. It is not appropriate for a local counterparty to assume an exemption is available.

Counterparties using the intragroup exemption under section 7 should have appropriate legal documentation between them and detailed operational material outlining the risk management techniques used by the overall parent entity and its affiliated entities with respect to the mandatory clearable derivatives benefiting from the exemption.

PART 4
MANDATORY CLEARABLE DERIVATIVES

and

PART 6
TRANSITION AND EFFECTIVE DATE

Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2

A regulated clearing agency must deliver a Form 94-101F2 Derivatives Clearing Services ("Form 94-101F2") to identify all derivatives for which it provides clearing services within 30 days of the coming into force of the Instrument pursuant to section 12. A new derivative or class of derivatives added to the offering of clearing services after the Instrument is in force is declared through a Form 94-101F2 within 10 days of the launch of such service pursuant to section 10.

Each regulator or securities regulatory authority has the power to determine by rule or otherwise which derivative or class of derivatives will be subject to mandatory central counterparty clearing. Furthermore, the CSA may consider the information required by Form 94-101F2 to determine whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing.

In the course of determining whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing, the factors we will consider include the following:

(e) the derivative is available to be cleared on a regulated clearing agency;

(f) the level of standardization of the derivative, such as the availability of electronic processing, the existence of master agreements, product definitions and short form confirmations;

(g) the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative;

(h) whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;

(i) the outstanding notional amount of the counterparties transacting in the derivative or class of derivatives, the current liquidity in the market for the derivative or class of derivatives, the concentration of participants active in the market for the derivative or class of derivatives, and the availability of reliable and timely pricing data;

(j) the existence of third-party vendors providing pricing services;

(k) with regards to a regulated clearing agency, the existence of an appropriate rule framework, and the existence of capacity, operational expertise and resources, and credit support infrastructure to clear the derivative on terms that are consistent with the material terms and trading conventions on which the derivative is traded;

(l) whether a regulated clearing agency would be able to manage the risk of the additional derivatives that might be submitted due to the mandatory central counterparty clearing requirement determination;

(m) the effect on competition, taking into account appropriate fees and charges applied to clearing, and whether mandating clearing of the derivative could harm competition;

(n) alternative derivatives or clearing services co-existing in the same market;

(o) the public interest.

FORM 94-101F1
INTRAGROUP EXEMPTION

Submission of information on intragroup transactions by a local counterparty

In paragraph (a) of item 1 in section 2, we refer to information required under section 28 of the TR Instrument.

We intend to keep the forms delivered by or on behalf of a local counterparty under the Instrument confidential in accordance with the provisions of the applicable legislation. We are of the view that the forms generally contain proprietary information, and that the cost and potential risks of disclosure for the counterparties to an intragroup transaction outweigh the benefit of the principle requiring that forms be made available for public inspection.

While we intend for Form 94-101F1 and any amendments to it to be kept generally confidential, if the regulator or securities regulatory authority considers that it is in the public interest to do so, it may require the public disclosure of a summary of the information contained in such form, or amendments to it.

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Submission of information on clearing services of derivatives by the regulated clearing agency

Paragraphs (a), (b) and (c) of item 2 in section 2 address the potential for a derivative or class of derivatives to be a mandatory clearable derivative given its level of standardization in terms of market conventions, including legal documentation, processes and procedures, and whether pre- to post- transaction operations are carried out predominantly by electronic means. The standardization of economic terms is a key input in the determination process.

In paragraph (a) of item 2 in section 2, "life-cycle events" has the same meaning as in section 1 of the TR Instrument.

Paragraphs (d) and (e) of item 2 in section 2 provide details to assist in assessing the market characteristics such as the activity (volume and notional amount) of a particular derivative or class of derivatives, the nature and landscape of the market for that derivative or class of derivatives and the potential impact its determination as a mandatory clearable derivative could have on market participants, including the regulated clearing agency. Assessing whether a derivative or class of derivatives should be a mandatory clearable derivative may involve, in terms of liquidity and price availability, considerations that are different from, or in addition to, the considerations used by the regulator or securities regulatory authority in permitting a regulated clearing agency to offer clearing services for a derivative or class of derivatives. Stability in the availability of pricing information will also be an important factor considered in the determination process. Metrics, such as the total number of transactions and aggregate notional amounts and outstanding positions, can be used to justify the confidence and frequency with which the pricing of a derivative or class of derivatives is calculated. We expect that the data presented cover a reasonable period of time of no less than 6 months. Suggested information to be provided on the market includes:

(c) statistics regarding the percentage of activity of participants on their own behalf and for customers,

(d) average net and gross positions including the direction of positions (long or short), by type of market participant submitting mandatory clearable derivatives directly or indirectly, and

(e) average trading activity and concentration of trading activity among participants by type of market participant submitting mandatory clearable derivatives directly or indirectly to the regulated clearing agency.

ANNEX E
LOCAL MATTERS – ONTARIO

Legislative Authority for Rule Making

The proposed amendments to National Instrument 94-101 *Mandatory Central Counteraparty Clearing of Derivatives* (the "National Instrument") will come into force under the rulemaking authority provided under subparagraph 143(1) of the *Securities Act*. Subparagraph 35(iii) authorizes the Ontario Securities Commission to make rules that make requirements in respect of margin, collateral, capital, clearing and settlement.

Alternatives Considered by Commission

No alternatives were considered.

Anticipated Costs and Benefits

We believe that the impact of the proposed amendments is to reduce the costs of compliance with the National Instrument and do not result in a material burden on market participants.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.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).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
RBC Emerging Markets Equity Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 6, 2017
Received on October 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
N/A
Project #2534654

Issuer Name:
RBC Emerging Markets Dividend Fund
RBC Emerging Markets Equity Fund
RBC Emerging Markets Small-Cap Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 6, 2017
Received on October 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Global Asset Management Inc.
RBC Direct Investing Inc.
Phillips, Hager & North Investment Funds Ltd.
The Royal Trust Company
RBC Dominion Securities Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2628996

Issuer Name:
FDP Short Term Fixed Income Portfolio
FDP Canadian Equity Portfolio
FDP Canadian Dividend Equity Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment #3 to Final Simplified Prospectus dated October 6, 2017
Received on October 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Professionals' Financial – Mutual Funds Inc.
Promoter(s):
Professionals' Financial – Mutual Funds Inc.
Project #2602347

Issuer Name:
FT Balanced Growth Pool
FT Balanced Income Pool
FT Growth Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 4, 2017
Received on October 4, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
FTC Investor Services Inc.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2594453

Issuer Name:
North American Financial 15 Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated October 4, 2017
NP 11-202 Preliminary Receipt dated October 4, 2017
Offering Price and Description:
* Preferred Shares and * Class A Shares
Price: $* per Preferred Share and $* per Class A Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
N/A
Project #2681013

Issuer Name:
North American Financial 15 Split Corp.
Principal Regulator – Ontario
Type and Date:
Amended and restate to Preliminary Short Form Prospectus dated October 5, 2017
NP 11-202 Preliminary Receipt dated October 5, 2017
Offering Price and Description:
Offering: $69,249,600
3,664,000 Preferred Shares and 3,664,000 Class A Shares
Price: $9.90 per Preferred Share and $9.00 per Class A Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
N/A
Project #2681013

Issuer Name:
Phillips, Hager & North Overseas Equity Pension Trust
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 6, 2017 and Amendment #2 to AIF dated October 6, 2017
Received on October 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2628023

Issuer Name:
Phillips, Hager & North Overseas Equity Fund
Phillips, Hager & North Currency-Hedged Overseas Equity Fund
Phillips, Hager & North Global Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated October 6, 2017
Received on October 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc.
Project #2628011

Issuer Name:
Pinnacle Balanced Portfolio
Pinnacle Growth Portfolio
Pinnacle Income Portfolio
Scotia Aria Conservative Build Portfolio
Scotia Aria Conservative Core Portfolio
Scotia Aria Conservative Pay Portfolio
Scotia Aria Moderate Build Portfolio
Scotia Aria Moderate Core Portfolio
Scotia Aria Moderate Pay Portfolio
Scotia Aria Progressive Build Portfolio
Scotia Aria Progressive Core Portfolio
Scotia Aria Progressive Pay Portfolio
Scotia Balanced Opportunities Fund
Scotia Bond Fund
Scotia Canadian Balanced Fund
Scotia Canadian Blue Chip Fund
Scotia Canadian Bond Index Fund
Scotia Canadian Dividend Fund
Scotia Canadian Growth Fund
Scotia Canadian Income Fund
Scotia Canadian Index Fund
Scotia Canadian Small Cap Fund
Scotia Conservative Income Fund
Scotia Diversified Monthly Income Fund
Scotia Dividend Balanced Fund
Scotia European Fund
Scotia Floating Rate Income Fund
Scotia Global Balanced Fund
Scotia Global Bond Fund
Scotia Global Dividend Fund
Scotia Global Growth Fund
Scotia Global Opportunities Fund
Scotia Global Small Cap Fund
Scotia Income Advantage Fund
Scotia INNOVA Balanced Growth Portfolio
Scotia INNOVA Balanced Income Portfolio
Scotia INNOVA Growth Portfolio
Scotia INNOVA Income Portfolio
Scotia INNOVA Maximum Growth Portfolio
Scotia International Index Fund
Scotia International Value Fund
Scotia Latin American Fund
Scotia Money Market Fund
Scotia Mortgage Income Fund
Scotia Nasdaq Index Fund
Scotia Pacific Rim Fund
Scotia Partners Balanced Growth Portfolio
Scotia Partners Balanced Income Portfolio
Scotia Partners Growth Portfolio
Scotia Partners Income Portfolio
Scotia Partners Maximum Growth Portfolio
Scotia Private American Core-Plus Bond Pool
Scotia Private Canadian All Cap Equity Pool
Scotia Private Canadian Corporate Bond Pool
Scotia Private Canadian Equity Pool
Scotia Private Canadian Growth Pool
Scotia Private Canadian Mid Cap Pool
Scotia Private Canadian Preferred Share Pool
Scotia Private Canadian Small Cap Pool
Scotia Private Canadian Value Pool
Scotia Private Emerging Markets Pool
Scotia Private Fundamental Canadian Equity Pool
Scotia Private Global Credit Pool
Scotia Private Global Equity Pool
Scotia Private Global High Yield Pool
Scotia Private Global Infrastructure Pool
Scotia Private Global Low Volatility Equity Pool
Scotia Private Global Real Estate Pool
Scotia Private High Yield Income Pool
Scotia Private Income Pool
Scotia Private International Core Equity Pool
Scotia Private International Equity Pool
Scotia Private International Small to Mid Cap Value Pool
Scotia Private North American Dividend Pool
Scotia Private Options Income Pool
Scotia Private Real Estate Income Pool
Scotia Private Short Term Income Pool
Scotia Private Short-Mid Government Bond Pool
Scotia Private Strategic Balanced Pool
Scotia Private Total Return Bond Pool
Scotia Private U.S. Dividend Pool
Scotia Private U.S. Large Cap Growth Pool
Scotia Private U.S. Mid Cap Value Pool
Scotia Private U.S. Value Pool
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 Short Term Bond Fund
Scotia T-Bill Fund
Scotia U.S. $ Balanced Fund
Scotia U.S. $ Bond Fund
Scotia U.S. $ Money Market Fund
Scotia U.S. Blue Chip Fund
Scotia U.S. Dividend Fund
Scotia U.S. Index Fund
Scotia U.S. Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated September 29, 2017
NP 11-202 Preliminary Receipt dated October 3, 2017
Offering Price and Description:
Pinnacle Series and Series M units
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Scotia Securities Inc.
1832 Asset Management L.P.
Scotia Securities Inc.
Promoter(s):
1832 Asset Management L.P.
Project #2680356

Issuer Name:
Mackenzie Canadian Balanced Fund
Mackenzie Emerging Markets Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 29, 2017
NP 11-202 Receipt dated October 4, 2017
Offering Price and Description:
Quadrus series, D5 series, D8 series, H series, H5 series, H8 series, L series, L5 series, L8 series, N series, N5 series, N8 series, QF series and QF5 series securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Quadrus Investment Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2621242

Issuer Name:
Alignvest Top 20 Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 4, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Class A and Class F Units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Alignvest Capital Management Inc.
Project #2661588

Issuer Name:
BMO High Yield US Corporate Bond Index ETF
BMO MSCI Canada Value Index ETF
BMO MSCI EAFE Value Index ETF
BMO MSCI USA Value Index ETF
BMO Shiller Select US Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 2, 2017
NP 11-202 Receipt dated October 3, 2017
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
BMO Asset Management Inc.
Project #2670204

Issuer Name:
Educators U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated to Final Simplified Prospectus September 15, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Class A and Class I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Educators Financial Group Inc.
Promoter(s):
Educators Financial Group Inc.
Project #2609937

Issuer Name:
Educators Balanced Fund
Educators Bond Fund
Educators Dividend Fund
Educators Growth Fund
Educators Money Market Fund
Educators Monthly Income Fund
Educators Mortgage & Income Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated September 15, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Class I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Educators Financial Group Inc.
Promoter(s):
Educators Financial Group Inc.
Project #2609937

Issuer Name:
Fidelity American High Yield Currency Neutral Investment Trust
Fidelity American High Yield Investment Trust
Fidelity Asset Allocation Currency Neutral Private Pool
Fidelity Asset Allocation Private Pool
Fidelity Balanced Currency Neutral Private Pool
Fidelity Balanced Income Currency Neutral Private Pool
Fidelity Balanced Income Private Pool
Fidelity Balanced Private Pool
Fidelity Canadian Equity Investment Trust
Fidelity Canadian Equity Private Pool
Fidelity Canadian Real Return Bond Index Investment Trust
Fidelity Canadian Short Term Fixed Income Investment Trust
Fidelity Concentrated Canadian Equity Investment Trust
Fidelity Concentrated Canadian Equity Private Pool
Fidelity Concentrated Value Investment Trust
Fidelity Concentrated Value Private Pool
Fidelity Conservative Income Private Pool
Fidelity Convertible Securities Investment Trust
Fidelity Emerging Markets Debt Investment Trust
Fidelity Emerging Markets Equity Investment Trust
Fidelity Emerging Markets Investment Trust
Fidelity Floating Rate High Income Investment Trust
Fidelity Global Bond Currency Neutral Investment Trust
Fidelity Global Bond Investment Trust
Fidelity Global Credit Investment Trust
Fidelity Global Equity Currency Neutral Private Pool
Fidelity Global Equity Investment Trust
Fidelity Global Equity Private Pool
Fidelity Global High Yield Investment Trust
Fidelity Global Real Estate Investment Trust
Fidelity High Income Commercial Real Estate Investment Trust
Fidelity Insights Investment Trust
Fidelity International Disciplined Equity Investment Trust
Fidelity International Equity Currency Neutral Private Pool
Fidelity International Equity Investment Trust
Fidelity International Equity Private Pool
Fidelity International Growth Investment Trust
Fidelity Premium Fixed Income Private Pool
Fidelity Premium Fixed Income Private Pool Class
Fidelity Premium Money Market Private Pool
Fidelity Premium Tactical Fixed Income Private Pool
Fidelity U.S. Bond Investment Trust
Fidelity U.S. Dividend Private Pool
Fidelity U.S. Equity Currency Neutral Private Pool
Fidelity U.S. Equity Investment Trust
Fidelity U.S. Equity Private Pool
Fidelity U.S. Growth and Income Private Pool
Fidelity U.S. Money Market Investment Trust
Fidelity U.S. Multi-Cap Investment Trust
Fidelity U.S. Small/Mid Cap Equity Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated September 29, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Series B, D, F, I, S5, S8, I, I5, I8, F, F5, F8 and O securities
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2661253

Issuer Name:
LOGiQ MLP and Infrastructure Income Class
LOGiQ Resource Growth and Income Class
LOGiQ Balanced Monthly Income Class
LOGiQ Growth Class
LOGiQ Special Opportunities Class
LOGiQ Global Opportunities Class
LOGiQ Tactical Equity Class
LOGiQ Money Market Class
LOGiQ Tactical Bond Class
LOGiQ Global Balanced Income Class
LOGiQ Tactical Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 21, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Series A, B, F, I, X, UB, UF and UI shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
LOGiQ Capital 2016
Project #2633183

Issuer Name:
LOGiQ Global Resource Fund
LOGiQ High Income Fund
LOGiQ Millennium Fund
LOGiQ Strategic Yield Fund
LOGiQ Total Return Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 21, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Series A, B, TA6, F, UF, TF6 and I units
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
LOGiQ Asset Management Ltd.
Project #2611300

Issuer Name:
LOGiQ Growth Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 21, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
Series A, B and F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
LOGiQ Capital 2016
Project #2633187

Issuer Name:
Mackenzie All China Equity Fund
Mackenzie Canadian All Cap Balanced Class
Mackenzie Canadian All Cap Balanced Fund
Mackenzie Canadian All Cap Dividend Class
Mackenzie Canadian All Cap Dividend Fund
Mackenzie Canadian All Cap Value Class
Mackenzie Canadian All Cap Value Fund
Mackenzie Canadian Bond Fund
Mackenzie Canadian Growth Balanced Class
Mackenzie Canadian Growth Balanced Fund
Mackenzie Canadian Growth Class
Mackenzie Canadian Growth Fund
Mackenzie Canadian Balanced Fund
Mackenzie Canadian All Cap Dividend Growth Fund
Mackenzie Canadian Large Cap Dividend Class
Mackenzie Canadian Large Cap Dividend Fund
Mackenzie Canadian Large Cap Growth Fund
Mackenzie Canadian Money Market Class
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Resource Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Class
Mackenzie Canadian Small Cap Fund
Mackenzie Corporate Bond Fund
Mackenzie Cundill Canadian Balanced Fund
Mackenzie Cundill Canadian Security Class
Mackenzie Cundill Canadian Security Fund
Mackenzie Cundill Recovery Class
Mackenzie Cundill Recovery Fund
Mackenzie Cundill US Class
Mackenzie Cundill Value Class
Mackenzie Cundill Value Fund
Mackenzie Diversified Alternatives Fund
Mackenzie Emerging Markets Class
Mackenzie Emerging Markets Opportunities Class
Mackenzie Floating Rate Income Fund
Mackenzie Global Equity Fund
Mackenzie Global Credit Opportunities Fund
Mackenzie Global Dividend Fund
Mackenzie Global Growth Class
Mackenzie Global Low Volatility Fund
Mackenzie Global Resource Class
Mackenzie Global Small Cap Class
Mackenzie Global Small Cap Fund
Mackenzie Global Sustainability and Impact Balanced Fund
Mackenzie Global Strategic Income Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Global Tactical Investment Grade Bond Fund
Mackenzie Global Leadership Impact Fund
Mackenzie Gold Bullion Class
Mackenzie Growth Fund
Mackenzie High Diversification Canadian Equity Class
Mackenzie High Diversification Emerging Markets Equity Fund
Mackenzie High Diversification European Equity Fund
Mackenzie High Diversification Global Equity Fund
Mackenzie High Diversification International Equity Fund
Mackenzie High Diversification US Equity Fund
Mackenzie Income Fund
Mackenzie Ivy International Class
Mackenzie Ivy International Fund
Mackenzie Investment Grade Floating Rate Fund
Mackenzie Ivy Canadian Balanced Class
Mackenzie Ivy Canadian Balanced Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy European Class
Mackenzie Ivy Foreign Equity Class
Mackenzie Ivy Foreign Equity Currency Neutral Class
Mackenzie Ivy Foreign Equity Fund
Mackenzie Ivy Global Balanced Class
Mackenzie Ivy Global Balanced Fund
Mackenzie Ivy International Equity Fund
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie North American Corporate Bond Fund
Mackenzie Precious Metals Class
Mackenzie Private Canadian Focused Equity Pool
Mackenzie Private Canadian Focused Equity Pool Class
Mackenzie Private Canadian Money Market Pool
Mackenzie Private Global Conservative Income Balanced Pool
Mackenzie Private Global Equity Pool
Mackenzie Private Global Equity Pool Class
Mackenzie Private Global Fixed Income Pool
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Mackenzie Private Income Balanced Pool Class
Mackenzie Private US Equity Pool
Mackenzie Private US Equity Pool Class
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie Unconstrained Fixed Income Fund
Mackenzie US All Cap Growth Fund
Mackenzie US Dividend Fund
Mackenzie US Dividend Registered Fund
Mackenzie US Growth Class
Mackenzie US Large Cap Class
Mackenzie US Low Volatility Fund
Mackenzie US Mid Cap Growth Class
Mackenzie US Mid Cap Growth Currency Neutral Class
Mackenzie US Strategic Income Fund
Mackenzie USD Global Strategic Income Fund
Mackenzie USD Global Tactical Bond Fund
Mackenzie USD Ultra Short Duration Income Fund
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Income Portfolio Class
Symmetry Conservative Portfolio

Symmetry Conservative Portfolio Class
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated September 29, 2017
NP 11-202 Receipt dated October 4, 2017

Offering Price and Description:
Investor Series, Series A, Series AR, Series D, Series F, Series F5, Series F8, Series FB, Series FB5, Series O, Series PW, Series PWF, Series PWF5, Series PWF8, Series PWFB, Series PWFB5, Series PWT5, Series PWT8, Series PWX, Series PWX5, Series PWX8, Series S5, Series S8, Series SC, Series T5 and Series T8

Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc.

Promoter(s):
Mackenzie Financial Corporation

Project #2656987

NON-INVESTMENT FUNDS

Issuer Name:
Atrium Mortgage Investment Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 3, 2017
NP 11-202 Preliminary Receipt dated October 3, 2017
Offering Price and Description:
$250,000,000.00 – Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2680697

Issuer Name:
Jamieson Wellness Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 3, 2017
NP 11-202 Preliminary Receipt dated October 3, 2017
Offering Price and Description:
$240,870,000.00 – 13,020,000 Common Shares
Price: $18.50 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
-
Project #2680545

Issuer Name:
Brookfield Asset Management Inc.
Brookfield Finance Inc.
Brookfield Finance LLC
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated September 29, 2017 to Final Shelf Prospectus dated February 17, 2017
NP 11-202 Receipt dated October 4, 2017
Offering Price and Description:
Debt Securities
Class A Preference Shares
Class A Limited Voting Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2582877

Issuer Name:
Brookfield Finance Inc.
Brookfield Finance LLC
Brookfield Asset Management Inc.
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated September 29, 2017 to Final Shelf Prospectus dated February 17, 2017
NP 11-202 Receipt dated October 4, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2582878

Issuer Name:
Brookfield Finance LLC
Brookfield Asset Management Inc.
Brookfield Finance Inc.
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated September 29, 2017 to Final Shelf Prospectus dated February 17, 2017
NP 11-202 Receipt dated October 4, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2582880

Issuer Name:
Paramount Gold Nevada Corp.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 3, 2017
NP 11-202 Receipt dated October 4, 2017
Offering Price and Description:
US$4,480,000.00 – 3,200,000 Shares of Common Stock
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cantor Fitzgerald Canada Corporation
Promoter(s):
-
Project #2680376

Issuer Name:
Sherpa Holdings Corp.
Principal Regulator – British Columbia
Type and Date:
Final CPC Prospectus (TSX-V) dated October 2, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
$250,000.00 – 2,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #2640722

Issuer Name:
Val-d'Or Mining Corporation (formerly Nunavik Nickel Mines Ltd.)
Principal Regulator – Quebec
Type and Date:
Final Short Form Prospectus dated October 3, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
C$1,200,000.00 – 12,000,000 Units
Price: C$0.10 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2672411

Issuer Name:
Western Energy Services Corp.
Principal Regulator – Alberta (ASC)
Type and Date:
Final Short Form Prospectus dated October 5, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
$11,375,000.00 – 9,100,000 Common Shares
Price: $1.25 per Common Share
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Promoter(s):
-
Project #2677400

Issuer Name:
Wow Unlimited Media Inc. (formerly, Rainmaker Entertainment Inc.)
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated October 5, 2017
NP 11-202 Receipt dated October 5, 2017
Offering Price and Description:
$150,000,000.00 – Common Voting Shares, Variable Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2678998

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Equiton Capital Inc.	From: Exempt Market Dealer To: Exempt Market Dealer, Investment Fund Manager and Portfolio Manager	October 4, 2017
Change in Registration Category	NS Partners Ltd.	From: Portfolio Manager To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	October 5, 2017
Change in Registration Category	ReSolve Asset Management Inc.	From: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager To: Portfolio Manager, Exempt Market Dealer, Investment Fund Manager and Commodity Trading Manager	October 5, 2017
Name Change	From: Bullion Marketing Services Inc. To: BMG Marketing Services Inc.	Exempt Market Dealer	September 20, 2017
Change in Registration Category	ETF Capital Management	From: Investment Fund Manager and Portfolio Manager To: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	October 3, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited and Ensoleillement Inc. – Application for Recognition as Exchanges – Notice and Request for Comment

NASDAQ CXC LIMITED AND ENSOLEILLEMENT INC.

APPLICATION FOR RECOGNITION AS EXCHANGES

NOTICE AND REQUEST FOR COMMENT

I. INTRODUCTION

Nasdaq CXC Limited (Nasdaq Canada) and Ensoleillement Inc. (CXCH) have applied to the Ontario Securities Commission (Commission) for recognition as exchanges under section 21 of the *Securities Act* (Ontario).

Nasdaq Canada is a wholly-owned subsidiary of CXCH, which is in turn wholly-owned by Nasdaq, Inc. (Nasdaq). Nasdaq Canada currently carries on business in Ontario as an alternative trading system (ATS), operating three equity trading facilities – Nasdaq CXC, Nasdaq CX2, and Nasdaq CXD. Nasdaq Canada also operates NFI, a fixed income facility that allows permitted clients to trade US treasuries on a US based ATS. In the event the Commission recognises Nasdaq Canada and CXCH as exchanges, the trading facilities operated by Nasdaq Canada will become trading facilities of the exchanges.

Staff of the Commission is publishing this Notice and Request for Comment, together with the following documentation, for a 30-day public comment period:

- Appendix A – Application by Nasdaq Canada and CXCH for recognition as exchanges (Application);
- Appendix B – Draft order, with terms and conditions, recognizing Nasdaq Canada and CXCH as exchanges.

The comment period for this Notice and Request for Comment will close on November 13, 2017. Please see Part IV of this Notice for information on how to provide comment.

II. APPLICATION

In the Application, Nasdaq Canada and CXCH have made representations regarding how each applicant proposes to meet the criteria for recognition as an exchange. In particular, Nasdaq Canada and CXCH have made representations in respect of the recognition criteria related to: governance, fees, access, rules and rulemaking, regulation of participants, due process, systems and technology, financial viability, clearing and settlement, information sharing and regulatory cooperation. The recognition criteria can be found at Appendix A to the Application.

As proposed, the market structure for Nasdaq Canada is unchanged from that of the trading facilities presently operated by Nasdaq CXC Limited under its registration as an ATS. As indicated, in the event of recognition, the trading facilities currently operated by Nasdaq CXC Limited will become trading facilities of the exchanges, with no changes to functionality. We note as well that Nasdaq Canada is not, at this point, proposing to list issuers' securities. Consequently, the proposed terms and conditions of recognition include a provision that no securities are to be listed on Nasdaq Canada except with the prior approval of the Commission. If and when Nasdaq Canada proposes to list securities, the listing rules will go through the process of being reviewed, published for comment and presented to the Commission.

III. TERMS AND CONDITIONS OF RECOGNITION

As indicated, Nasdaq Canada and CXCH have made representations in respect of complying with the criteria for recognition. The following sections of the notice discuss the general approach to the terms and conditions of recognition and specifically discuss the application of some of the terms and conditions.

Recognition of Nasdaq

We note that, as proposed, Nasdaq will not be recognized as an exchange. Generally, the Commission's approach to the recognition of exchanges is that the Commission will seek to recognize any entity that carries on exchange-like functions, whether or not the entity actually operates an exchange. The consequence to this approach is that in some cases, the Commission has recognized an ultimate parent company of an exchange operator as an exchange because the entity carried out exchange functions. These functions included establishing the strategic direction for the exchange and nominating directors to the board.

Based on Staff's review of the Application and the representations of Nasdaq and Nasdaq Canada, Nasdaq does not carry out exchange activities in respect of Nasdaq Canada and CXCH that would warrant recognition as an exchange. We note in particular that Nasdaq maintains a separate and distinct board of directors from both Nasdaq Canada and CXCH and that Nasdaq Canada is responsible for establishing its own strategic direction.

Staff has proposed that even though Nasdaq would not be recognized, it would be subject to certain terms and conditions in areas where it has a degree of influence over the business and operations of Nasdaq Canada. In particular, Nasdaq would be required to take reasonable steps to ensure that each director and officer of Nasdaq Canada would be a fit and proper person and to allocate sufficient financial and other resources to Nasdaq Canada to ensure that Nasdaq Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law. Nasdaq would also be subject to the requirements to establish policies and procedures to identify and manage conflicts of interest, restrictions in respect of the routing of order flow to Nasdaq Canada, and restrictions regarding the bundling of its products and services with those of Nasdaq Canada.

The proposed terms and conditions that would apply to Nasdaq may be found at Schedule 4 to the draft recognition order.

Significant Shareholders of Nasdaq

As with the recognition of ultimate parent companies as exchanges, the Commission has also, in appropriate circumstances, imposed terms and conditions on the significant shareholders[1] of these parent companies. The purpose of these terms and conditions is to establish requirements in areas where significant shareholders may be able to exercise influence over the business and operations of the recognized exchange. Examples of such terms and conditions include restrictions on the routing of order flow to the recognized exchange and disclosure to clients of the significant shareholders that they have an ownership interest in the recognized exchange.

Nasdaq has several shareholders that would constitute significant shareholders.[2] Staff is proposing a limited number of terms and conditions that would apply to these significant shareholders. These terms and conditions relate primarily to restrictions on the routing of order flow to Nasdaq Canada, the management of conflicts of interest, restrictions on the ability of significant shareholders to incent their employees to preference Nasdaq Canada as a marketplace, and requirements for the significant shareholders to disclose their relationship with Nasdaq Canada to clients whose orders may be routed to Nasdaq Canada.

We note that, based on the Application and the representations of Nasdaq Canada and Nasdaq, the significant shareholders of Nasdaq have a limited ability and opportunity to influence the business and operations of Nasdaq Canada. The significant shareholders have no rights to nominate individuals to the boards of CXCH and Nasdaq Canada and are restricted generally in their ability to vote their shares of Nasdaq. As such, in Staff's view, the approach to impose these limited terms and conditions being proposed for significant shareholders is appropriately tied to their limited ability to influence the business and operations of Nasdaq Canada.

The proposed terms and conditions that would apply to the significant shareholders of Nasdaq may be found at Schedule 4 to the draft recognition order.

Nasdaq Canada and CXCH Terms and Conditions

Additional terms and conditions have been proposed for Nasdaq Canada and CXCH. In addition to terms and conditions that would require Nasdaq Canada and CXCH to establish policies and procedures to identify and manage conflicts of interest together with financial reporting and financial viability monitoring, specific terms and conditions have been proposed in order to limit Nasdaq Canada's ability to provide discounts on its fees conditional on the purchase of products and services offered by Nasdaq. The terms and conditions would also limit Nasdaq Canada's ability to incent or encourage Nasdaq affiliates or significant shareholders from coordinating the routing of order flow to Nasdaq Canada.

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1 The Commission has typically established significant shareholders as the owners of more than 5% of the issued and outstanding securities of the parent company.

2 The following entities own more than 5% of the issued and outstanding shares of Nasdaq: Borse Dubai (17.9%), Investor AB (11.7%), MFS Institutional Advisors (9.2%), BlackRock (5.6%), Vanguard Group (6.5%).

The proposed terms and conditions that would apply to Nasdaq Canada may be found at Schedule 2 to the draft recognition order. The proposed terms and conditions that would apply to CXCH may be found at Schedule 3 to the draft recognition order.

IV. REQUEST FOR COMMENTS

Staff is seeking comment on all aspects of the Application and the draft terms and conditions of recognition. Documentation pertaining to the operations of the proposed exchanges can be found on the Commission's website.

Comments should be in writing and submitted by November 13, 2017, to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON, M5H 3S8
Fax: 416.595.8940
email: marketregulation@osc.gov.on.ca

Comments received will be made public on the Commission's website.

Questions on the content of this Notice and the draft recognition order may be directed to:

Tracey Stern
Manager, Market Regulation
tstern@osc.gov.on.ca

Christopher Byers
Senior Legal Counsel, Market Regulation
cbyers@osc.gov.on.ca

Barb Majerski
Legal Counsel, Market Regulation
bmajerski@osc.gov.on.ca

Questions on the content of the Application may be directed to:

Matthew Thompson
Nasdaq CXC Chief Compliance Officer
matthew.thompson@nasdaq.com

APPENDIX A

NASDAQ CXC LIMITED

25 York Street, Suite 900
Toronto, Ontario M5J 2V5

●, 2017

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8

Attention: Susan Greenglass, Director of Market Regulation

Dear Sirs/Mesdames,

Re: Application for Recognition as exchanges of Nasdaq CXC Limited ("Nasdaq Canada") and its parent holding company, Ensoleillement Inc. ("CXCH")

I. Application for Recognition of Nasdaq Canada and CXCH

(a) Application for recognition of Nasdaq Canada

This letter (the "**Application**") sets out the application of Nasdaq Canada to the Ontario Securities Commission (the "**Commission**") for recognition of Nasdaq Canada as an exchange in accordance with section 21(2) of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5 (the "**Act**") and in accordance with the terms and conditions set out in the draft exchange recognition order published by the Commission on October 12, 2017 (the "**Recognition Order**").

(b) Application for recognition of CXCH

This letter also sets out the application of CXCH, the holding company of Nasdaq Canada, to the Commission for recognition of CXCH as an exchange in accordance with section 21(2) of the Act and in accordance with the terms of the Recognition Order.

(c) Application for Exemptive Relief in Canadian Jurisdictions other than Ontario

Nasdaq Canada will be operating as an exchange across Canada. It has applied[1] for an exemption from exchange recognition for Nasdaq Canada and CXCH in each jurisdiction in Canada, other than Ontario, on the basis of the Lead Regulator Model. The Lead Regulator Model is set out in a Memorandum of Understanding ("**MOU**") among certain members of the Canadian Securities Administrators about the oversight of exchanges[2].

The underlying principles of the Lead Regulator Model are based upon each recognized exchange ("**Exchange**") having a lead regulator ("**Lead Regulator**") responsible for its oversight, and one or more exempting regulators ("**Exempting Regulators**"). The Exempting Regulators exempt the Exchange from recognition on the basis that:

(A) the Exchange is and will continue to be recognized by the Lead Regulator as an Exchange;

(B) the Lead Regulator is responsible for conducting the regulatory oversight of the Exchange; and

(C) the Lead Regulator will inform the Exempting Regulators of its oversight activities and the Exempting Regulators will have the opportunity to raise issues concerning the oversight of the Exchange with the Lead Regulator in accordance with the MOU.

[1] The exemption application will be published by the Autorité des marchés financiers.

[2] The current MOU became effective on January 1, 2010 and is available online here: http://www.osc.gov.on.ca/documents/en/Securities/mou_20091002_nca-amd-mou-qtrs.pdf

II. Background and Introduction to the Nasdaq Canada Application

Current Operations

Since the acquisition by Nasdaq, Inc. in February of 2016, Nasdaq CXC Limited ("**Nasdaq ATS**") has continued operating the CXC alternative trading system ("**CXC**") for the trading of securities listed on the Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**"). Nasdaq ATS commenced operations on February 20, 2008 and is a corporation incorporated under the *Canada Business Corporations Act* ("**CBCA**"). It currently has 66 subscribers and offers trading in over 4100 securities. Nasdaq ATS subscribers must be members in good standing of the Investment Industry Regulatory Organization of Canada ("**IIROC**") with the ability to clear trades on a continuous net settlement basis with the Canadian Depository for Securities.

Nasdaq ATS operates a second trading facility, Nasdaq CX2 ("**CX2**"), which offers trading in the same listed securities as that of CXC. CX2 is available to registered investment dealers who are members in good standing of IIROC. CX2 operates as a separate marketplace using the same trading platform as CXC. Key features of the CX2 platform are described in the Trading section of this Application letter. There is no requirement for CX2 subscribers to also become subscribers of CXC.

Nasdaq ATS also operates a third Canadian trading facility, Nasdaq CXD ("**CXD**"), which is a dark trading book. CXD is available to registered investment dealers who are members in good standing of IIROC. CXD operates as a separate marketplace using the same trading platform as CX2. Key features of the CXD platform are described in the Trading section of this Application letter. There is no requirement for CXD subscribers to also become subscribers of CXC or CX2.

Nasdaq ATS also provides Canadian "permitted clients" as defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") access to the Nasdaq Fixed Income trading system ("**NFI**") operated by its U.S. affiliate Execution Access, LLC ("**EA**") for purposes of trading non-Canadian fixed income securities ("**U.S. Treasury securities**" or "**UST**"). Key features of the NFI platform are described in the Trading section of this Application letter.

On the effective date of the Recognition Order issued pursuant to this Application (the "**Recognition Date**"), Nasdaq ATS will cease operations as an ATS and Nasdaq Canada will commence operations as an exchange.

CXCH is a corporation incorporated under the New Brunswick *Business Corporations Act* on December 9, 2015. CXCH is currently and will continue to be the sole shareholder of Nasdaq Canada on the Recognition Date.

Participants / Membership

Nasdaq Canada will operate an electronic automated marketplace for participating IIROC members ("**Members**") to trade securities listed on TSX, TSXV and Canadian Securities Exchange ("**CSE**"), on substantially the same basis as Nasdaq ATS has been operating. The Nasdaq Canada market structure will include three separate trading books (each, a "**Trading Book**"): the Nasdaq CXC Book (CXC Book), the Nasdaq CX2 Book (CX2 Book) and the Nasdaq CXD Book (CXD Book). Effective on the Recognition Date, the CXC Book, CX2 Book and CXD Book will provide substantially the same services to Members as the three trading platforms of Nasdaq ATS provide to Subscribers today.

It is expected that existing CXC, CX2 and CXD subscribers will execute the proposed Nasdaq Canada Member Agreement. As part of the proposed Nasdaq Canada Member Agreement, Nasdaq Canada Members will agree to be bound by the Exchange Requirements, as more fully described further on in this Application.

A copy of the proposed Nasdaq Canada Member Agreement is published with this Application and a version will be available on Nasdaq Canada's website from the Recognition Date.

Effective on the Recognition Date, Nasdaq Canada will continue to provide Canadian "permitted clients" as defined in NI 31-103 access to the NFI system operated by EA for purposes of trading U.S. Treasury securities.

Trading Policies

Nasdaq Canada will adopt the Trading Rules and Policies published with this application and a version will be available on Nasdaq Canada's website from the Recognition Date.

III. Recognition Criteria for Nasdaq Canada

The following sets out the recognition criteria that will be applicable to Nasdaq Canada and how Nasdaq Canada proposes to address those criteria. The criteria cover the following topics:

- Governance
- Access
- Regulation of Participants and Issuers
- Rules and Rulemaking
- Due Process
- Clearing and Settlement
- Systems and Technology
- Financial Viability
- Fees
- Information Sharing and Regulatory Cooperation.

A. Governance

Governance Criteria

(i) The governance structure and governance arrangements of Nasdaq Canada and CXCH must ensure: (a) effective oversight of the Exchange; (b) that business and regulatory decisions are in keeping with their public interest mandate; (c) fair, meaningful and diverse representation on the board of directors and any board committees; (d) policies and procedures are in place to appropriately identify and manage conflicts of interest; and (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors; and

(ii) Nasdaq Canada and CXCH must have policies and procedures under which it will take reasonable steps, and must take such reasonable steps, to ensure that each director and officer is a fit and proper person.

1. Ownership of Nasdaq Canada and CXCH

Nasdaq ATS commenced operations on February 20, 2008 and is a corporation incorporated under the CBCA. On the Recognition Date, Nasdaq ATS will cease operations as an ATS and Nasdaq Canada will commence operations as an exchange.

CXCH is a corporation incorporated under the New Brunswick *Business Corporations Act* on December 9, 2015. CXCH is currently and will continue to be the sole shareholder of Nasdaq Canada on the Recognition Date.

Nasdaq, Inc. ("**Nasdaq**") is a Delaware USA corporation incorporated on January 12, 1976. Nasdaq is the sole shareholder of CXCH.

Nasdaq, Inc. is a leading provider of trading, clearing, exchange technology, regulatory, securities listing, information and public company services across six continents. Nasdaq's global offerings are diverse and include trading and clearing across multiple asset classes, access services, data products, financial indexes, capital formation solutions, corporate solutions and market technology products and services.

Nasdaq is a publicly traded company and is owned by various shareholders. Other than the shareholders set out in the Form 21-101F1[3] separately filed with the Commission concurrently with this Application, and as disclosed in Nasdaq's 2017 Proxy Statement, which was filed with the U.S. Securities and Exchange Commission on March 29, 2017, no known shareholders hold a material percentage of Nasdaq's securities.

2. Objectives of the Governance Structure

The governance structure of Nasdaq Canada and CXCH is designed to ensure:

[3] See Exhibit B – *Ownership* to the Form 21-101F1.

- That Nasdaq Canada's business and regulatory decisions are in keeping with its public interest mandate;
- Fair, meaningful and diverse representation on the board of directors and any board committees, including independent director representation;
- Proper consideration and representation of the interests of the persons or companies accessing the facilities and/or services of Nasdaq Canada;
- That Nasdaq Canada and CXCH have policies and procedures to appropriately identify and manage conflicts of interest;
- That each director and officer of Nasdaq Canada and CXCH is a fit and proper person; and
- That there are appropriate qualifications, remuneration, limitations of liability and indemnity provisions for directors and officers.

3. CXCH and Nasdaq Canada Board Structure

a. CXCH Board and Committee

CXCH is a holding company. The board of directors ("**Board**") of CXCH is expected to be comprised of 6 directors, 3 of whom will be independent. The Chair of the CXCH Board will be an independent director.

A quorum of the CXCH Board will consist of a majority of directors, at least 50% of whom shall be independent directors. Independence criteria are addressed below.

The CXCH Board will establish and maintain a Nominating Committee as further described below. The Chair of the CXCH Nominating Committee will be an independent director.

The initial CXCH and Nasdaq Canada Boards are expected to be mirror boards consisting of the same independent and non-independent directors.

b. The Nasdaq Canada Board and Committee

The Nasdaq Canada Board is expected to be comprised of 6 directors, 3 of whom will be independent. The non-independent directors are expected to be Dan Kessous (the CEO of Nasdaq Canada), Thomas Wittman, Executive Vice President, Global Head of Equities of Nasdaq (a current director of both CXCH and Nasdaq Canada) and Tal Cohen, Senior Vice President, Head of North American Equities of Nasdaq.

The three independent directors of Nasdaq Canada are expected to be Canadian residents with excellent experience in financial services, market risk management and governance who will meet the independence criteria further described below.

A quorum of the Nasdaq Canada Board will consist of a majority of directors, at least 50% of whom shall be independent directors. The Chair of the Nasdaq Canada Board will be an independent director.

The Nasdaq Canada Board will establish and maintain a Regulatory Oversight Committee as further described below.

4. CXCH Board Committee Structure

a. CXCH Nominating Committee

The CXCH Board will have a Nominating Committee comprised of no fewer than 3 members, a majority of whom will be independent directors, and one of the members of the Nominating Committee will be the Chairman of the CXCH Board. The Chair of the CXCH Nominating Committee will be an independent director. The role of the Nominating Committee will be to identify and put forward for nomination qualified directors to act on the CXCH Board and the Nasdaq Canada Board. A quorum of the Nominating Committee consists of a majority of the members, a majority of whom shall be independent directors.

5. The Nasdaq Canada Board Committee Structure

a. The Nasdaq Canada Regulatory Oversight Committee

The Nasdaq Canada Board will have a Regulatory Oversight Committee, comprised of no fewer than 3 directors, a majority of whom shall be independent directors. A quorum of the Regulatory Oversight Committee will consist of a majority of the members, a majority of whom shall be independent directors.

The Regulatory Oversight Committee's mandate is to oversee the performance of Nasdaq Canada's regulatory responsibilities, the management of conflicts of interest, and, among other duties:

- reviews and decides, or makes recommendations to the Nasdaq Canada Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 of the Recognition Order;
- considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:
    - Nasdaq Canada marketplace participant's representation on the CXCH Board or the Nasdaq Canada Board;
    - significant changes in ownership of Nasdaq Canada and CXCH; and
    - the profit-making objective and the public interest responsibilities of Nasdaq Canada, including general oversight of the management of the regulatory and public interest responsibilities of Nasdaq Canada;
- oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Nasdaq Canada and CXCH;
- monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of conflicts of interest by Nasdaq Canada and CXCH;
- reviews regularly, and at least annually, the effectiveness of the policies and procedures regarding conflicts of interest;
- annually prepares a written report examining the avoidance and management of conflicts of interest, the mechanisms used and the effectiveness of those mechanisms and provides the report to the Nasdaq Canada Board promptly, and to the Commission within 30 days of providing it to the Nasdaq Canada Board; and
- reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring the Nasdaq Canada Board approval for such reporting.

Nasdaq Canada will obtain prior approval of the Commission before implementing amendments to the mandate of the Regulatory Oversight Committee and the mandate will be publicly available on the Nasdaq Canada website.

6. Nasdaq Canada and CXCH Independence Standards

Nasdaq Canada and CXCH have established the following standards to determine whether a director is independent (the "**Independence Standards**"). An independent director is one who does not have a direct or indirect material relationship with Nasdaq Canada or CXCH, where the term "**material relationship**" is a relationship that could, in the view of the Nasdaq Canada Board or the CXCH Board, respectively, be reasonably expected to interfere with the exercise of the director's independent judgment. A director is independent if the director is "**independent**" within the meaning of section 1.4 of National Instrument 52-110 – *Audit Committees* ("**NI 52-110**"), as amended from time, but is not independent if the director:

- is a partner, officer[4], director or employee of a Nasdaq Canada marketplace participant, or of an affiliated entity[5] of a Nasdaq Canada marketplace participant, who is responsible for or is actively engaged in the day-to-day operations or activities of that Nasdaq Canada marketplace participant;

[4] "officer" has the meaning ascribed to it in subsection 1(1) of the Act.

[5] "affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation.*

- is an officer or an employee of CXCH or any of its affiliated entities;
- is a partner, officer or employee of Nasdaq or an associate[6] of that partner, officer or employee;
- is a director of Nasdaq or an associate of that director;
- is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH;
- is a director of a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Nasdaq; or
- has any relationship with Nasdaq or a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH, that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CXCH or Nasdaq Canada.

The Recognition Order permits the Nominating Committee of CXCH to waive specific restrictions set out above where it has determined that independence is not compromised, and the Commission does not object. This allows otherwise qualified independent persons to be considered as an independent director on the Board of Nasdaq Canada or CXCH.

The objective of the Independence Standards is to remove anyone who has a material relationship with CXCH or its affiliated entities from qualifying as an independent director. The Nominating Committee of CXCH is charged with making recommendations to the Nasdaq Canada Board and CXCH Board, as applicable, on the interpretation and application of the Independence Standards to the Nasdaq Canada directors and CXCH directors, as applicable.

7. Director and Officer Fitness Requirements

Nasdaq Canada and CXCH will ensure that each of its respective directors and officers is a fit and proper person so that there are reasonable grounds to believe that the business of Nasdaq Canada and CXCH, respectively, will be conducted with integrity and in a manner that is consistent with the public interest.

The names and qualifications of nominee directors will be provided to the CXCH Nominating Committee to consider and determine whether the person is both fit and proper, as well as qualified. The officers will be reviewed and confirmed as fit and proper by the Nasdaq Canada Board or the CXCH Board, as applicable.

8. Managing potential conflicts of interest within Nasdaq Canada and CXCH

Nasdaq Canada and CXCH, respectively, will adopt a conflicts of interest policy applicable to the members of the respective Board which will set out the obligations and expectations imposed upon directors in dealing with conflicts of interest and matters of confidentiality. This policy will, among other things, provide that every director of Nasdaq Canada or CXCH, respectively, shall, in acting in such capacity, act honestly and in good faith with a view to the best interests of Nasdaq Canada or CXCH, respectively, and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In addition, the policy will provide that directors must ensure that their personal interests and their duty to Nasdaq Canada or CXCH, respectively, are not brought into conflict, and that they do not receive or obtain, directly or indirectly, a personal profit, gain or benefit (other than any fees paid as a result of acting as a director) as a result of their relationship with Nasdaq Canada or CXCH, respectively. The conflicts of interest policy will also contain provisions requiring a director to disclose the nature and extent of any interest that he or she has in a material contract or material transaction with Nasdaq Canada or CXCH, respectively.

In addition, Nasdaq Canada and CXCH will establish policies and procedures that address the conflict of interest matters addressed in the Recognition Order, including conflicts arising from the interactions between Nasdaq Canada and CXCH and its shareholders, and arising between the regulation functions and business activities of Nasdaq Canada.

In addition, the Recognition Order requires that Nasdaq also establish policies and procedures to manage conflicts of interest resulting from its interactions with Nasdaq Canada and CXCH, and to maintain confidentiality.

[6] "associate" has the meaning ascribed to it in subsection 1(1) of the Act.

B. Access

Fair Access Criteria

Nasdaq Canada must establish appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements, and such access standards and the process for obtaining, limiting and denying access must be fair, transparent and applied reasonably.

Nasdaq Canada has established appropriate written standards for access to its trading and related services. The requirement is that Nasdaq Canada Members are appropriately registered under securities laws and are dealer members of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), except with respect to separately provided access to NFI by Canadian permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. The access standards and the process for obtaining, limiting and denying access are set out in Chapter 4 of the Trading Rules and Policies and are fair, transparent and can be applied reasonably.

Nasdaq Canada may refuse to approve an applicant based on past or present misconduct by the applicant or any related person, or if the applicant refuses to comply with Nasdaq Canada requirements or is not qualified by reason of integrity, solvency, training or experience. Any dealer who is refused approval will have a right of appeal.

Dealers who are eligible for membership must complete an application process and ultimately must sign the Nasdaq Canada Member Agreement. Once approved, a Member must comply with all Exchange Requirements as set out in the Member Agreement and the Trading Rules and Policies and as notified to Members from time to time.

Copies of the proposed Member Agreement and the Trading Policies have been filed with this Application.

C. Regulation of Participants

Regulation of Participants Criteria

Nasdaq Canada must have the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirement.

Nasdaq Canada has the authority, capacity, systems and processes to undertake directly or indirectly through a regulatory services provider, its regulation functions by:

- Setting requirements governing the conduct of its Members;
- Monitoring conduct of its Members and, if and when applicable, at such future time as Nasdaq Canada may engage in a listings business, its listed issuers; and
- Appropriately disciplining Members for violations of the Exchange Requirements.

Nasdaq Canada will enter into a Regulatory Services Agreement with IIROC so that IIROC will perform on its behalf market regulation services. Nasdaq ATS currently has in place a Regulatory Services Agreement with IIROC whereby IIROC performs on its behalf market regulation services in respect of the Nasdaq ATS.

1. Trading

a. Summary of Features and Functions of the Trading Platform

Nasdaq Canada will transition its market operations from those of an ATS to those of an Exchange, with no substantial changes to its current trading platform or operations. Functionality currently in place to support the Nasdaq ATS trading platform will continue to be available after the Recognition Date. The specific policies associated with the trading operations are described in the Nasdaq Canada Trading Rules and Policies, a copy of which has been filed with this Application.

Nasdaq Canada will operate a continuous auction market Monday through Friday, excluding Canadian banking holidays. It will offer trading on securities listed on TSX, TSXV and CSE, through three separate Trading Books: CXC, CX2 and CXD. Trading sessions for CXC and CX2 are from 8:30 a.m. to 5:00 p.m. (EST). Trading sessions for CXD are from 9:30 a.m. to 4:00 p.m.

The CXC Book will offer matching based on price/time priority, with visible orders having a higher priority over hidden orders that are at the same price. The default attribution for the CXC Book is that orders are anonymous. CXC will support round lot and odd lot orders.

The CX2 Book will offer matching based on price/broker/time priority, with visible broker orders having a higher priority over visible non-broker orders at the same price. Anonymous and jitney orders are not eligible for broker preferencing. The default attribution for the CX2 Book is that orders are attributed. CX2 will support round lot and odd lot orders.

The CXD Book is a dark book with matching based on price/broker/time priority. Orders entered on CXD that do not meet the minimum size requirements as defined by Universal Market Integrity Rules (UMIR) must provide incoming orders with minimum price improvement. CXD orders are attributed by default and are automatically eligible for broker preferencing. Members may not opt-out of broker preferencing for attributed orders. Anonymous orders and jitney orders are not eligible for broker preferencing. CXD will support round lot and odd lot orders.

Orders that are not immediately matched will be posted into the Trading Books.

The Nasdaq Canada trading platform will support the following order types:

- Limit
- Market

It will also support the following types of order attributes:

- Time in force (Day, IOC, FOK)
- Quantity (Minimum, Minimum Acceptable, All or None)
- Attribution (Anonymous/Attributed)
- Pegged orders (Primary, Mid-Point and Market)
- Minimum Price Improvement Order
- Visibility (Hidden, Iceberg/Reserve and X-berg orders)
- Self-Trade Prevention
- Post only

Nasdaq Canada will also provide Members with the ability to enter intentional crosses, including specialty crosses. Members will be required to enter crosses in compliance with regulatory provisions for crosses.

Nasdaq Canada will continue to provide Canadian “permitted clients” as defined in NI 31-103 access to the NFI system operated by EA for purposes of trading USTs. Nasdaq Canada will be the “client-facing” entity for Canadian fixed income customers. Such Canadian customers have entered into a supplemental agreement with Nasdaq Canada that provides for the routing of Canadian client orders to NFI. EA will continue to be responsible for the execution of trades in USTs on the NFI platform.

An intercompany agreement was entered into between Nasdaq Canada and EA in respect of the routing arrangement. Orders transmitted by a customer located in Canada for a fixed income security traded in the United States will be routed and executed in accordance with the terms of the intercompany agreement. Nasdaq Canada will not execute UST trades. Nasdaq Canada will receive orders from Canadian fixed income customers and will route them to NFI in accordance with the terms of the intercompany agreement.

The NFI graphical user interface provides Canadian fixed income customers with a trading application that enables users to create customizable order placement, and real-time monitoring and management of orders, positions and profit & loss. The NFI application program interface (API) provides Canadian customers with access to order entry and straight through processing. Canadian customers using the NFI API can also access real-time market data and historical data. The NFI FIX protocol provides Canadian customers with access to order entry and straight through processing. Canadian customers may also connect by using a third-party vendor’s order management system.

NFI accepts limit orders only. Limit orders may have a time-in-force of Day (“DAY”), Immediate or Cancel (“IOC”), Good ‘til Bettered (“GTB”), or Only-At-Best (“OAB”). A limit order will only execute at prices equal to or better than its specified price. A

limit order can be matched in part or in its entirety. If not fully executed, the unexecuted remaining quantity is posted in the order book, unless the order's time-in-force value is IOC.

b. Access

Nasdaq Canada will use a FIX interface for access to the trading systems. Specifications will be published on the Nasdaq Canada website. Nasdaq Canada will provide operational support and access to a test environment for development and certification of Members' interfaces.

Members can access the Exchange directly or via certified third party services providers.

c. Operational Controls

Nasdaq Canada will provide several operational controls in support of its mandate to operate a fair and orderly market:

- **Trading Halts**: Trading may be halted on a security, or group of securities, on any Trading Book by the Exchange ("Business Halt") or the Regulation Services Provider ("Regulatory Halt"). Halting a security is considered a significant act and generally will be done by IIROC or in consultation with IIROC. However, the maintenance of fair markets and certain market events suggest that other options need to be available in the rare circumstances where the harm is obvious and immediate, and there may not be sufficient time to get a response from IIROC. In that event, Nasdaq Canada may announce a trading halt. There will be clear accountability and oversight if such action is taken. If Nasdaq Canada takes action to halt trading, a report will be prepared and submitted to IIROC and the Commission for their review and follow up;

- **Marketplace Thresholds:** Nasdaq Canada will support marketplace thresholds in accordance with requirements established under National Instrument 23-101 – *Trading Rules* ("**NI 23-101**") and guidance issued by IIROC. These thresholds will be operative between the hours of 9:30 a.m. and 5:00 p.m. (EST) on CXC and CX2 and between 9:30 a.m. and 4:00 p.m. (EST) on CXD;

- **Order Protection:** in accordance with NI 23-101, Nasdaq Canada will offer the following:

    - Repricing: Members may elect to have orders that would cross the NBBO and would trade-through a better priced order on a protected market be automatically re-priced as the NBBO updates to prevent a trade-through or crossed market from occurring.

    - Cancellation: Members may elect to have their orders cancelled (in addition to the option to reprice) to prevent a trade-through from occurring.

    - Directed Action Order ("**DAO**") orders: Members may indicate an order as a DAO and by-pass the repricing mechanism.

d. Nasdaq Canada Trading Rules and Policies

Rules for membership and policies related to trading activities are published in the Nasdaq Canada Trading Rules and Policies. This document is organized into the following chapters:

Chapter 1:	Definitions and Interpretation
Chapter 2:	Policies and Authority of the Exchange
Chapter 3:	Membership
Chapter 4:	Access to Trading
Chapter 5:	Trading
Chapter 6:	Provisions Regarding Odd Lot Dealers
Chapter 7:	Clearing and Settlement
Chapter 8:	Appeals Policy
Chapter 9	General

e. The Nasdaq Canada Trading Policies

Chapter 5 of the Trading Rules and Policies sets out key features and policies of Nasdaq Canada's trading. It covers the following topics:

- Trading Books
- Trading Sessions
- Trading Halts
- Marketplace Thresholds
- Trade Amendments and Cancellations
- Order Types and Attributes
- Order Processing
- Crossing
- Order Protection Rule Compliance
- Order and Trade Reporting
- Nasdaq Canada Odd Lot Facility

Nasdaq Canada has also adopted a Trading Functionality Guide that is meant to serve as a companion guide to Nasdaq Canada's Trading Rules and Policies. The Trading Functionality Guide provides various illustrations and covers the following topics:

- Trading Operations
- Trading Books
- Order Matching Priority
- Order Types
- Summary of Trading Book Orders
- Nasdaq Canada Odd Lot Facility
- Non-Display Order Handling
- Order Handling Compliance with the Order Protection Rule
- Risk Management Tools

2. Data

Currently, subscribers of CXC, CX2 and CXD, as well as other third parties, may purchase any of a variety of data products for internal consumption or redistribution by entering into either a Data Use Agreement or Data Distribution Agreement with Nasdaq ATS. Nasdaq Canada will continue to offer data products on a basis consistent with the manner in which such products are currently offered by Nasdaq ATS, with such changes as may be necessary to reflect Nasdaq Canada's exchange status and related considerations.

3. Listing

Nasdaq Canada does not intend to engage in a listings business at the present time.

D. Rules and Rulemaking

Rules and Rulemaking Criteria

Nasdaq Canada must have rules, policies, and other similar instruments that are designed to (i) appropriately govern and regulate the operations and activities of participants and, at such future time as Nasdaq Canada may engage in a listings business, issuers, (ii) ensure a fair and orderly market, and (iii) provide a framework for disciplinary and enforcement actions.

Nasdaq Canada will establish, rules, policies and other similar instruments ("**Rules**") designed to govern the operations and activities of Members and, at any future time as Nasdaq Canada may engage in a listings business, Issuers and designed to:

- Ensure compliance with securities legislation;
- Prevent fraudulent and manipulative acts and practices;
- Promote just and equitable principles of trade;
- Provide for appropriate sanctions for violations of Nasdaq Canada Rules;
- Ensure a fair and orderly market; and
- Provide a framework for disciplinary and enforcement actions.

Nasdaq Canada will be executing a Regulatory Services Agreement with IIROC regarding oversight of UMIR requirements.

Nasdaq Canada will comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto as set out in the Recognition Order.

The Regulatory Oversight Committee is responsible for reviewing and deciding, or making recommendations to the Nasdaq Canada Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 of the Recognition Order, and to periodically, and at least annually, prepare a written report providing details of the Regulatory Oversight Committee's review of any regulation rules and in particular any issues or concerns that arose with respect to Significant Changes, and provide the report to the Nasdaq Canada Board promptly, and to the Commission within 30 days of providing it to the Nasdaq Canada Board.

E. Due Process

Due Process Criteria

For any decision made by Nasdaq Canada that affects a participant or, at such future time as Nasdaq Canada may engage in a listings business, an issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, Nasdaq Canada must ensure that: (i) parties are given an opportunity to be heard or make representations, and (ii) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

Nasdaq Canada's requirements relating to access, listing (at such as time as this may be appropriate), exemptions and discipline will be fair and reasonable. For all decisions made by Nasdaq Canada in the administration of the Trading Rules and Policies that affect a Member or applicant for Member, Nasdaq Canada will keep a record of and provide its reasons, and a party adversely affected by a decision or proposed decision of Nasdaq Canada will be given an opportunity to be heard by the Regulatory Oversight Committee. In addition, if the affected party wishes to appeal the decision of the Regulatory Oversight Committee, it has the right to pursue either arbitration (if applicable) or its other rights under securities law, including requesting review of the decision by the Commission.

F. Clearing and Settlement

Clearing and Settlement Criteria

Nasdaq Canada must have appropriate arrangements for the clearing and settlement of trades.

Nasdaq Canada will require all Members to have appropriate clearing arrangements with the Clearing Corporation (currently CDS) in place. Nasdaq Canada will provide a daily file of trades executed on the Exchange to CDS.

G. Systems and Technology

Systems and Technology, and Information Risk Management Criteria

Nasdaq Canada must have appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

Nasdaq Canada will be adopting the current Nasdaq ATS trading platform, which has in place appropriate risk management procedures, including those that handle trading errors, trading halts and circuit breakers. Functionality currently in place to support the Nasdaq ATS trading platform will continue to be available after the Recognition Date.

H. Financial Viability and Reporting

Financial Viability Criteria

Nasdaq Canada must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

Nasdaq Canada currently has, and will maintain, sufficient financial resources for the proper performance of its functions and to meet its responsibilities. On a quarterly basis, Nasdaq Canada will provide the Commission with unaudited financial statements and a calculation of certain liquidity, debt coverage and financial leverage measures as set out in the Recognition Order.

Nasdaq Canada will file with the Commission annual audited financial statements within 90 days after the end of each financial year. In addition, Nasdaq Canada will file with the Commission its financial budget for the year, together with underlying assumptions, as approved by the Nasdaq Canada Board, within 30 days of the commencement of each financial year.

Nasdaq shall, subject to the terms of the Recognition Order, facilitate the allocation of sufficient financial and non-financial resources to ensure Nasdaq Canada and CXCH can carry out their functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

I. Fees

Fees Criteria

(i) All fees imposed by Nasdaq Canada must be reasonable and equitably allocated and consistent with the requirements in Ontario securities laws, and (ii) the process for setting fees must be fair and appropriate, and the fee model transparent.

All fees imposed by Nasdaq Canada will be equitably allocated and will not have the effect of creating unreasonable barriers to access. Nasdaq Canada's process for setting fees will be fair, appropriate and its fees will be fully transparent. In addition, with respect to the execution of an order, Nasdaq Canada will not impose terms that have the effect of discriminating between orders that are routed to Nasdaq Canada from other marketplaces and orders that are entered on Nasdaq Canada.

1. Trading Fees

Trading fees for Nasdaq Canada will be the same as those currently in effect for CXC, CX2 and CXD, respectively, and are available on the Nasdaq ATS website. The fee structure is:

- Membership fees based on the current subscriber fees; and
- Per share fees based on the type and price of the security.

2. Data Fees

The fees charged for data will vary depending on the type of data feed subscribed for and the intended use of such feed. All such fees will be publicly available on the Nasdaq Canada website.

J. Information Sharing and Regulatory Cooperation

Information Sharing and Regulatory Cooperation

Nasdaq Canada must have mechanisms in place to enable it to share information and otherwise cooperate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

Nasdaq Canada will continue the mechanisms already in place at Nasdaq ATS to ensure that it is able to cooperate, by sharing information or otherwise, with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

IV. Conclusion

Nasdaq Canada respectfully submits that, subject to the terms and conditions imposed by the Commission, that Nasdaq Canada meets the criteria for recognition so that recognition will not be contrary to the public interest.

Sincerely,

_____

Nasdaq CXC Limited

Cc: Rene Sorell, McCarthy Tétrault
Cristian O. Blidariu, McCarthy Tétrault

APPENDIX B

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

AND

IN THE MATTER OF
ENSOLEILLEMENT INC. AND NASDAQ CXC LIMITED

AND

IN THE MATTER OF NASDAQ, INC.

ORDER
(Section 21 of the Act)

WHEREAS Ensoleillement Inc. (CXCH) and Nasdaq CXC Limited (Nasdaq Canada) (collectively, the Applicants) have filed an application requesting recognition of CXCH and Nasdaq Canada as exchanges pursuant to section 21 of the Act (Application);

AND WHEREAS at the time of granting this order, CXCH is the sole shareholder of Nasdaq Canada, and Nasdaq, Inc. (Nasdaq) is the sole shareholder of CXCH;

AND WHEREAS Nasdaq Canada operates Nasdaq CXC, Nasdaq CX2 and Nasdaq CXD that are facilities of the exchange that trade Canadian exchange-traded securities;

AND WHEREAS Nasdaq Canada separately provides access to a fixed income trading system, Nasdaq Fixed Income, that facilitates trading in U.S. fixed income securities by Canadian permitted clients;

AND WHEREAS on or about the effective date of this order Nasdaq Canada will continue operations as an exchange under the terms and conditions of this order;

AND WHEREAS the Commission has received certain representations and undertakings from the Applicants in connection with the Application;

AND WHEREAS the Commission considers the proper operation of CXCH and Nasdaq Canada as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of CXCH and Nasdaq Canada be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

AND WHEREAS the Applicants represent that CXCH and Nasdaq Canada satisfy the criteria for recognition as an exchange in Schedule 1 of this order;

AND WHEREAS the Commission has determined that it is in the public interest to recognize each of CXCH and Nasdaq Canada as an exchange pursuant to section 21 of the Act;

AND WHEREAS CXCH, Nasdaq Canada and Nasdaq have agreed to the applicable terms and conditions set out in Schedule 2 to Schedule 4 to the Order;

IT IS ORDERED that:

(a) pursuant to section 21 of the Act, CXCH is recognized as an exchange, and

(b) pursuant to section 21 of the Act, Nasdaq Canada is recognized as an exchange,

provided that the Applicants and Nasdaq comply with the terms and conditions set out in Schedule 2, 3 and Schedule 4 to the Order, as applicable.

Dated this _____ day of _____, 2017.

"●" "●"

SCHEDULE 1
CRITERIA FOR RECOGNITION

PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

1.1 **Compliance with NI 21-101 and NI 23-101**

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

PART 2 GOVERNANCE

2.1 **Governance**

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 **Fitness**

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 **Fees**

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 **Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE 2
TERMS AND CONDITIONS APPLICABLE TO NASDAQ CANADA

1. **Definitions and Interpretation**

(a) For the purposes of this Schedule:

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"Nasdaq Canada dealer" means a dealer that is also a significant shareholder;

"Nasdaq Canada marketplace participant" means a marketplace participant of Nasdaq Canada;

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"Board" means the board of directors of CXCH or Nasdaq Canada, as the context requires;

"criteria for recognition" means all the criteria for recognition set out in Schedule 1 to the Order;

"Competitor" means a person whose consolidated business, operations or disclosed business plans are in competition, to a significant extent, with the trading functions, market data services or other material lines of business of Nasdaq Canada or its affiliated entities;

"dealer" means "investment dealer", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations*;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act;

"marketplace participant" has the meaning ascribed to it in section 1.1 of NI 21-101;

"Nominating Committee" means the committee established by CXCH pursuant to section 28 of Schedule 3;

"officer" has the meaning ascribed to it in subsection 1(1) of the Act;

"Regulatory Oversight Committee" means the committee established by Nasdaq Canada pursuant to section 7 of this Schedule;

"Rule" means a rule, policy, or other similar instrument of Nasdaq Canada;

"significant shareholder" means a person or company that beneficially owns or controls directly more than 5% of any class or series of voting shares of Nasdaq.

"unaudited consolidated financial statements" means financial statements that are prepared in the same manner as audited consolidated financial statements except that they are not audited; and

"unaudited non-consolidated financial statements" means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

(i) they are not audited; and

(ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 Separate Financial Statements.

(b) For the purposes of this Schedule, an individual is independent if the individual is "independent" within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

(i) is a partner, officer, director or employee of a Nasdaq Canada marketplace participant, or of an affiliated entity of a Nasdaq Canada marketplace participant, who is responsible for or is actively engaged in the day- to-day operations or activities of that Nasdaq Canada marketplace participant;

(ii) is an officer or an employee of CXCH or any of its affiliated entities;

(iii) is a partner, officer or employee of Nasdaq, Inc. or an associate of that partner, officer or employee;

(iv) is a director of Nasdaq or an associate of that director;

(v) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH;

(vi) is a director of a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Nasdaq; or

(vii) has any relationship with Nasdaq or a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH, that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CXCH or Nasdaq Canada.

(c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(iv) and (b)(vi) provided that:

(i) the individual being considered does not have, and has not had, any relationship with Nasdaq, Inc. that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Nasdaq Canada or CXCH;

(ii) Nasdaq Canada publicly discloses the use of the waiver with reasons why the particular candidate was selected;

(iii) Nasdaq Canada provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and

(iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. **Public Interest Responsibilities**

(a) Nasdaq Canada shall conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board shall expressly include regulatory and public interest responsibilities of Nasdaq Canada.

3. **Share Ownership Restrictions**

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10% or more than 50% respectively of any class or series of voting shares of Nasdaq Canada.

(b) The articles of Nasdaq Canada shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

4. **Recognition Criteria**

Nasdaq Canada shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

5. **Fitness**

In order to ensure that Nasdaq Canada operates with integrity and in the public interest, Nasdaq Canada will take reasonable steps to ensure that each person or company that is a director or officer of Nasdaq Canada, is a fit and proper person and the past conduct of each person or company that is a director or officer of Nasdaq Canada affords reasonable grounds for belief that the business of Nasdaq Canada will be conducted with integrity. Each director and officer of Nasdaq Canada must be a fit and proper person.

6. **Board of Directors**

(a) Nasdaq Canada shall ensure that at least 50% of its Board members are independent.

(b) The Chair of the Board shall be independent.

(c) In the event that Nasdaq Canada fails to meet the requirement in paragraph (a) of this section, it shall immediately advise the Commission and take appropriate measures to promptly remedy such failure.

(d) Nasdaq Canada shall ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, at least 50% of whom shall be independent directors.

7. **Regulatory Oversight Committee**

(a) Nasdaq Canada shall establish and maintain a Regulatory Oversight Committee that, at a minimum:

(i) is made up of at least three directors, a majority of whom shall be independent;

(ii) reviews and decides, or makes recommendations to the Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;

(iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:

(A) ownership interests in CXCH by any Nasdaq Canada marketplace participant with representation on the Board of CXCH or the Board of Nasdaq Canada,

(B) significant changes in ownership of Nasdaq Canada and CXCH, and

(C) the profit-making objective and the public interest responsibilities of Nasdaq Canada, including general oversight of the management of the regulatory and public interest responsibilities of Nasdaq Canada.

(iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Nasdaq Canada and CXCH, including those that are required to be established pursuant to the Schedules of the Order;

(v) monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of conflicts of interest by Nasdaq Canada and CXCH;

(vi) reviews regularly, and at least annually, the effectiveness of the policies and procedures regarding conflicts of interest;

(vii) annually prepares a written report examining the avoidance and management of conflicts of interest, the mechanisms used and the effectiveness of those mechanisms and provides the report to the Board promptly, and to the Commission within 30 days of providing it to its Board;

(viii) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting;

(ix) has a requirement that the quorum consist of a majority of the Regulatory Oversight Committee members, a majority of whom shall be independent.

(b) The mandate of the Regulatory Oversight Committee shall be publicly available on the website of Nasdaq Canada.

(c) The Regulatory Oversight Committee shall provide to the Commission meeting materials provided to the Regulatory Oversight Committee members in conjunction with each meeting, within 30 days after any meeting it held, and will include a list of the matters considered and a detailed summary of the Regulatory Oversight Committee's considerations, how those matters were addressed and any other information required by the Commission.

(d) The Regulatory Oversight Committee shall provide such information as may be required by the Commission from time to time.

8. **Conflicts of Interest and Confidentiality Procedures**

(a) Nasdaq Canada shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the operation of the marketplace or the services it provides including, but not limited to, the following:

(A) conflicts of interest or potential conflicts of interest that arise from the involvement of any partner, director, officer or employee of a significant shareholder in the management or oversight of the exchange operations or regulation functions of Nasdaq Canada and the services or products it provides;

(B) conflicts of interest or potential conflicts of interest that arise from any interactions between Nasdaq Canada and a significant shareholder where Nasdaq Canada may be exercising discretion that involves or affects the significant shareholder either directly or indirectly, and

(C) conflicts of interest or potential conflicts of interest that arise between the regulation functions and the business activities of Nasdaq Canada; and

(ii) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Nasdaq Canada:

(A) be kept separate and confidential from the business or other operations of the significant shareholder and its affiliated entities, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to the significant shareholder or its affiliated entities.

(b) The policies established in accordance with paragraph 8(a) shall be made publicly available on the website of Nasdaq Canada.

(c) Nasdaq Canada shall regularly review compliance with the policies and procedures established in accordance with paragraph 8(a) and shall document each review, and any deficiencies, and how those deficiencies were remedied. A report detailing review(s) conducted shall be provided to the Commission on an annual basis.

9. **Access**

Nasdaq Canada's requirements shall provide access to the facilities of Nasdaq Canada only to properly registered investment dealers that are members of IIROC and satisfy reasonable access requirements established by Nasdaq Canada, except with respect to access to Nasdaq Fixed Income by Canadian permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

10. **Regulation of Nasdaq Canada Marketplace Participants**

(a) Nasdaq Canada shall establish, maintain and require compliance with policies and procedures that effectively monitor and enforce the Rules against Nasdaq Canada marketplace participants, either directly or indirectly through a regulation services provider.

(b) Nasdaq Canada has retained and shall continue to retain IIROC as a regulation services provider to provide, as agent for Nasdaq Canada, certain regulation services that have been approved by the Commission. Nasdaq Canada shall obtain approval of the Commission before amending the listed services provided by IIROC. Nasdaq Canada shall annually provide the Commission with a list of the regulation functions performed by Nasdaq Canada and the regulation functions performed by IIROC.

(c) Nasdaq Canada shall perform all other regulation functions not performed by IIROC, and shall maintain adequate staffing, systems and other resources in support of those functions. Nasdaq Canada shall obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Nasdaq Canada.

(d) Nasdaq Canada shall notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

11. **Rules, Rulemaking and Form 21-101F1**

Nasdaq Canada shall comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto, as set out in Schedule 5, as amended from time to time.

12. **Due Process**

(a) Nasdaq Canada shall ensure that the requirements of Nasdaq Canada relating to access to the trading facilities of Nasdaq Canada, the imposition of limitations or conditions on access, and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions of appeals.

13. **Fees, Fee Models And Incentives**

(a) Nasdaq Canada shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon:

(A) the requirement to have Nasdaq Canada be set as the default or first marketplace a marketplace participant routes orders to, or

(B) the router of Nasdaq Canada being used as the marketplace participant's primary order router.

(b) Except with the prior approval of the Commission, Nasdaq Canada shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by Nasdaq Canada or Nasdaq or any affiliated entity, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.

(c) Except with the prior approval of the Commission, Nasdaq Canada shall not require another person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service.

(d) If the Commission considers that it would be in the public interest, the Commission may require Nasdaq Canada to submit for approval by the Commission a fee, fee model or incentive that has previously been filed with and/or approved by the Commission.

(e) Where the Commission decides not to approve the fee, fee model or incentive submitted under paragraph (d), any previous approval for the fee, fee model or incentive shall be revoked, if applicable, and Nasdaq Canada shall no longer be permitted to offer the fee, fee model or incentive.

(f) Any fee, fee model or incentive, or amendment thereto, shall be filed in accordance with the Rule and Form 21-101F1 Filing Protocol attached as Schedule 5.

14. **Order Routing**

Nasdaq Canada shall not support, encourage or incent, either through fee incentives or otherwise, Nasdaq Canada marketplace participants, Nasdaq affiliated entities or significant shareholders to coordinate the routing of their orders to Nasdaq Canada.

15. **Financial Reporting**

(a) Within 90 days of its financial year end, Nasdaq Canada shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.

(b) Within 60 days of each quarter end, Nasdaq Canada shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.

(c) Nasdaq Canada shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

16. **Financial Viability Monitoring And Reporting**

(a) Nasdaq Canada shall calculate the following financial ratios monthly:

(i) a current ratio, being the ratio of current assets to current liabilities;

(ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and

(iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Nasdaq Canada.

(b) Nasdaq Canada shall report quarterly in writing to the Commission, along with the financial statements required to be delivered pursuant to this Schedule, the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (a).

(c) If Nasdaq Canada determines that it does not have, or anticipates that, in the next twelve months, it will not have:

(i) a current ratio of greater than or equal to 1.1/1,

(ii) a debt to cash flow ratio of less than or equal to 4.0/1, or

(iii) a financial leverage ratio of less than or equal to 4.0/1,

it will immediately notify Commission staff of the above ratio(s) that it is not maintaining, the reasons, along with an estimate of the length of time before the ratio(s) will be met.

(d) Upon receipt of a notification made by Nasdaq Canada under paragraph (c), the Commission may, as determined appropriate, impose any of the terms and conditions set out in paragraph (e) below.

(e) If Nasdaq Canada's current ratio, debt to cash flow ratio or financial leverage ratio falls below the levels outlined in subparagraphs 16(c)(i), 16(c)(ii) and 16(c)(iii) above for a period of more than three months, Nasdaq Canada will:

(i) immediately deliver a letter advising the Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation;

(ii) deliver to Commission staff, on a monthly basis, within 30 days of the end of each month:

(A) unaudited monthly financial statements and a status update on any pending capital raising transaction(s) including the amount, terms and name(s) of individuals/entities that have committed to providing funding and their commitment,

(B) a comparison of the monthly revenues and expenses incurred by Nasdaq Canada against the projected monthly revenues and expenses included in Nasdaq Canada's most recently updated budget for that fiscal year,

(C) for each revenue item whose actual amount was significantly lower than its projected amount, and for each expense item whose actual amount was significantly higher than its projected amount, the reasons for the variance, and

(D) a calculation of the current ratio, debt to cash flow ratio and financial leverage ratio for the month;

(iii) prior to making any type of payment to any director, officer, affiliated entity or shareholder that is in excess of the amount included in the most recent annual financial budget delivered to Commission staff, demonstrate to the satisfaction of the Commission staff that it will have sufficient financial resources to continue its operations after the payment; and

(iv) adhere to any additional terms and conditions imposed by the Commission or its staff, as determined appropriate, on Nasdaq Canada,

until such time as Nasdaq Canada has maintained each of its current ratio, debt to cash flow ratio and financial leverage ratio at the levels set out in subparagraphs 16(c)(i), 16(c)(ii) and 16(c)(iii) for a period of at least 6 consecutive months.

17. **Additional Information**

(a) Nasdaq Canada shall provide the Commission with:

(i) the information set out in Appendix A to this Schedule, as amended from time to time; and

(ii) any information required to be provided by Nasdaq Canada to IIROC, including all order and trade information, as required by the Commission.

18. **Compliance**

Nasdaq Canada shall carry out its activities as an exchange recognized under section 21 of the Act and in compliance with Ontario securities law.

19. **Provision Of Information**

(a) Nasdaq Canada shall, and shall cause its affiliated entities, to promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control of Nasdaq Canada or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(i) data, information and analyses relating to all of its or their businesses; and

(ii) data, information and analyses of third parties in its or their custody or control.

(b) Nasdaq Canada shall share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

20. **Compliance With Terms And Conditions**

(a) Nasdaq Canada shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within one year of the effective date of its recognition as an exchange pursuant to

this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance;

(iii) the names and titles of employees who have oversight of compliance.

(b) If Nasdaq Canada or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Nasdaq Canada under the Schedules to the Order, such person shall, within five business days after becoming aware of the breach or possible breach (or within two business days in the case of a breach or possible breach of the financial ratios required by section 16(c)), notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Regulatory Oversight Committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Regulatory Oversight Committee shall, within five business days after being notified of the breach or possible breach (or within two business days in the case of a breach or possible breach of the financial ratios required by section 16(c)), notify the Commission and confirm that the breach or possible breach is under investigation as required by section 20(d).

(d) The Regulatory Oversight Committee shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 20(b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Nasdaq Canada under the Schedules to the Order, the Regulatory Oversight Committee shall, within five business days of such determination (or within two business days in the case of a determination involving a breach or possible breach of the financial ratios required by section 16(c)), notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

21. **Listings**

Except with the prior approval of the Commission, no securities shall be listed on Nasdaq Canada.

APPENDIX A
ADDITIONAL REPORTING OBLIGATIONS

1. **Ad Hoc**

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.

(b) Any plans by Nasdaq Canada to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.

(c) Immediate notification of:

(i) the appointment of any new director or officer of Nasdaq Canada, including a description of the individual's employment history; and

(ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of Nasdaq Canada, including a statement of the reasons for the resignation.

(d) Any minutes of the meetings of Board and Board committees of Nasdaq Canada, promptly after their approval.

(e) Immediate notification if Nasdaq Canada:

(i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(f) Any strategic plan for Nasdaq Canada, within 30 days of approval by the Board.

(g) Any filings made by Nasdaq Canada with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.

(h) Copies of all notices, bulletins and similar forms of communication that Nasdaq Canada sends to the Nasdaq Canada marketplace participants.

(i) Prompt notification of any application for exemption or waiver from Nasdaq Canada requirements received from a significant shareholder or any of its affiliated entities.

2. **Quarterly Reporting**

(a) A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of Nasdaq Canada, if such reports are produced.

(b) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Nasdaq Canada marketplace participant, which shall include the following information:

(i) the name of the Nasdaq Canada marketplace participant;

(ii) the type of exemption or waiver granted during the period;

(iii) the date of the exemption or waiver; and

(iv) a description of the recognized exchange's reason for the decision to grant the exemption or waiver.

(c) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Nasdaq Canada and how such conflicts were addressed.

3. **Annual Reporting**

At least annually, an assessment of the risks, including business risks, facing Nasdaq Canada and the plan for addressing such risks.

SCHEDULE 3
TERMS AND CONDITIONS APPLICABLE TO CXCH

22. **Definitions and Interpretation**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2. In addition:

23. **Public Interest Responsibilities**

(a) CXCH shall conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board shall expressly include CXCH's regulatory and public interest responsibilities.

24. **Share Ownership Restrictions**

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10% or more than 50% respectively of any class or series of voting shares of CXCH.

(b) The articles of CXCH shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

25. **Recognition Criteria**

CXCH shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

26. **Fitness**

In order to ensure that CXCH and Nasdaq Canada operate with integrity and in the public interest, CXCH will take reasonable steps to ensure that each person or company that is a director or officer of CXCH is a fit and proper person and the past conduct of each person or company that is a director or officer of CXCH affords reasonable grounds for belief that the business of CXCH and Nasdaq Canada will be conducted with integrity. Each director and officer of CXCH must be a fit and proper person.

27. **Board of Directors**

(a) CXCH shall ensure that at least 50% of its Board members are independent.

(b) The Chair of the Board shall be independent.

(c) In the event that CXCH fails to meet the requirement in paragraph (a) of this section, it shall immediately advise the Commission and take appropriate measures to remedy such failure.

(d) CXCH shall ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, at least 50% of whom shall be independent.

28. **Nominating Committee**

CXCH shall maintain a Nominating Committee that, at a minimum:

(a) is made up of at least three directors, a majority of whom shall be independent, and has an independent Chair;

(b) confirms the status of a nominee to the Board as independent before the name of the individual is submitted to shareholders as a nominee for election to the Board;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of a majority of the Nominating Committee members, a majority of whom shall be independent.

29. **Conflicts of Interest and Confidentiality Procedures**

(a) CXCH shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, perceived or real, arising from its ownership interest in Nasdaq Canada, and

(ii) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of CXCH or Nasdaq through that individual's involvement in the management or oversight of the marketplace operations or regulation functions of Nasdaq Canada:

(A) be kept separate and confidential from the business or other operations of the partner, director, officer or employee of CXCH or Nasdaq, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to the partner, director, officer or employee of CXCH or Nasdaq or Nasdaq's affiliated entities,

provided that nothing in this section 29(a)(ii) shall be construed to limit CXCH or Nasdaq Canada from providing to Nasdaq necessary information. CXCH shall cause Nasdaq Canada to mandate that each Nasdaq Canada dealer and affiliated entity of a Nasdaq Canada dealer carrying on a securities business in Canada in reliance on a securities registration or exemption therefrom disclose its relationship with Nasdaq Canada to clients whose orders might be, and clients whose orders have been, routed to Nasdaq Canada.

(b) CXCH shall regularly review compliance with the policies and procedures established in accordance with section 29(a) and shall document each review and any deficiencies and how those deficiencies were remedied. A report detailing the review(s) conducted shall be provided to the Commission on an annual basis.

(c) The policies established in accordance with section 29(a) shall be made publicly available on the website of CXCH or Nasdaq Canada.

30. **Allocation of Resources**

(a) CXCH shall, for so long as Nasdaq Canada carries on business as an exchange, allocate sufficient financial and other resources to Nasdaq Canada to ensure that Nasdaq Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

(b) CXCH shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial and other resources, as required under paragraph (a), to Nasdaq Canada.

31. **Fees, Fee Models and Incentives**

(a) CXCH shall ensure that its affiliated entities, including Nasdaq Canada, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person, significant shareholder or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by the affiliated entity; or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies,

unless prior approval has been granted by the Commission.

(b) CXCH shall ensure that Nasdaq Canada does not require a person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service unless prior approval has been granted by the Commission.

(c) CXCH shall ensure that Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders do not require another person, significant shareholder or company to obtain products or services from Nasdaq Canada as a condition of the affiliated entity supplying or continuing to supply a product or service.

32. **Order Routing**

CXCH shall not support, encourage or incent, either through fee incentives or otherwise, Nasdaq Canada marketplace participants, Nasdaq affiliated entities or significant shareholders to coordinate the routing of their order to Nasdaq Canada.

33. **Financial Reporting**

(a) Within 90 days of its financial year end, CXCH shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.

(b) Within 60 days of each quarter end, CXCH shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.

(c) CXCH shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

34. **Prior Commission Approval**

CXCH shall obtain prior Commission approval of any changes to any agreement between CXCH and its significant shareholders.

35. **Reporting Requirements**

CXCH shall provide the Commission with the information set out in Appendix B to this Schedule, as amended from time to time.

36. **Compliance With Terms and Conditions**

(a) CXCH shall certify in writing to the Commission, in a certificate signed by its CEO and either its Chairman of the Board, general counsel or chief compliance officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance; and

(iii) the names and titles of employees who have oversight of compliance.

(b) If CXCH or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to CXCH under the Schedules to the Order, such person shall, within five business days after becoming aware of the breach or possible breach, notify the Board or committee designated by the Board and approved by the Commission of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Board or committee designated by the Board details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Board or committee designated by the Board shall, within five business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by section 36(d).

(d) The Board or committee designated by the Board shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 36(b). Once the Board or committee designated by the Board has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to CXCH under the Schedules to the Order, the Board or committee designated by the Board shall, within five business days of such determination, notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX B
ADDITIONAL REPORTING OBLIGATIONS

1. **Ad Hoc**

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.

(b) Any plans by CXCH to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.

(c) Immediate notification of:

(i) the appointment of any new director or officer of CXCH, including a description of the individual's employment history; and

(ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of CXCH, including a statement of the reasons for the resignation.

(d) Any minutes of the meetings of Board and Board committees of CXCH, promptly after their approval.

(e) Immediate notification if CXCH:

(i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(f) Immediate notification if Nasdaq becomes, or it is notified in writing that it will become, the subject of a criminal, administrative or regulatory proceeding.

(g) Any strategic plan for CXCH, within 30 days of approval by the Board.

(h) Any filings made by CXCH with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.

2. **Quarterly Reporting**

A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of CXCH and Nasdaq Canada, if such reports are produced.

3. **Annual Reporting**

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing CXCH and Nasdaq Canada and the plan for addressing such risks.

SCHEDULE 4
TERMS AND CONDITIONS APPLICABLE TO NASDAQ AND SIGNIFICANT SHAREHOLDERS

37. **Definitions and Interpretation**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

38. **Public Interest Responsibilities**

Nasdaq shall ensure that Nasdaq Canada and CXCH conduct the business and operations of recognized exchanges in a manner that is consistent with the public interest.

39. **Fitness**

Nasdaq shall take reasonable steps to ensure that each director and officer of Nasdaq Canada and CXCH is a fit and proper person. As part of those steps, Nasdaq shall consider whether the past conduct of each director or officer affords reasonable grounds for belief that the business of Nasdaq Canada and CXCH will be conducted with integrity and in a manner that is consistent with the public interest responsibilities of Nasdaq Canada and CXCH.

40. **Conflicts of Interest and Confidentiality Procedures**

(a) Nasdaq shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the involvement of a nominee of Nasdaq or a significant shareholder of Nasdaq on the Board of CXCH or Nasdaq Canada in the management or oversight of the marketplace operations or regulation functions of Nasdaq Canada, and

(ii) require that confidential information regarding marketplace operations or regulation functions, or regarding a Nasdaq Canada marketplace participant that is obtained by such nominee on the Board of Nasdaq Canada or CXCH:

(A) be kept separate and confidential from the business or other operations of such significant shareholder, except with respect to where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to Nasdaq, its significant shareholder or affiliated entities,

provided that nothing in this section 40(a)(ii) shall be construed to limit CXCH or Nasdaq Canada from providing to Nasdaq necessary information.

(b) Nasdaq shall establish, maintain and require compliance, or ensure that its affiliated entities that are dealers, if any, establish, maintain or require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from its ownership interest in CXCH, and indirectly in Nasdaq Canada, including, but not limited to, conflicts of interest or potential conflicts of interest that arise from any interactions between either of Nasdaq Canada and Nasdaq, Nasdaq Canada or significant shareholders or between Nasdaq Canada and the affiliated entities of Nasdaq that are dealer where Nasdaq Canada may be exercising discretion in the application of its Rules that involves or affects Nasdaq or its affiliated entities either directly and indirectly.

(c) Nasdaq shall regularly review compliance with the policies and procedures established in accordance with paragraphs (a) and (b), as applicable, and shall document each review of compliance.

41. **Allocation of Resources**

(a) To ensure Nasdaq Canada and CXCH can carry out their functions in a manner that is consistent with the public interest and in compliance with Ontario securities law, Nasdaq shall, for so long as Nasdaq Canada and CXCH carry on business as exchanges, facilitate the allocation of sufficient financial and non-financial resources for the operations of these exchanges.

(b) Nasdaq shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial or other resources to Nasdaq Canada or CXCH, as required under paragraph (a).

42. **Routing and Other Operational Decisions**

(a) Nasdaq shall not enter into, and shall not cause any of its affiliated entities that are dealers to enter into, any arrangements, undertakings, commitments, understandings or agreements with CXCH, Nasdaq Canada, or any marketplace participant with respect to coordination of the routing of orders to Nasdaq Canada except with respect to activities that are permitted by the requirements of Nasdaq Canada or IIROC.

(b) Each significant shareholder shall not enter into, and shall not cause any of its affiliated entities that are dealers to enter into, any arrangements, undertakings, commitments, understandings or agreements with Nasdaq, CXCH, Nasdaq Canada or any marketplace participant with respect to coordination of the routing of orders to Nasdaq Canada, except with respect to activities that are permitted by the requirements of Nasdaq Canada or IIROC.

(c) For greater certainty, paragraph (a) is not intended to prohibit any temporary agreements or coordination between Nasdaq or affiliated entities of Nasdaq that is a dealer and any other shareholder or affiliated entities of a shareholder that is a dealer or any other person in the event of any failure, malfunction or material delay of the systems or equipment of a marketplace if and to the extent reasonably necessary to protect the integrity and liquidity of capital markets, provided that prior notice of the temporary agreement or coordination is provided to the Commission.

(d) Nasdaq shall not cause any of its affiliated entities to offer or pay any benefit, financial or otherwise to its traders that would incent such traders to direct their orders to Nasdaq Canada in preference to any other marketplace.

(e) No significant shareholder shall cause any of its affiliated entities to offer or pay any benefit, financial or otherwise, to its traders, if applicable, that would incent such traders to direct their orders to Nasdaq Canada in preference to any other marketplace.

(f) Significant shareholders shall provide a written directive to their traders, if applicable, that they shall not cause routing decisions to be made based on Nasdaq's ownership interest in CXCH and Nasdaq Canada.

43. **Disclosure To Clients**

(a) A significant shareholder shall ensure that any affiliated entity that is a Nasdaq Canada marketplace participant shall disclose its relationship with Nasdaq Canada and CXCH and its affiliated entities to clients whose orders might be, and clients whose orders have been, routed to Nasdaq Canada.

44. **Conditional Provision of Products or Services**

(a) A Nasdaq Canada dealer shall not require another person or company to obtain products or services from Nasdaq Canada or any of its affiliated entities as a condition of the Nasdaq Canada dealer supplying or continuing to supply a product or service.

(b) Nasdaq shall not cause its dealer affiliated entities to require another person or company to obtain products or services from Nasdaq Canada or any of its affiliated entities as a condition of the significant shareholder supplying or continuing to supply a product or service.

45. **Notification of New Dealer Affiliated Entities**

Nasdaq shall promptly notify the Commission if it creates or acquires an affiliated entity that is a dealer.

46. **Provision of Information**

Nasdaq shall promptly provide to the Commission, on request, any and all data, information, and analyses in its custody or control related to the business and operations of Nasdaq Canada or CXCH without limitations, redactions, restrictions, or conditions.

47. **Certifications**

(a) Nasdaq shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of CXCH and Nasdaq Canada as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission that, based on their knowledge, having exercised reasonable diligence, Nasdaq is in compliance with the terms and conditions applicable to it in this Schedule and describe the steps taken to require compliance.

(b) Nasdaq shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of CXCH and Nasdaq Canada as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission, that, based on their knowledge, having exercised reasonable diligence:

(i) Nasdaq is not acting jointly or in concert with any other significant shareholder, or any affiliated entity or associated thereof, with respect to any voting shares of CXCH;

(ii) despite subparagraph (b)(i), Nasdaq may act jointly or in concert with any other shareholders under arrangements to nominate a director to the board of CXCH or Nasdaq Canada;

(iii) Nasdaq has no agreement, commitment or understanding, written or otherwise, with any other significant shareholder, or any affiliated entity or associate thereof, with respect to the acquisition or disposition of voting shares of CXCH, the exercise of any voting rights attached to any voting shares of CXCH or the coordination of decisions or voting by its nominee director of CXCH (if any) with the decisions or voting by the nominee of any other significant shareholder, other than what is included in the CXCH shareholders' agreement; and

(iv) since the last certification, Nasdaq has not acted jointly or in concert with any other significant shareholder, or any affiliated entity or associate thereof, with respect to any voting shares of CXCH, including with respect to the acquisition or disposition of any voting shares of CXCH or the exercise of any voting rights attached to any voting shares of CXCH.

48. **Compliance with Terms and Conditions**

(a) If Nasdaq or its partners, officers, directors or employees becomes aware that there has been a breach or possible breach of any of the terms and conditions applicable to it under this schedule of the Order, such person shall, promptly after becoming aware of the breach or possible breach, notify the Designated Recipient (as defined below) of the breach or possible breach. The partner, director, officer or employee of Nasdaq shall provide to the Designated Recipient details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(b) "Designated Recipient" means the person or body that Nasdaq designates as having the responsibilities described in this section, which may be its Board, audit committee, governance committee (or chairperson of any of the foregoing), General Counsel, Chief Compliance Officer, an ombudsperson specifically designated by Nasdaq to review compliance with corporate policies under Nasdaq's established whistle-blowing procedures, or, with the approval of the Commission, such other person or committee designated by Nasdaq .

(c) The Designated Recipient shall promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph (a) and shall promptly provide a report to the Commission and to Nasdaq Canada after concluding such investigation if the Designated Recipient determines that a breach has occurred or that there is an impending breach. Any such report to the Commission by the Designated Recipient shall include details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

49. **Expiry of Terms and Conditions**

The obligations of Nasdaq to comply with the terms and conditions of this Schedule expire on the later of:

(a) the date on which, for a consecutive six month period, Nasdaq owns less than 10% of the number of voting shares of CXCH that it had beneficially owned or exercised control or direction over at the launch of the recognized exchange, and

(b) the date on which the nominee or partner, officer, director or employee of Nasdaq has ceased to be a director on the board of CXCH or Nasdaq Canada.

SCHEDULE 5
PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

50. **Purpose**

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 51 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

51. **Definitions**

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(f) *Rule* includes a rule, policy and other similar instrument of the Exchange.

(g) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(h) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or

(ii) in Staff's view, has an impact on the Exchange's market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

52. **Scope**

(a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

53. **Board Approval**

(a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

54. **Waiving or Varying the Protocol**

(a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

55. **Materials to be Filed and Timelines**

(a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:

(i) a cover letter that, together with the notice for publication filed under paragraph 55(a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;

(E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;

(F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;

(G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;

(H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;

(I) a discussion of any alternatives considered; and

(J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 55(a)(i) above, except that the following may be excluded from the notice:

(A) supporting analysis required under subparagraph 55(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;

(B) the information on systemic risk required under subparagraph 55(a)(i)(E) above;

(C) the information on the internal governance processes followed required under subparagraph 55(a)(i)(G) above;

(D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 55(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and

(E) the discussion of alternatives required under subparagraph 55(a)(i)(I) above.

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will file the materials set out in subsection 55(a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will file with Staff the following materials:

(i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will file the materials set out in subsection 55(d) by the earlier of

(i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

56. **Review by Staff of notice and materials to be published for comment**

(a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 55(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a re-filing of the notice and materials.

(b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 57.

57. **Publication of a Public Interest Rule or Significant Change Subject to Public Comment**

(a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 55(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

58. **Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within

(i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and

(ii) seven business days from the date of filing of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 58(a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 55 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 58(g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 58(f),

(i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;

(ii) if comments received through the public comment process raise significant public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

59. **Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

(a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the Securities Act (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

60. **Effective Date of a Fee Change, Public Interest Rule or Significant Change**

(a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website; and

(iii) the date designated by the Exchange.

61. **Significant Revisions and Republication**

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 61(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

62. **Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.

(c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 58(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

63. **Effective Date of a Housekeeping Rule or Housekeeping Change**

(a) Subject to subsections 63(c) and 63(d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 63(e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections 63(c) and 63(d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 55(c) and 55(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

64. **Immediate Implementation of a Public Interest Rule or Significant Change**

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 64(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 55.

65. **Review of a Public Interest Rule or Significant Change Implemented Immediately**

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 64 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 58, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

66. **Application of Section 21 of the *Securities Act* (Ontario)**

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

13.2.2 TSX – Housekeeping Amendments to Form 5 – Dividend/Distribution Declaration – Notice of Housekeeping Rule Amendments to the TSX Company Manual

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the "**Amendments**") to Form 5 – *Dividend/Distribution Declaration* ("**Form 5**") of the TSX Company Manual (the "**Manual**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

TSX is proposing to make changes to the Form 5 to clarify the information required of issuers when completing the Form 5 and to provide TSX with the information it requires to process the Form 5 efficiently. These changes will reduce the need for issuers to re-file the Form 5 with TSX when they either have not completed it correctly or have not provided all information TSX requires.

Summary of the Non-Public Interest Amendments

Under the current Form 5, an issuer is required to provide the following information when submitting a Form 5 to TSX:

- security symbol;
- amount per share;
- currency of the dividend;
- declaration date;
- record date of the dividend;
- payable date of the dividend;
- indication whether the amount per share exceeds 25% of the share value as at the declaration date; and
- other details, as applicable.

TSX is proposing to amend the Form 5 to require issuers to provide TSX with the following information:

- security symbol;
- the type of dividend/distribution (i.e., regular, occasional, special/extra, omitted, deferred or resumption);
- frequency and type of dividend to be resumed (for resumption dividends);
- decision date and first affected payment date (for omitted and deferred dividends);
- initial affected period (for deferred dividends);
- declaration date;
- the payment date;
- the record date for the dividend/distribution;
- whether such dividend/distribution is the first time it is being declared on the security with TSX;

- where a dividend is a change from a previous regular dividend, specifying the amount per share changed from the previous declaration;
- whether the dividend/distribution amount is estimated, final or unknown;
- the cash amount per security;
- currency of dividend;
- Canadian Dollar equivalent per security;
- whether there are Due Bills attached to the dividend;
- whether there is a security portion as part of the dividend, and if so, the applicable details;
- whether the security is also listed on certain other exchanges (i.e. New York Stock Exchange, NYSE MKT, or NASDAQ);
- whether TSX may notify the market of the dividend immediately, and if not, the reasons for the delay, and the date and time when TSX may publish the dividend bulletin;
- additional details, as applicable; and
- contact information of officer.

Effective Date

The Amendments become effective on November 4, 2017.

13.3 Clearing Agencies

13.3.1 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – Application to Vary the Recognition Order – Request for Comment

REQUEST FOR COMMENT

APPLICATION TO VARY THE RECOGNITION ORDER FOR THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED AND CDS CLEARING AND DEPOSITORY SERVICES INC.

A. Background

The Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, as varied and restated, pursuant to section 21.2 of the Securities Act (Ontario) (Act) continuing the recognition of The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (collectively, **CDS**) as clearing agencies (**Recognition Order**).

CDS has filed an application (**Application**) with the Commission requesting that an order be granted varying the definition of an "independent director" in the Recognition Order (**Draft Order**) pursuant to section 144 of the Act for the limited purpose of permitting the same individuals to be considered "independent" for the boards of directors (**Boards**) of CDS and the Canadian Derivatives Clearing Corporation (**CDCC**), an affiliate of CDS. This would have the effect of enabling CDS and CDCC to have a mirror Board and, consequently, mirror Board committees.

B. Draft Variation Order

The Draft Order would vary the independence definition in section 4.3(a) of Schedule "B" of the Recognition Order to provide that notwithstanding paragraphs 4.3(a) (ii), (iii) and (iv) of such definition, a director of CDCC is not considered to be non-independent solely on the ground that he or she is a director, or in the case of the chair of the Board only, an officer, of CDCC, or in the case of the chair of the Board only, an officer of CDS[1].

Subject to comments received, staff propose to recommend to the Commission that it grant CDS an order in the form of the proposed Draft Order attached at Appendix A.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on the Application and Draft Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **November 11, 2017** addressed to the attention of the Secretary to the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: comments@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

Aaron Ferguson
Manager, Market Regulation
Tel: 416-593-3676
aferguson@osc.gov.on.ca

Emily Sutlic
Senior Legal Counsel, Market Regulation
Tel: 416-593-2362
esutlic@osc.gov.on.ca

[1] CDS is defined as a recognized clearing agency in the Recognition Order.

APPENDIX "A"

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

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

VARIATION ORDER (Section 144 of the Act)

WHEREAS the Ontario Securities Commissions (**Commission**) issued an order dated July 4, 2012, as varied and restated on December 21, 2012 and as varied on December 7, 2012, May 1, 2013, June 25, 2013, June 24, 2014, January 27, 2015, March 27, 2015 and December 20, 2016, pursuant to section 21.2 of the Act continuing the recognition of The Canadian Depository for Securities Limited (**CDS Ltd.**) and CDS Clearing and Depository Services Inc. (together with CDS Ltd., **CDS**) as clearing agencies (the **Clearing Agency Recognition Order**);

AND WHEREAS CDS has filed an application (**Application**) with the Commission to vary the Clearing Agency Recognition Order pursuant to section 144 of the Act to replace the definition of "independent" in section 4.3(a) of Schedule "B" of the Clearing Agency Recognition Order (the **Independence Definition**) for the limited purpose of permitting the same individuals to be considered "independent" for the boards of directors of both CDS and the Canadian Derivatives Clearing Association (**CDCC**);

AND WHEREAS the Application requests that the Commission vary the Independence Definition to provide that notwithstanding paragraphs (ii), (iii) and (iv) of such definition, a director of CDCC is not considered to be non-independent solely on the ground that he or she is (v) a director, or in the case of the chair of the board of directors only, an officer, of CDCC, or (vi) in the case of the chair of the board of directors only, an officer of CDS, a recognized clearing agency;

AND WHEREAS the Commission has determined based on the Application and representations made by CDS that it is not prejudicial to the public interest to vary the Clearing Agency Recognition Order to replace the Independence Definition;

IT IS HEREBY ORDERED that, pursuant to section 144 of the Act, section 4.3(a) of Schedule "B" of the Clearing Agency Recognition Order is deleted and replaced with the following:

(a) a director is independent, if the director is not:

(i) an associate, partner, director, officer or employee of a significant Maple shareholder;

(ii) an associate, partner, director, officer or employee of a Participant of the recognized clearing agency or such Participant's affiliated entities or an associate of such director, partner, officer or employee; or

(iii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliated entities or an associate of such partner, director, officer or employee, or

(iv) an officer or employee of the recognized clearing agency or its affiliated entities or an associate of such officer or employee,

notwithstanding paragraphs (ii), (iii) and (iv) above:

(v) a director of the Canadian Derivatives Clearing Corporation (**CDCC**) is not considered to be non-independent solely on the ground that he or she is a director, or in the case of the chair of the board of directors only, an officer, of CDCC; and

(vi) the chair of the board of directors of the recognized clearing agency is not considered non-independent solely on the ground that he or she is an officer of the recognized clearing agency; and

DATED at Toronto this _____ day of _____, 2017.

_____

_____

[Editor's Note: CDS' application for an order varying the recognition order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. follows on separately numbered pages. Bulletin pagination resumes with the index for this issue.]

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August 14, 2017

VIA OSC ELECTRONIC PORTAL

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

Re: Application for an order varying the recognition order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.

The Canadian Depository for Securities Limited ("**CDS Limited**") and CDS Clearing and Depository Services Inc. ("**CDS Clearing**", and collectively with CDS Limited, "**CDS**") are hereby applying to the Ontario Securities Commission ("**OSC**") for an order varying the CDS recognition order. The variation order would revise the definition of an "independent" director to enable an individual to be an independent director of CDS, notwithstanding that the individual is also a director of the Canadian Derivatives Clearing Corporation ("**CDCC**"), so long as the individual meets all other director independence criteria in the CDS recognition order (the "**Requested Variation Order**").[1]

CDS and CDCC are applying to the Autorité des marchés financiers ("**AMF**") for similar variation orders. These variations to the CDS and CDCC recognition orders would have the effect of enabling CDS and CDCC to have mirror boards of directors and, consequently, mirror board committees.

TMX Group Limited ("**TMX**"), CDS and CDCC have embarked on a business initiative to bring CDS and CDCC closer together. This initiative is part of a vision that is designed to advance TMX's evolution as a client-driven solutions provider to the Canadian and global capital markets. This vision includes an organizational emphasis on increasing efficiencies across the TMX enterprise. One phase of this initiative included a realignment that resulted in one individual, Glenn Goucher, becoming President and Chief Clearing Officer of CDS while retaining his position

[1] We note that revised definition will also clarify that the chair of the board of directors of CDCC and CDS will not be considered non-independent solely on the grounds that he or she is an officer of CDCC and CDS. Pursuant to the *Canada Business Corporations Act*, which is CDS and CDCC's incorporating statute, the chair of the board of directors is an officer of the corporation.

of President and Chief Clearing Officer of CDCC, and one individual, George Kormas, becoming the Chief Risk Officer of both clearing houses.

Bringing CDS and CDCC together under one leader has harmonized our efforts to bring efficiencies across the risk, operations, systems and business development areas of the clearing houses. Consistent with this, CDS and CDCC have determined that creating mirror boards of directors to oversee the activities of the President and the risk operations of CDS and CDCC is an appropriate next step in this evolution. For the purposes of this application, "mirror boards" means that each of CDS and CDCC will continue to have its own, separate board of directors, but that each board will be populated with the same individuals. Similarly, "mirror board committees" means that each of CDS and CDCC will continue to have its own separate board committees, but that the same committee of each board will be populated with the same individuals.

Recognition order provisions

The OSC's varied and restated order recognizing CDS as a clearing agency dated December 21, 2012, as amended (the "**OSC CDS Recognition Order**"), the AMF's Decision No. 2012-PDG-0142 recognizing CDS as a clearing house, as amended (the "**AMF CDS Recognition Order**", and together with the OSC CDS Recognition Order, the "**CDS Recognition Orders**"), and the AMF's Decision No. 2012-PDG-0078 recognizing CDCC as a clearing house, as amended (the "**CDCC Recognition Order**"),[2] contain provisions that have the effect of preventing CDS and CDCC from realizing the benefit of mirror boards of directors, as the definition of "independence" in these orders prevents CDS and CDCC from cross-appointing independent directors.

The CDS Recognition Orders require that 33% of the members of the CDS board of directors be independent, as that term is defined in the CDS Recognition Orders. The definition of the term "independent" states:

> a director is independent, if the director is not;
>
> (i) an associate, partner, director, officer or employee of a significant Maple shareholder,
>
> (ii) an associate, partner, director, officer or employee of a Participant of the recognized clearing agency or such Participant's affiliated entities or an associate of such director, partner, officer or employee,
>
> (iii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliated entities or an associate of such partner, director, officer or employee, or
>
> (iv) an officer or employee of the recognized clearing agency or its affiliated entities or an associate of such officer or employee.[3]

[2] We note that the OSC CDCC recognition order dated April 8, 2014 incorporates the CDCC Recognition Order as an appendix and therefore indirectly contains provisions that have the effect of preventing CDS and CDCC from having mirror boards of directors. Further, TMX Group Limited's undertakings to the AMF dated April 30, 2012 incorporate by reference the definition of "independent" in the CDCC Recognition Order.

[3] See s. 4.2 and s. 4.3 of the OSC CDS Recognition Order and s. 23.2 and 23.3 of the AMF CDS Recognition Order. Capitalized terms in this definition have the meaning ascribed to them in the CDS Recognition Orders.

The CDCC Recognition Order, similarly, requires that 33% of the members of the CDCC board of directors be independent, as that term is defined in the CDCC Recognition Order.[4]

The combined effect of paragraphs (iii) of the definition of "independent" in the CDS Recognition Orders and the CDCC Recognition Order is to preclude cross-appointments of independent directors between the CDS and CDCC boards. Paragraph (iii) of the CDS Recognition Orders excludes directors of an affiliated entity of a marketplace from being considered independent directors of CDS. CDCC is an affiliate of TSX Inc., Montréal Exchange Inc., TSX Venture Exchange Inc. and Alpha Exchange Inc., which are all marketplaces. Therefore, none of the independent directors of CDCC are independent for the purposes of the CDS Recognition Orders. Similarly, paragraph (iii) of the CDCC Recognition Order excludes directors of an affiliate of a marketplace that clears through CDCC from being considered independent directors of CDCC. Montréal Exchange Inc. clears through CDCC and is also an affiliate of CDS. Therefore, none of the independent directors of CDS are independent for the purposes of the CDCC Recognition Order. This is ultimately because CDS, CDCC and the marketplaces that clear through CDS and CDCC are under common control.

Additionally, paragraph (ii) of the definition of independence in the CDS Recognition Orders excludes directors of CDS participants from being considered independent directors of CDS. CDCC is technically a participant of CDS. As a result, none of the independent directors of CDCC are independent for the purposes of the CDS board.

In order for CDS and CDCC to have mirror boards of directors, CDS is requesting an order varying the definition of "independent" in the OSC CDS Recognition Order for the limited purpose of permitting the same individuals to be considered "independent" for both the CDS and CDCC boards of directors.[5] In particular, CDS is requesting that the revised definition of "independent" read as follows (the new text is underlined):

> a director is independent, if the director is not;
>
> (i) an associate, partner, director, officer or employee of a significant Maple shareholder;
>
> (ii) an associate, partner, director, officer or employee of a Participant of the recognized clearing agency or such Participant's affiliated entities or an associate of such director, partner, officer or employee; or

[4] The definition of the term "independent" in the CDCC Recognition order states:

> an independent director means a person who is not:
> (i) a partner, director, officer or employee of a Significant Maple Shareholder;
> (ii) a partner, director, officer or employee of a CDCC member or of an affiliate of such member, or an associate of such partner, director, officer or employee;
> (iii) a partner, director, officer or employee of a marketplace that clears through CDCC or of an affiliate of such marketplace, or an associate of such partner, director, officer or employee; or
> (iv) an officer or employee of CDCC or of a CDCC affiliate, or an associate of such officer or employee;
> (v) notwithstanding subparagraphs (i) to (iv) above and the definition of "officer" in section 3 of the Derivatives Act, the Chair of the Board of Directors is not considered to be non-independent solely on the ground that he or she is, or has been within the last three years, Chair of the Board of Directors of CDCC on a part-time basis.

[5] The independent directors of the CDS and CDCC mirror boards of directors will not be members of the board of directors of another TMX entity.

(iii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliated entities or an associate of such partner, director, officer or employee, or

(iv) an officer or employee of the recognized clearing agency or its affiliated entities or an associate of such officer or employee,

notwithstanding paragraphs (ii), (iii) and (iv) above:

(v) a director of the Canadian Derivatives Clearing Corporation ("CDCC") is not considered to be non-independent solely on the ground that he or she is a director, or in the case of the chair of the board of directors only, an officer, of CDCC, and

(vi) the chair of the board of directors of CDS[6] is not considered non-independent solely on the ground that he or she is an officer of CDS.

Rationale for mirror boards of directors

Having mirror boards of directors is an extension of the initiative that CDS and CDCC are currently undertaking to work more closely together. This initiative is part of the TMX vision to increase collaboration among entities and focus on increasing efficiencies across the TMX enterprise. This broad vision includes a strategy to achieve a number of very important goals. While each clearing house will continue to manage a separate risk pool, with its own rule book and processes, we have undertaken a project to form a common technology platform to support the two clearing houses. In addition, as part of the CDS and CDCC initiative to work more closely together, we effected an organizational redesign to allow one individual, Glenn Goucher, to be the President and Chief Clearing Officer of both clearing houses.

Management of CDS and CDCC believe that it is in the public interest for CDS and CDCC to have mirror boards of directors due to the level of interaction between CDS and CDCC (interaction that can result in efficiencies for participants and other stakeholders). This is particularly true given the relatively small size of the Canadian market as compared to the markets that are served by our global clearing house peers. In the case of all nominees to the boards of directors, the respective Governance Committees[7] must assess nominees to ensure that they each possess the appropriate competencies, skills, expertise and experience, when complemented by the other directors, to guide the strategies and business operations of the clearing house. The respective Governance Committees will continue to consider the independence, professional or board expertise, and other relevant expertise and experience of nominees. In particular, the selection criteria will continue to focus on identifying knowledgeable persons who understand the industry and have subject matter expertise in derivatives clearing and equities clearing. The objective will continue to be to ensure that the board's composition provides an appropriate mix of skills and experience. Using mirror boards will not diminish in any way the broad skills and qualifications that the clearing houses seek in their board members.

We acknowledge that the effect of the mirror boards is that every director will be a director of two clearing houses. CDS and CDCC are mindful that each director must be in a position to commit sufficient time to these directorships in order to successfully fulfil his or her director roles. The

[6] CDS is defined as the "recognized clearing agency" in the CDS Recognition Orders.
[7] As discussed above, we note that the CDS and CDCC Governance Committees will be populated by the same individuals.

clearing houses will ensure that each director is aware of the time commitment related to these directorships by clearly communicating expectations regarding directors' responsibilities and workload before nominating an individual to the board. The clearing houses will schedule board and committee meetings in a manner that provides directors with sufficient time to fulfil their obligations to each clearing house. Given improved coordination among the clearing houses, as well as some of the dual CDS-CDCC oversight roles that are now undertaken by CDS and CDCC management, we are confident that the clearing house directors will be in a position to dedicate appropriate time to their director roles for both clearing houses.

We believe that using mirror boards at CDS and CDCC has the potential to enhance the ability of senior management at CDS and CDCC to manage risk, particularly by having the common President and a common Chief Risk Officer overseen by a common board of directors. We also believe that using mirror boards of directors has the potential to broaden the oversight capabilities of the CDS and CDCC board members. We discuss these opportunities in more detail below.

Enhanced risk management

A mirror board structure has the potential to improve the board's oversight of the overall risk profile of CDS and CDCC. CDS and CDCC intend to integrate risk management operations across the two clearing houses,[8] which will enable CDS and CDCC to manage risk effectively and consistently across both entities.[9] The integrated risk management operations, as well as improved coordination between the two clearing houses, will afford CDS and CDCC the opportunity to be more effective in certain scenarios, such as managing defaults. As the management of a clearing agency's risk profile is a significant oversight topic for its board of directors, having mirror boards of directors will ensure that each board has a holistic view of the overall risk profile of CDS and CDCC. As CDS and CDCC move toward integrating risk management operations across the two clearing houses, a mirror board structure will enhance the board's oversight of the overall risk profile of the two entities.

We note that the Companion Policy to National Instrument 24-102 *Clearing Agency Requirements* (the "**Companion Policy**") emphasizes the importance of a consolidated entity managing risk appropriately across the entity. The Companion Policy states that a consolidated entity should have an appropriate risk management framework that considers the risks of each subsidiary and the additional risks related to their interdependencies. Further, consolidated entities should identify and manage the risks they pose to one another as a result of their interdependencies.[10] CDS and CDCC believe that a mirror board structure aligns with this guidance and complies with the requirements in National Instrument 24-102 *Clearing Agency Requirements* ("**NI 24-102**").

The Committee on Payments and Market Infrastructures of the International Organization of Securities Commissions ("**CPMI IOSCO**") recently articulated that the board of a clearing house has ultimate responsibility for establishing a risk management framework and for the effectiveness of its implementation. In carrying out this responsibility, the board is not expected to itself implement the risk management framework or to carry out the day-to-day management of risks. Rather, the board, in discharging its ultimate responsibility over risk management matters, should work closely with the clearing house's management.[11] At each committee meeting, the Chief Risk

[8] Certain integrations between the two clearing houses, including integration of risk management operations, may be subject to regulatory approval. We are not seeking regulatory approval for such integrations in this application.
[9] CDCC and CDS will continue to be separate legal entities with separate clearing funds. They will continue to have separate rule books and separate risk procedures for default management.
[10] See Box 2.2 of Annex I to the Company Policy.
[11] See Section 2.2 of the Final Report on the Resilience of Central Counterparties: Further Guidance on the PFMI

Officer provides each entity's Risk Management and Audit Committee ("**RMAC**") with an update regarding the clearing house's program for compliance with the Principles for Financial Market Infrastructures ("**PFMIs**"), including an update on the clearing house's gap assessment and closure program. These activities will continue under the mirror board structure. Therefore, compliance with the PFMIs will continue to be a key area of focus for the boards of CDS and CDCC.

Enhanced operational oversight

A mirror board structure will enhance the board of directors' oversight over the operations of each entity. The CDCC and CDS boards currently have four board members in common.[12] Each board has found that these directors are able to provide the board with important insight into the operations of the clearing agency due to these dual roles. We expect that there will be strengthened cross-organizational oversight from a board structure that results in all directors having insight into the operations of both clearing houses. Additionally, since CDS and CDCC now have one President and one Chief Risk Officer, reporting to mirror boards of directors will ensure that the board has a comprehensive view of all aspects of these roles. Therefore, the mirror board construct will allow for consistency in operational decision-making across both clearing houses, with all board members having the benefit of all relevant information.

The recognized exchanges within TMX – TMX Group Limited, TMX Group Inc., TSX Inc., TSX Venture Exchange Inc., Montréal Exchange Inc. and Alpha Exchange Inc. – have mirror boards. TMX Group Limited's undertakings to the AMF, the Alberta Securities Commission and the British Columbia Securities Commission require Montréal Exchange Inc. and TSX Venture Exchange Inc. to have mirror boards with TMX Group Limited. In this regard, one group of individuals is empowered with the oversight, including oversight of strategic development, of these entities. This construct enables the board members to ensure that they are provided with the appropriate level of information from each exchange, which gives the board members the knowledge to effectively oversee strategic decision-making for the organization. These strategic decisions can then be implemented in a consistent manner across the organization. Furthermore, we note that TMX's directors are able to devote the amount of time required to fulfil their fiduciary obligations to six separate entities, including an entity that is a reporting issuer and publicly traded company.[13] CDS and CDCC believe that a mirror board structure at the clearing house level will have similar benefits for these entities. CDS and CDCC believe that their directors will similarly be able to manage the time commitment associated with being members of the board of directors of more than one entity.[14]

Alignment of interests between CDS and CDCC

CDS and CDCC are aligned in terms of their risk management practices (including related to each entity's designation as a systemically important clearing house) and as regulated entities that operate in the public interest. Due to their systemic importance, their public interest responsibilities, the interdependence of their operations discussed above, and the overlap with respect to their key stakeholders, CDS and CDCC's interests are aligned. Each clearing house is under the common control of TMX Group Limited, which is ultimately accountable to regulators and the public. As noted above, CDCC is technically a participant of CDS. The board of directors

published in July 2017 by CPMI IOSCO.

[12] Jean Desgagné, Glenn Goucher, Pat Cronin and Lloyd Costley.

[13] We note that many of TMX's directors are also members of the board of directors of other publicly traded companies.

[14] For greater certainty, we note that CDS and CDCC are not proposing that CDS or CDCC have mirror boards with the recognized exchanges.

of CDS may, therefore, consider the impact of corporate decisions on particular stakeholders, including CDCC, when considering what is in the best interests of the corporation. The reverse is also true for the board of directors of CDCC. CDS and CDCC believe that it is appropriate for the board of directors to consider such impacts, as long as the board of directors also considers the best interests of each corporation. The boards of directors would also need to be mindful of any potential conflicts of interest that could arise in the event of any related party transactions between CDS and CDCC. CDS and CDCC believe that it is unlikely that a circumstance will arise that would result in a potential conflict of interest between CDS and CDCC that would lead to board members being unable to fulfill their fiduciary obligations and public interest responsibilities with respect to each entity.

The governance arrangement we are proposing does not, apart from the potential dealings between CDS and CDCC resulting from CDCC's status as a participant of CDS, or a related party transaction, give rise to an inherent risk of a conflict of interest. The PFMIs lay out a number of specific board responsibilities, such as overseeing risk management, overseeing internal audit and ensuring compliance. CDS and CDCC do not believe that being a director of both entities will create a conflict for the director in carrying out his/her duties, since the approach of both CDS and CDCC to such issues is consistent. CDS and CDCC will ensure that their board members understand the PFMIs by providing training on these requirements, including the requirements regarding risk management. The PFMIs indicate that the key characteristic of independence is the ability to exercise objective, independent judgment after fair consideration of all relevant information and views and without undue influence from executives or from inappropriate external parties or interests. The mirror board structure proposed by CDS and CDCC fulfills these requirements.

The mirror board structure discussed above for TMX's recognized exchanges permits independent directors on one board to qualify and count towards the necessary independence requirements on the affiliated board, and vice versa. Similarly, directors that are independent for the purposes of the TMX Group Limited board of directors are also considered independent for the purpose of the board of directors of Natural Gas Exchange Inc. In developing NI 24-102, regulators put in place governance requirements, including guidance with respect to independence requirements, which apply to all Canadian-recognized clearing agencies. NI 24-102 does not prevent independent directors of affiliated entities or participants from serving as independent directors on a clearing agency's board even though it is common for clearing agencies to be part of a larger conglomerate that consists of other clearing agencies and exchanges. We note that other exchange/clearing conglomerates operating in Canada are not subject to restrictions imposed by Canadian securities regulators that are equivalent to paragraph (iii) of the definition of "independent" in the CDS Recognition Orders and the CDCC Recognition Order.

CDS submits that since the same individuals are considered independent directors for the purposes of the boards of directors of TMX Group Limited's recognized exchanges and Natural Gas Exchange Inc., Canadian securities regulators have recognized that such an arrangement does not by itself create a conflict. Similarly, CDS submits that NI 24-102 and the guidance in Companion Policy do not appear to presume that a conflict of interest exists for a similar governance arrangement among clearing agencies.[15] Therefore, CDS and CDCC believe that the Requested Variation Order complies with the regulatory standards applicable to Canadian clearing houses set out in NI 24-102 and the Companion Policy.

[15] See Box 2.2 of Annex I to the Company Policy.

Rationale for mirror board committees

As discussed above, having mirror boards of directors is an extension of the initiative that CDS and CDCC are currently undertaking to work more closely together. Having mirror board committees is the natural extension of the mirror board structure. Management of CDS and CDCC believe that it is in the public interest for CDS and CDCC to have their board committees operate on a mirror basis due to the level of overlap in the responsibilities and expertise required for the corresponding committees. Further, we believe that the alternative, having the corresponding committees of CDS and CDCC composed of different directors, would be unworkable.

Alignment of committee responsibilities

The responsibilities and expertise required of members of the CDS and CDCC RMACs are substantially similar. Similarly, the responsibilities and expertise required of members of the CDS and CDCC Governance Committees are the same. CDS and CDCC have worked together to make the charters for their respective Governance Committees and RMACs as similar as possible to the charters for the corresponding board committee of the other clearing house.[16] There is consistency in the responsibilities and expertise required for the same committees of each board. Therefore, CDS and CDCC believe that the most efficient committee structure is the mirror board committee structure.

Both RMACs are charged with, among other things, assisting the board in fulfilling its risk management responsibilities, including assessing the clearing house's risk management policies and procedures and the adequacy of and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Members of each RMAC are required to possess experience or expertise in one or more of the following areas: internal risk controls, risk assessments and reporting, legal matters, government and public policy, accounting, risk management and corporate governance. As discussed above, risk management is a significant oversight topic for each of the CDS and CDCC boards. Therefore, having mirror RMACs will ensure that the same individuals have a detailed holistic view of the overall risk profile of CDS and CDCC. In contrast, not having mirror RMACs would fail to realize this significant benefit.

Similarly, both Governance Committees are charged with, among other things, assisting the board on matters related to corporate governance, including candidate selection and nomination, orientation of new board members and oversight of policies and procedures for the identification and resolution of conflicts of interest. Each Governance Committee reviews on an ongoing basis the composition of the board and is charged with identifying any gaps in the board's composition and seeking to fill those gaps. Having mirror Governance Committees will ensure that these committees are engaging in coordinated reviews of the mirror board's composition and are providing consistent recommendations in respect thereof to the board. Not having mirror Governance Committees would be less efficient and may result in inconsistent recommendations to the board.

Therefore, CDS and CDCC management have determined that having mirror board committees is the natural extension of having mirror boards of directors. The mirror board committee structure will facilitate the enhanced risk management and operational oversight of each clearing house.

[16] The charters of the CDS and CDCC RMACs are the same except for a few matters specific to CDS that the CDS Recognition Orders require to be included in the CDS RMAC's charter.

Efficient use of time and expertise

The mirror board committee structure is the most efficient use of directors' time and expertise given the mirror board structure that CDS and CDCC are proposing. CDS and CDCC are currently considering a board of directors composed of 12 individuals. As a group of 12 individuals will have to populate four board committees, many directors will be members of more than one board committee. It is the most efficient use of such directors' time to be on the same board committee for each of CDS and CDCC. A mirror board committee structure will enable the same groups of directors to do in depth reviews of similar issues for each clearing house. Therefore, having mirror board committees, composed of the directors with the most relevant expertise to fulfil the responsibilities of the applicable committee, is the most efficient arrangement for a mirror board structure.

A mirror board committee structure will ensure that the directors with the most relevant expertise for each committee are members of the applicable committee of both the CDS and CDCC boards. A mirror board committee structure will enable the board to appoint the directors with the most relevant risk operations oversight expertise to the RMACs of both clearing houses, instead of having to divide such directors across two separate RMACs. The board will similarly be able to appoint the directors with the most relevant corporate governance expertise to both Governance Committees. Therefore, a mirror board committee structure is the most practical and effective manner to populate committees given the mirror board structure.

We note that the recognized exchanges within TMX have a mirror board committee structure for their Audit Committees, which enables the same groups of individuals to oversee similar issues at each exchange. This results in each committee member being a member of six Audit Committees. Due to the alignment of the responsibilities of each exchange's Audit Committee and the expertise of the members of the Audit Committee, this is the most efficient and effective arrangement for each exchange. CDS and CDCC believe the same benefits will accrue to each clearing house from a mirror board committee structure.

Finally, CDS and CDCC will ensure that the composition of the RMACs of CDS and CDCC continues to comply with the independence requirements set out in NI 24-102 and the guidance in the Companion Policy.

Pro forma board composition

If the OSC grants the Requested Variation Order and the AMF provides similar relief, the mirror board of directors for CDS and CDCC will continue to meet the composition requirements in the CDS Recognition Orders and the CDCC Recognition Order. Based on the requirements applicable to the boards of CDS and CDCC, the composition of the mirror board of directors will be as follows:

- 33% of directors who are independent, where the term "independent" means a person who is not:
    - an associate, partner, director, officer or employee of a significant Maple shareholder,
    - an associate, partner, director, officer or employee of a participant of CDS or such participant's affiliated entities or an associate of such director, partner, officer or employee,

- an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliated entities (other than CDS and CDCC) or an associate of such partner, director, officer or employee, or

- an officer or employee of the CDS or CDCC or its affiliated entities or an associate of such officer or employee,

provided that a director shall not be considered to be non-independent solely on the ground that he or she is a director, or in the case of the chair of the board of directors only, an officer, of both CDS and CDCC;

- 33% of directors who are representatives of participants of CDS, of which:

    - one who is a nominee of the Investment Industry Regulatory Organization of Canada;

    - one who is a nominee of TMX Group Limited selected from one of the five largest participants of CDS (with the participant and its affiliated entities aggregated for this purpose);

    - one who is a nominee of TMX Group Limited that, for so long as a Maple nomination agreement is in effect, is that is unrelated to original Maple shareholders (as the terms “Maple nomination agreement” and “unrelated to original Maple shareholders” are defined in the CDS Recognition Orders);

- 33% directors who are partners, directors, officers or employees of clearing members of CDCC or affiliates of such members, be financially literate within the meaning of National Instrument 52-110 *Audit Committees* and have expertise in derivatives clearing, including:

    - the chief executive officer of Montreal Exchange Inc., or such other officer or employee of Montreal Exchange Inc. as is appointed by Montreal Exchange Inc., notwithstanding that such person is not a partner, director, officer or employee of a clearing member of CDCC or an affiliate of such member;

    - two directors who are not partners, directors, officers or employees of a Significant Maple shareholder (as defined in the CDCC Recognition Order) and who are, for as long as a Maple Nomination Agreement is in effect, unrelated to Original Maple Shareholders (as the terms “Maple Nomination Agreement” and “Unrelated to Original Maple Shareholders” are defined in the CDCC Recognition Order);

- the chief executive officer (i.e., President) of CDCC;

- one director who is a representative of a marketplace unaffiliated with TMX Group Limited and nominated by the marketplaces unaffiliated with TMX Group Limited;

- 25% of directors who are residents of Québec;

- 50% of directors who have expertise in derivatives clearing;

- 50% of directors who have expertise in clearing and settlement; and

- two directors who represent investment dealers that are independent of a bank and that have a significant amount of their dealer activity in trading, clearing and settling securities listed on a venture exchange in Canada.

Conclusion

In conclusion, CDS submits that a mirror board structure will be beneficial to CDS and CDCC's operations and the Canadian capital markets. We attach at Appendix A a draft variation order for the Requested Variation Order.

Yours truly,

Deanna Dobrowsky
Vice President, Regulatory

cc: Susan Greenglass, *Ontario Securities Commission*
Élaine Lanouette, *Autorité des marchés financiers*
Doug MacKay, *British Columbia Securities Commission*

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