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Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 52-404
Approach to Director and Audit Committee Member Independence

October 26, 2017

1. Introduction

The corporate governance regime in Canada was introduced over a decade ago and was largely based on the report sponsored by the Toronto Stock Exchange, *Where were the Directors?* (commonly referred to as the Dey Report) published in 1994. The regime encompasses guidelines related to the exercise of independent judgement, including the composition of the board of directors (the **board**) and the audit committee. Non-venture issuers must provide disclosure with reference to the guidelines within the framework of a "comply or explain" disclosure model, whereas venture issuers are subject to more basic disclosure requirements.[1]

The approach to determining whether a director or audit committee member is independent was introduced in 2004. This approach is largely subjective, but contains prescriptive elements (bright-line tests) that, when applicable, do not permit the board to determine whether a director could reasonably be expected to exercise independent judgement. It is predominantly derived from the concepts of independence adopted by the New York Stock Exchange (**NYSE**) and the Nasdaq Stock Market (**Nasdaq**) following several U.S. financial reporting scandals, as modified by the requirements set out in the *Sarbanes-Oxley Act of 2002*. This approach was taken following these financial reporting scandals in order to address concerns about investor confidence in our capital markets which are largely integrated with and affected by the U.S. markets and because companies inter-listed in the U.S. and Canada indicated a need for this alignment.

Some stakeholders have expressed concern about the appropriateness of our approach to determining independence. They believe that our approach has precluded individuals with the requisite expertise and sound judgement from being considered independent members of the board or being able to serve as audit committee members. In other instances, it has been argued that the application of our approach has limited the pool of individuals who could be considered independent to the detriment of certain issuers. Some of those stakeholders who have expressed these concerns point to the merits of approaches to independence adopted in other jurisdictions such as the U.K., Australia and

[1] The term "issuer" in this Consultation Paper refers to a reporting issuer.

Sweden. Other stakeholders, however, have pointed out that the market has adapted to our approach and are concerned with potential costs associated with making changes to the approach or transitioning to a new approach.

The purpose of this consultation paper (the **Consultation Paper**) is to facilitate a broad discussion on the appropriateness of our approach to determining director and audit committee member independence. The Canadian Securities Administrators (**CSA** or **we**) are publishing the Consultation Paper for a 90-day comment period to solicit views on whether or not any changes should be considered. In addition to any general comments you may have, we also invite comments on the specific questions set out at the end of the Consultation Paper.

The comment period will end on **January 25, 2018**.

The remainder of the Consultation Paper is structured as follows:

- Part 2 examines the key historical developments relating to our corporate governance regime;
- Part 3 sets out the approach to determining director and audit committee member independence in Canada;
- Part 4 provides a comparative overview of the approaches to determining director and audit committee member independence in Canada, Australia, Sweden, the U.K. and the U.S.;
- Part 5 discusses the benefits and limitations of the Canadian approach; and
- Annexes A through E provide additional information concerning the approaches to determining independence in Canada and in other jurisdictions.

2. Key historical developments relating to our corporate governance regime

The following table sets out the key developments relating to our corporate governance regime.

Date	Development
March 30, 2004	Participating CSA jurisdictions[2] adopted Multilateral Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees.* The purpose was to encourage issuers to establish and maintain strong, effective and independent audit committees. The rationale was that such audit committees enhance the quality of financial disclosure made by

[2] The securities regulatory authorities in every province and territory in Canada, other than British Columbia. The British Columbia Securities Commission adopted National Instrument 52-110 *Audit Committees* on March 17, 2008.

Date	Development
	issuers, and ultimately foster investor confidence in Canada's capital markets.
June 30, 2005	Multilateral Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees* were amended to clarify and update the definition of independence. The primary purpose of the amendments was to better align the definition of independence with the independent audit committee member requirements and independent director requirements applicable in the U.S.
June 30, 2005	The CSA adopted National Policy 58-201 *Corporate Governance Guidelines* (**NP 58-201**) and National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) to confirm as best practices corporate governance guidelines and to provide greater transparency for the marketplace regarding the nature and adequacy of issuers' corporate governance practices. Following implementation, we committed to review both NP 58-201 and NI 58-101 periodically to ensure that the guidelines and disclosure requirements continue to be appropriate for issuers in Canada.
September 28, 2007	The CSA communicated its plans to undertake a broad review of NP 58-201 and NI 58-101 and to publish its findings together with any proposed amendments for comment in 2008.[3]
December 19, 2008	The CSA published for comment proposed changes to the corporate governance regime.[4] One of the proposals was to replace the current approach to independence in National Instrument 52-110 *Audit Committees* (**NI 52-110**) with a principles-based definition of independence and guidance in Companion Policy 52-110CP to National Instrument 52-110 *Audit Committees* (**52-110CP**) regarding the types of relationships that could affect independence.
November 13, 2009	Based on comments received from stakeholders, the CSA concluded that it was not an appropriate time to implement significant changes to the corporate governance regime.[5] Reconsideration at a later date was left open.

[3] CSA Staff Notice 58-304 *Review of National Instrument 58-101 Disclosure of Corporate Governance Practices and National Policy 58-201 Corporate Governance Guidelines*.
[4] Request for Comment – Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines*, National Instrument 58-101 *Disclosure of Corporate Governance Practices*, and National Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees*.
[5] CSA Staff Notice 58-305 *Status Report on the Proposed Changes to the Corporate Governance Regime*.

3. Corporate governance and determining independence in Canada

The corporate governance regime in Canada includes voluntary guidelines that are set out in NP 58-201 and mandatory disclosure requirements that are set out in NI 58-101.

NP 58-201 includes voluntary guidelines that provide guidance on corporate governance practices. Although NP 58-201 applies to all issuers, the guidelines are not prescriptive. Issuers are encouraged to consider the guidelines when developing their own corporate governance practices. The practices encompassed by the guidelines relate to components of effective corporate governance, including those intended to foster independent decision making, such as the composition of the board, nominating committee and compensation committee. Issuers are, however, free to adopt those corporate governance practices that they determine to be appropriate for their particular circumstances.

NI 58-101 sets out mandatory disclosure requirements that provide transparency regarding issuers' corporate governance practices. As mentioned above, non-venture issuers are required to provide this disclosure with reference to the guidelines within the framework of a "comply or explain" disclosure model. Venture issuers are subject to more basic disclosure requirements that are framed more generally and are not "comply or explain" in nature.

NI 52-110 also forms part of our corporate governance regime, prescribing the approach to determining director and audit committee member independence, the composition of the audit committee and the responsibilities of the audit committee.

Independent directors or audit committee members must not have a direct or indirect material relationship with the issuer.[6] A material relationship is defined as a relationship which could, in the view of the board, be reasonably expected to interfere with the exercise of a member's independent judgement.[7]

NI 52-110 defines certain relationships as material relationships and thereby precludes some individuals from being considered independent. These relationships are set out as bright line tests in sections 1.4 and 1.5 of NI 52-110, and they apply regardless of any determination of independence made by the board. To be considered an independent director, an individual must not have a relationship captured by the bright line tests set out in section 1.4 of NI 52-110. To be considered an independent audit committee member, an individual must not have a relationship captured by the bright line tests that are set out in sections 1.4 and 1.5 of NI 52-110.

[6] Subsection 1.4(1) of NI 52-110.
[7] Subsection 1.4(2) of NI 52-110.

The audit committee of non-venture issuers must be comprised solely of independent audit committee members.[8] There are a number of conditional exemptions from this independence requirement set out in NI 52-110, including; (i) when an issuer recently obtained a receipt for a prospectus that constitutes its initial public offering; (ii) where the issuer is a controlled company;[9] (iii) when an audit committee member ceases to be independent for reasons outside that member's reasonable control; and (iv) if there is a vacancy on the audit committee due to the death, disability or resignation of an audit committee member.[10]

Venture issuers are exempt from the requirement that every audit committee member be independent, but are instead required to have a majority of audit committee members who are not executive officers, employees, or control persons of the issuer or an affiliate of the issuer.[11]

3.1 Relevance of the definition of independence

The definition of independence is a central component of our corporate governance regime. We believe that the exercise of independent judgment contributes to the effectiveness of boards and board committees.

NP 58-201 provides guidance to issuers that the board should have a majority of independent directors.[12] NI 58-101 requires issuers to disclose the identities of directors who are independent and those who are not, along with the basis for those determinations.[13] Issuers, other than venture issuers, must also disclose whether or not a majority of directors are independent and if not, they must describe what the board does to facilitate the exercise of independent judgement in carrying out its responsibilities.[14]

The definition of independence is also relevant for purposes of board committee composition. There is no requirement that board committees, other than the audit committee, be comprised of independent members. NP 58-201 provides guidance that the nominating and compensation committees should be comprised entirely of independent

[8] Subsection 3.1(3) of NI 52-110.
[9] See section 1.3 of NI 52-110. For the purposes of NI 52-110, "control" means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.
[10] Sections 3.2 to 3.9 of NI 52-110.
[11] TSX Venture Exchange listed issuers are required to meet an almost identical requirement under that exchange's policies.
[12] Section 3.1 of NP 58-201.
[13] Items 1(a) and (b) of Form 58-101F1 and item 1 of Form 58-101F2.
[14] Item 1(c) of Form 58-101F1.

directors because these committees and their functions are fundamental elements of corporate governance that act as a check on management and non-independent directors.[15] NI 58-101 requires issuers, other than venture issuers, to disclose whether these committees are comprised entirely of independent members and if not, they must describe what the board does to ensure an objective decision-making process for these committees.[16]

As mentioned above, subject to certain exemptions, NI 52-110 requires audit committees of non-venture issuers to be comprised solely of independent audit committee members. The purpose of this requirement is to facilitate the independent exercise of the audit committee's responsibilities, including the review of the issuer's financial disclosure, oversight of its financial reporting processes and the work of the external auditors. NI 52-110 requires issuers to disclose whether or not each audit committee member is independent.[17]

3.2 Approach to determining independence

The approach to determining whether a director or audit committee member is independent is set out in NI 52-110. This approach includes:

- a definition of independence that is subjective;
- bright line tests that preclude a director or audit committee member from being considered independent; and
- additional bright line tests that relate specifically to the independence of an audit committee member.

Section 1.4 of NI 52-110 defines independence as the absence of any direct or indirect material relationship with the issuer. A material relationship is one which could, in the view of the issuer's board, be reasonably expected to interfere with the exercise of an individual's independent judgement. These types of relationships may include, for example, a commercial, charitable, industrial, banking, consulting, legal, accounting, or familial relationship, or any other relationship that the board considers to be material.[18] Notwithstanding any determination made by an issuer's board, an individual is deemed

[15] Sections 3.10 and 3.15 of NP 58-201.
[16] Items 6(b) and 7(b) of Form 58-101F1.
[17] Item 2 of Form 52-110F1 and item 2 of Form 52-110F2.
[18] Section 3.1 of 52-110 CP.

(bright line test) to have a material relationship with the issuer if the individual is, or has been within the last three years:[19]

- an employee or executive officer of the issuer;
- a partner or an employee of the issuer's internal or external auditor or a former partner or employee of the internal or external auditor who personally worked on the issuer's audit;
- an executive officer of another entity if a current executive officer of the issuer serves or served, at the same time, on the compensation committee of that other entity; or
- in receipt of more than $75,000 in direct compensation from the issuer during any 12-month period (except for acting as a director or committee member), excluding fixed amounts of compensation under a retirement or deferred compensation plan for prior service with the issuer if receipt is not in any way contingent on continued service.

Immediate family members having relationships similar to those described above are generally considered to have a material relationship with the issuer. For the purposes of these determinations, an issuer includes a subsidiary entity and a parent of the issuer.[20]

Section 1.5 of NI 52-110[21] sets out additional bright line tests applicable only to audit committee members deeming an individual to have a material relationship with the issuer if the individual:

- accepts, directly or indirectly, any consulting, advisory or compensatory fee from the issuer or any subsidiary entity of the issuer, other than as remuneration for board or board committee work; or
- is an affiliated entity of the issuer or any of its subsidiary entities. The definition of "affiliated entity" is broad and includes entities within a controlled group as well as an individual who is both a director and an employee of an affiliated entity, or is an executive officer, general partner or managing member of an affiliated entity.[22]

[19] Subsection 1.4(3) to subsection 1.4(7) of NI 52-110. This description of the relationships is general in nature and does not in all instances capture all the detail set out in NI 52-110. The detailed description of the relationships is included in Annex A.
[20] Subsection 1.4(8) of NI 52-110. For the purpose of section 1.4 of NI 52-110, an issuer does not include other entities under common control.
[21] This description of the relationships is general in nature and does not in all instances capture all the detail set out in NI 52-110. The detailed description of the relationships is included in Annex A.
[22] Section 1.3 of NI 52-110.

4. Approaches to determining director and audit committee member independence in other jurisdictions

In this part, we provide a comparative overview of the approaches to determining independence in Canada, Australia, Sweden, the U.K. and the U.S. Information included in this part is not intended to present a comprehensive review of the law in those jurisdictions. Please refer to Annexes A through E of this Consultation Paper for further information.

4.1 Definition of independence

The definitions of independence in Canada, Australia, Sweden, the U.K. and the U.S. are substantially similar, with a focus on an individual's independence as evidenced by the nature of their relationship with an issuer, including those relationships that could impair, or could be seen to impair, their independence.

Examples of interests, positions, associations and relationships that might raise doubts about the independence of an individual are provided by each of these jurisdictions. In some jurisdictions, examples are framed in a prescriptive manner as bright line tests, deeming an individual to not be independent. In other jurisdictions, examples are framed in a more principles-based manner, providing guidance to boards in making a determination as to whether an individual should be considered independent.

The table below highlights the approach to determining independence taken in Canada, Australia, Sweden, the U.K. and the U.S.

Jurisdiction	Definition of independence	Bright line tests vs guidance
Canada	The individual has no direct or indirect material relationship with the issuer, i.e., a relationship which could, in the view of the board, be reasonably expected to interfere with the exercise of independent judgement.	Definition of independence is supplemented with **bright line tests.**
Australia	The director is free of any interest or relationship that might influence, or reasonably be perceived to influence, in a material respect his or her capacity to exercise independent judgment and to act in the best interests of the company and its shareholders.	Definition of independence is supplemented with **guidance.**

Jurisdiction	Definition of independence	Bright line tests vs guidance
Sweden	There are no factors that may give cause to question the director's independence and integrity with regard to the company or its executive management.	Definition of independence is supplemented with **guidance.**
U.K.	The director is independent in character and judgement and there are no relationships or circumstances which are likely, or could appear, to affect the director's judgement.	Definition of independence is supplemented with **guidance.**
U.S.	NYSE: The board has affirmatively determined that the director has no material relationship with the listed company; Nasdaq: The director is not an officer or employee of the company, and, in the opinion of the board, the director has no relationship which would interfere with the exercise of independent judgment.	Definition of independence is supplemented with **bright line tests.**

4.2 Criteria relevant for determining independence

As noted above, corporate governance regimes in Canada, Australia, Sweden, the U.K. and the U.S. provide examples of interests, positions, associations and relationships that may raise doubts about the independence of an individual. These criteria are relevant when making independence determinations. The table below compares the criteria in general terms applicable in each jurisdiction and notes whether they are bright line tests or guidance.

Criteria in general terms[23]	Canada	Australia	Sweden	U.K.	U.S.
Employment	**BL**	**G**	**G**	**G**	**BL**
Direct compensation from the issuer greater than a specified threshold	**BL**		**G**	**G**	**BL**

[23] The intercorporate relationships among the issuer and other entities are relevant when applying the criteria. Immediate family members having relationships similar to those summarized in this table may also cause doubts about the independence of the individual.

Criteria in general terms[23]	Canada	Australia	Sweden	U.K.	U.S.
Relationship with or compensation for (i) an internal or external auditor, (ii) consulting, advisory or other professional services, or (iii) any other material business or contractual relationships with the issuer	**BL**	**G**	**G**	**G**	**BL**
Employment by an entity if the issuer's executive officers serve on entity's compensation committee, cross-directorships or significant links with directors	**BL**		**G**	**G**	**BL**
Board term greater than certain number of years or for such a period that independence has been compromised		**G**		**G**	
Affiliate of the issuer or substantial security holder of the issuer or relationship with the substantial security holder	**BL**	**G**	**G**	**G**	**BL**

BL	Bright line tests	**G**	Guidance

5. The Canadian approach – benefits and limitations

We recognize that our current approach has both benefits and limitations.

Certainty, consistency and predictability have been noted as benefits of our approach to determining independence. Our approach has been in place for over a decade. Stakeholders understand our approach and issuers have incorporated it in how they structure and manage their boards and committees. Under NI 52-110 the board must determine whether or not an individual, given their relationship to the issuer, could reasonably be expected to exercise independent judgement. The bright line tests add a degree of certainty, consistency and predictability to this determination by listing specific relationships that preclude an individual from being considered independent. Certainty may be of assistance to boards in making independence determinations, while

consistency and predictability may better enable stakeholders to evaluate the independence of an issuer's board or its committees.

Inflexibility and overly-restrictive parameters have been noted as limitations of our approach to determining independence. Our approach does not leave much flexibility to the board to exercise its judgment in the event one of the bright-line tests has been met. If an individual has a relationship that is listed in the bright line tests, the individual is automatically disqualified from being considered independent regardless of any circumstances a board might consider as warranting a different determination. The bright line tests found in NI 52-110 have been criticized, including by certain controlled companies, as creating overly-restrictive parameters for determining independence that can result in a determination of independence which may not, in the particular circumstances, accord with the view of the board. Inflexibility and overly-restrictive parameters may unduly limit the pool of qualified candidates who could serve as independent directors or audit committee members.

Recognizing these benefits and limitations, this Consultation Paper is intended to facilitate a broad discussion on the appropriateness of our approach to determining director and audit committee member independence.

6. Consultation Questions

We welcome your comments on the issues outlined in this Consultation Paper. In addition, we are also interested in your views and comments on the following specific questions:

1. Our approach to determining director and audit committee member independence is described in section 3.2 of this Consultation Paper.
    a. Do you consider our approach appropriate for all issuers in the Canadian market? Please explain why or why not.
    b. In your view, what are the benefits or limitations of our approach to determining independence? Please explain.
    c. Do you believe that our approach strikes an appropriate balance in terms of:
        i. the restrictions it imposes on issuers' boards in exercising their discretion in making independence determinations, and
        ii. the certainty it provides boards in making those determinations and the consistency and predictability it provides other stakeholders in evaluating the independence of an issuer's directors or audit committee members?
    d. Do you have any other comments regarding our approach?

2. Should we consider making any changes to our approach to determining independence as prescribed in NI 52-110, such as changes to:
    a. the definition of independence;
    b. the bright line tests for directors and audit committee members; or
    c. the exemptions to the requirement that every audit committee member be independent?

    Are there other changes we should consider? Please explain.

3. What are the advantages and disadvantages of maintaining our approach to determining independence versus replacing it with an alternative approach? Please explain.

Please submit your comments in writing on or before January 25, 2018. Please send your comments by email in Microsoft Word format.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.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.

7. Questions

Please refer your questions to any of the following:

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Annex A – Canada

In Canada, the approach to determining director and audit committee member independence is prescribed in NI 52-110. The following are extracts from the relevant sections:

1.4 Meaning of Independence

(1) An audit committee member is independent if he or she has no direct or indirect material relationship with the issuer.

(2) For the purposes of subsection (1), a "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement.

(3) Despite subsection (2), the following individuals are considered to have a material relationship with an issuer:

(a) an individual who is, or has been within the last three years, an employee or executive officer of the issuer;

(b) an individual whose immediate family member is, or has been within the last three years, an executive officer of the issuer;

(c) an individual who:

(i) is a partner of a firm that is the issuer's internal or external auditor,

(ii) is an employee of that firm, or

(iii) was within the last three years a partner or employee of that firm and personally worked on the issuer's audit within that time;

(d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:

(i) is a partner of a firm that is the issuer's internal or external auditor,

(ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or

(iii) was within the last three years a partner or employee of that firm and personally worked on the issuer's audit within that time;

(e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the issuer's current executive officers serves or served at that same time on the entity's compensation committee; and

(f) an individual who received, or whose immediate family member who is employed as an executive officer of the issuer received, more than $75,000 in direct compensation from the issuer during any 12 month period within the last three years.

(4) Despite subsection (3), an individual will not be considered to have a material relationship with the issuer solely because

(a) he or she had a relationship identified in subsection (3) if that relationship ended before March 30, 2004; or

(b) he or she had a relationship identified in subsection (3) by virtue of subsection (8) if that relationship ended before June 30, 2005.

(5) For the purposes of clauses (3)(c) and (3)(d), a partner does not include a fixed income partner whose interest in the firm that is the internal or external auditor is limited to the receipt of fixed amounts of compensation (including deferred compensation) for prior service with that firm if the compensation is not contingent in any way on continued service.

(6) For the purposes of clause (3)(f), direct compensation does not include:

(a) remuneration for acting as a member of the board of directors or of any board committee of the issuer, and

(b) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.

(7) Despite subsection (3), an individual will not be considered to have a material relationship with the issuer solely because the individual or his or her immediate family member

(a) has previously acted as an interim chief executive officer of the issuer, or

(b) acts, or has previously acted, as a chair or vice-chair of the board of directors or of any board committee of the issuer on a part-time basis.

(8) For the purpose of section 1.4, an issuer includes a subsidiary entity of the issuer and a parent of the issuer.

1.5 Additional Independence Requirements

(1) Despite any determination made under section 1.4, an individual who

(a) accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the issuer or any subsidiary entity of the issuer, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee; or

(b) is an affiliated entity of the issuer or any of its subsidiary entities,

is considered to have a material relationship with the issuer.

(2) For the purposes of subsection (1), the indirect acceptance by an individual of any consulting, advisory or other compensatory fee includes acceptance of a fee by

(a) an individual's spouse, minor child or stepchild, or a child or stepchild who shares the individual's home; or

(b) an entity in which such individual is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary entity of the issuer.

(3) For the purposes of subsection (1), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.

Annex B – Australia

In Australia, the approach to determining independence is described in the ASX Corporate Governance Principles and Recommendations. The following are extracts from the relevant recommendation:

Recommendation 2.3

A director of a listed entity should only be characterised and described as an independent director if he or she is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the entity and its security holders generally.

Examples of interests, positions, associations and relationships that might cause doubts about the independence of a director include if the director:

- is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least three years between ceasing such employment and serving on the board;

- is, or has within the last three years been, a partner, director or senior employee of a provider of material professional services to the entity or any of its child entities;

- is, or has been within the last three years, in a material business relationship (e.g. as a supplier or customer) with the entity or any of its child entities, or an officer of, or otherwise associated with, someone with such a relationship;

- is a substantial security holder of the entity or an officer of, or otherwise associated with, a substantial security holder of the entity;

- has a material contractual relationship with the entity or its child entities other than as a director;

- has close family ties with any person who falls within any of the categories described above; or

- has been a director of the entity for such a period that his or her independence may have been compromised.

In each case, the materiality of the interest, position, association or relationship needs to be assessed to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity and its security holders generally.

Annex C – Sweden

In Sweden, the approach to determining independence is described in the Swedish Corporation Governance Code. The following are extracts from the relevant rules:

Rule 4.4

A director's independence is to be determined by a general assessment of all factors that may give cause to question the individual's independence and integrity with regard to the company or its executive management. Factors that should be considered include:

- whether the individual is the chief executive officer or has been the chief executive officer of the company or a closely related company within the last five years,

- whether the individual is employed or has been employed by the company or a closely related company within the last three years,

- whether the individual receives a not insignificant remuneration for advice or other services beyond the remit of the board position from the company, a closely related company or a person in the executive management of the company,

- whether the individual has or has within the last year had a significant business relationship or other significant financial dealings with the company or a closely related company as a client, supplier or partner, either individually or as a member of the executive management, a member of the board or a major shareholder in a company with such a business relationship with the company,

- whether the individual is or has within the last three years been a partner at, or has as an employee participated in an audit of the company conducted by, the company's or a closely related company's current or then auditor,

- whether the individual is a member of the executive management of another company if a member of the board of that company is a member of the executive management of the company, or

- whether the individual has a close family relationship with a person in the executive management or with another person named in the points above if that person's direct or indirect business with the company is of such magnitude or significance as to justify the opinion that the board member is not to be regarded as independent.

Rule 4.5

In order to determine a board member's independence and integrity, the extent of the member's direct and indirect relationships with major shareholders is to be taken into consideration. A member of the board who is employed by or is a board member of a company which is a major shareholder is not to be regarded as independent.

Rule 4.6

Nominees to positions on the board are to provide the nomination committee with sufficient information to enable an assessment of the candidate's independence as defined in 4.4 and 4.5.

Annex D – United Kingdom

In the U.K., the approach to determining independence is described in the UK Corporate Governance Code. The following are extracts from the relevant provision:

B.1.1

The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company or group within the last five years;

- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;

- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance related pay scheme, or is a member of the company's pension scheme;

- has close family ties with any of the company's advisers, directors or senior employees; holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;

- represents a significant shareholder; or

- has served on the board for more than nine years from the date of their first election.

Annex E – United States

In the U.S., issuers listed on a national securities exchange[24] must comply with the audit committee requirements contained in SEC rules as well as the director independence and audit committee requirements of the applicable national securities exchange.

Under the NYSE listing requirements, an individual is only independent if the board affirmatively determines that the individual has no material relationship with the listed company, either directly or as a partner, shareholder or officer of an organization that has a relationship with the company. Under the Nasdaq listing requirements, an individual is considered independent only if the individual is not an executive officer or employee of the company and the board affirmatively determines that the individual does not have any relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The NYSE and Nasdaq have adopted additional independence requirements for compensation committee members.[25]

Both the NYSE and Nasdaq have bright line independence criteria, i.e. disqualifying relationships and transactions. The following are extracts from the relevant NYSE and Nasdaq listing requirements:

NYSE[26]	**Nasdaq**[27]
The director is, or has been within the last three years, an employee of the listed company, or an immediate family member is, or has been within the last three years, an executive officer, of the listed company.	A director who is, or at any time during the past three years was, employed by the Company. A director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer.
The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than $120,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not	A director who accepted or who has a Family Member who accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following: (i) compensation for board or board

[24] 17 CFR. 240.10A-3(b)(1).
[25] NYSE Listed Company Manual Section 303A.02(a)(ii) and Nasdaq Listing Rule 5605.(d)(2).
[26] NYSE Listed Company Manual Section 303A.02(b).
[27] Nasdaq Listing Rule 5605.(a)(2).

NYSE[26]	Nasdaq[27]
contingent in any way on continued service).	committee service; (ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.
(A) The director is a current partner or employee of a firm that is the listed company's internal or external auditor; (B) the director has an immediate family member who is a current partner of such a firm; (C) the director has an immediate family member who is a current employee of such a firm and personally works on the listed company's audit; or (D) the director or an immediate family member was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.	A director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.
The director or an immediate family member is, or has been with the last three years, employed as an executive officer of another company where any of the listed company's present executive officers at the same time serves or served on that company's compensation committee.	A director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity.
The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of $1 million, or 2% of such other company's consolidated gross revenues.	A director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than the following:

NYSE[26]	Nasdaq[27]
	(i) payments arising solely from investments in the Company's securities; or (ii) payments under non-discretionary charitable contribution matching programs.

For purposes of applying the NYSE and Nasdaq bright line independence criteria, a parent or subsidiary company of a listed company is considered as if it were the listed company.

In addition, audit committee members of NYSE and Nasdaq listed companies[28] must satisfy the requirements for independence set out in the SEC rules.[29] As directed by the *Sarbanes-Oxley Act of 2002*, the SEC adopted rules to direct the national securities exchanges to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the *Sarbanes-Oxley Act of 2002*, including the requirements relating to the independence of audit committee members.[30] The following is an extract from the relevant SEC rules:

In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee

(i) accept any consulting, advisory or other compensatory fee from the issuer; or
(ii) be an affiliated person of the issuer or any subsidiary thereof.

[28] NYSE Listed Company Manual Section 303A.07 and Nasdaq Listing Rule 5605(c)(2)(A).
[29] Section10A-3(b)(1) of the Securities Exchange Act of 1934.
[30] Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

1.1.2 Notice of Co-operation Agreement Concerning Innovative Fintech Businesses with the Abu Dhabi Global Market Financial Services Regulatory Authority

NOTICE OF CO-OPERATION AGREEMENT
CONCERNING INNOVATIVE FINTECH BUSINESSES WITH
THE ABU DHABI GLOBAL MARKET FINANCIAL SERVICES REGULATORY AUTHORITY

October 26, 2017

The Ontario Securities Commission, together with the Québec Autorité des Marchés Financier, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Manitoba Securities Commission, the Financial and Consumer Services Commission (New Brunswick) and the Nova Scotia Securities Commission, have recently entered into a Co-operation Agreement ("the Agreement") with the Abu Dhabi Global Market Financial Services Regulatory Authority ("FSRA") concerning co-operation and information sharing between authorities regarding their respective innovation functions. The Agreement provides a comprehensive framework for cooperation and information sharing and referrals related to the innovation functions which were established through the CSA regulatory Sandbox initiative and by FSRA.

The Agreement is subject to the approval of the Minister of Finance. The Agreement was delivered to the Minister of Finance on October 24, 2017.

Questions may be referred to:

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Director
Office of Domestic and International Affairs
Tel: 416-593-8131
E-mail: jbureaud@osc.gov.on.ca

Pat Chaukos
Chief
OSC Launchpad
Tel: 416-593-2373
E-mail: pchaukos@osc.gov.on.ca

Innovation Functions Co-Operation Agreement

Between

The Abu Dhabi Global Market Financial Services Regulatory Authority

The Québec Autorité des Marchés Financiers

The Ontario Securities Commission

The Alberta Securities Commission

The Financial and Consumer Affairs Authority of Saskatchewan

The Manitoba Securities Commission

The Financial and Consumer Services Commission (New Brunswick)

The Nova Scotia Securities Commission

British Columbia Securities Commission

Contents

Innovation Functions Co-operation Agreement

1 Definitions

For the purposes of this Co-operation Agreement, unless the context requires otherwise:

– **"Authorisation"** means the process of licensing, registering, approving, authorising, granting exemptive relief, or otherwise bringing an entity under an Authority's regulatory ambit so that they are authorised to carry on business in providing a financial service or issuing a financial product in the relevant Authority's jurisdiction, and "Authorised" has a corresponding meaning;

– **"Authority"** means the FSRA or the Canadian Authority (and, collectively, "the Authorities");

– **"Canadian Authority"** means a securities regulatory authority established in Canada under provincial or territorial statute, that is a signatory to this Co-operation Agreement as described in Article 9;

– **"Criteria for Support"** means the criteria of a Referring Authority that an Innovator Business is required to meet before the Referring Authority refers the Innovator Business to a Receiving Authority;

– **"Innovator Business"** means an innovative financial business that has been offered support from an Authority through its Innovation Function, or would qualify for such support;

– **"Innovation Function"** means the dedicated function established by an Authority to support innovation in financial services in their respective markets;

– **"Receiving Authority"** means:

(a) Where the Referring Authority is the FSRA, any Canadian Authority to which a referral is made under the agreement; or

(b) Where the Referring Authority is a Canadian Authority, the FSRA

– **"Referring Authority"** means the Authority that is referring an Innovator Business to the Receiving Authority; and

– **"Regulations"** means any regulation, regulatory requirement or guidelines applicable in the jurisdiction of an Authority.

2 Introduction

2.1 The Authorities share a mutual desire to promote innovation in financial services in their respective markets. The Authorities have established Innovation Functions in order to do so. The Authorities believe that through co-operation with each other, they will be able to further the promotion of innovation in their respective markets.

2.2 On February 23, 2017, all the Canadian securities regulatory authorities launched the CSA Regulatory Sandbox, an initiative that supports innovative businesses across Canada through its Innovation Function. The Regulatory Sandbox will help in developing an in-depth understanding of new securities-related business models that use technology solutions.

2.3 The FSRA launched the Regulatory Laboratory ("RegLab") in November 2016 to provide a controlled environment for Innovator Businesses to develop and test innovative solutions that promote efficiency and consumer choices in the financial sector, and to support the FSRA in the development of risk-appropriate and effective regulations for such innovation.

Support offered through the Innovation Functions

2.4 The support offered by the Authorities to Innovator Businesses through their Innovation Functions may include:

2.4.1 A dedicated team and/or a dedicated contact for each Innovator Business;

2.4.2 Help for Innovator Businesses to understand the Regulations in the relevant Authority's jurisdiction, and how they apply to their business and them;

2.4.3 Assistance during the pre-Authorisation application phase to:

2.4.3.1 Discuss the Authorisation application process and any Regulations issues that the Innovator Business has identified; and

2.4.3.2 Ensure the Innovator Business understands the relevant Authority's Regulations and what it means for them.

2.4.4 Support during the Authorisation process, including the allocation of Authorisation staff who are knowledgeable about financial innovation in their respective markets, to consider the application.

2.4.5 A dedicated contact person after an Innovator Business is Authorised.

3 Purpose

The purpose of this Co-operation Agreement is to provide a framework for cooperation and referrals between the Innovation Functions of FSRA and any Canadian Authority. The framework centres on a referral mechanism which will

enable the Authorities to refer Innovator Businesses to their respective Innovation Functions. It also sets out how the Authorities plan to share and use information on innovation in their respective markets.

4 Principles

4.1 The Authorities intend to provide the fullest possible mutual assistance to one another within the terms of this Co-operation Agreement. This Co-operation Agreement shall be subject to the domestic laws of each Authority and shall not modify or supersede any applicable laws in force in, or applicable to, any such Authority's respective jurisdiction. This Co-operation Agreement sets forth a statement of intent and accordingly does not create any enforceable rights, and is not legally binding. This Co-operation Agreement is intended to complement, but not affect or alter the terms and conditions of any other multilateral or bilateral arrangements concluded between the Authorities or between the Authorities and third parties.

4.2 This Co-operation Agreement is a bilateral arrangement between each Canadian Authority and the FSRA and should not be considered a bilateral agreement between any Canadian Authority.

5 Scope

Referral mechanism

5.1 The Authorities, through their Innovation Functions, will refer to each other Innovator Businesses that would like to operate in the other's jurisdiction.

5.2 Referrals will be made in writing, and shall include information demonstrating that the Innovator Business seeking to operate in the Receiving Authority's jurisdiction meets, or would meet, the Referring Authority's Criteria for Support.

5.3 The Criteria for Support should include the following:

5.3.1 The Innovator Business shall offer innovative financial products or services that benefit the consumer, investor and/or industry; and

5.3.2 The Innovator Business shall demonstrate that they have conducted sufficient background research on the Receiving Authority's Regulations as they might apply to it.

5.4 Following referral, and provided the Innovator Business meets the Criteria for Support, the Receiving Authority's Innovator Function may offer support to the Innovator Business in accordance with paragraph 2.4 above.

5.5 The Referring Authority acknowledges that when a Receiving Authority provides assistance to an Innovator Business, the Receiving Authority is not expressing an opinion about whether an Innovator Business will ultimately meet the requirements for Authorisation in its jurisdiction.

Information sharing

5.6 The Authorities undertake, subject to applicable domestic laws and Regulations, to:

5.6.1 share information about innovations in financial services in their respective markets, where appropriate. This may include, but is not limited to:

5.6.1.1 Emerging market trends and developments (including use of new technologies); and

5.6.1.2 Regulatory issues pertaining to innovation in financial services.

5.6.2 share further information on an Innovator Business which has been referred to a Receiving Authority for support through its Innovation Function by a Referring Authority (including the nature of the support to the Innovative Business by the Referring Authority); and

5.6.3 notify each other of any material changes to the other Authority's Criteria for Support.

6 Confidentiality & Permissible Uses

6.1 Any information disclosed by the FSRA to a Canadian Authority or by a Canadian Authority to FSRA under paragraph 5.6, and any information contained in a referral under paragraphs 5.1 to 5.4 should be treated by the other Authority as confidential information.

6.2 Information about an Innovator Business included in a referral under paragraphs 5.1 to 5.4 and shared under paragraph 5.6 should be sent to a Receiving Authority only if the Innovator Business consents to that disclosure in writing and provides such consent to both the FSRA and to the Canadian Authority. Such consent can be withdrawn by the Innovator Business at any time.

6.3 A Receiving Authority should use information about a referred Innovator Business only for the purpose of providing support to the referred Innovator Business through the Receiving Authority's Innovation Function and ensuring compliance with the law of the Receiving Authority's jurisdiction.

6.4 If any Canadian Authority is required to disclose any information provided to it by the FSRA or if the FSRA is required to disclose any information provided to it by any Canadian Authority pursuant to a requirement of law, such Authority should notify the other Authority prior to complying with such a requirement and should assert all appropriate legal exemptions or privileges with respect to such information as may be available.

7 Term

7.1 This Co-operation Agreement takes effect from the date of execution for all parties, or on the date determined in accordance with the each Authority’s applicable legislation.

7.2 If this Co-operation Agreement is terminated by one or more of the Canadian Authorities, it will continue to have effect as between the FSRA and the remaining Canadian Authorities until it is terminated by any Authority by giving at least 30 days’ written notice of termination to the other Authority.

7.3 In the event of the termination of this Co-operation Agreement, information obtained under this Co-operation Agreement will continue to be treated in the manner set out under paragraph 6.

8 Amendment

8.1 The Authorities will review the operation of this Co-operation Agreement and update its terms as required. The Authorities acknowledge that review may be required if there is a material change to the support offered by a Receiving Authority's Innovation Function to Innovator Businesses referred by a Referring Authority pursuant to paragraph 5.1 or to the Authority’s Criteria for Support.

8.2 This Co-operation Agreement may be amended if Authorities agree in writing to do so.

9 Additional Parties to the Agreement

Any other Canadian securities regulatory authority may become a party to this Co-operation Agreement by executing a counterpart hereof together with the FSRA and providing notice to the other signatories which are parties to this Co-operation Agreement.

Executed by the Authorities:

This Co-operation Agreement will be effective from the date of its signing by the Authorities or on the date determined in accordance with each Authority’s applicable legislation.

For the FSRA

"Richard Teng"
Richard Teng
Chief Executive Officer

Date

For the AMF Québec

"Louis Morisset"
Louis Morisset
President and CEO

Date

For the Ontario Securities Commission

"Maureen Jensen"
Name : Maureen Jensen
Chair and CEO

Date

For the British Columbia Securities Commission

"Brenda Leong"
Name : Brenda M. Leong
Chair and CEO

Date

For the Alberta Securities Commission

"Stan Magidson"
Name : Stan Magidson
Chair and CEO

Date

For the Financial and Consumer Affairs Authority of Saskatchewan

"Roger Sobotkiewicz"
Name : Roger Sobotkiewicz
Chair and CEO

Date

For the Manitoba Securities Commission

"Donald Murray"
Name : Donald Murray
Chair

Date :

For the Financial and Consumer Services Commission (New Brunswick)

"*Rick Hancox"*
Name : Rick Hancox
CEO

Date :

For the Nova Scotia Securities Commission

"Paul Radford"
Name: Paul Radford
Chair

Date

Appendix A: Designated Innovation Functions Contact Persons

Mr. Philippe Richard
Director of International Affairs
Financial Services Regulatory Authority FSRA
Abu Dhabi Global Market
ADGM Square
Al Mariyah Island
P.O. Box 111 999
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Québec Autorité des marchés financiers
Director, FinTech and Innovation
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Email: fintech@lautorite.qc.ca

Ontario Securities Commission
OSC LaunchPad Co-operation Requests:
Tel.: (416) 596-4266
Email: osclaunchpad@osc.gov.on.ca

British Columbia Securities Commission
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701 West Georgia Street
P.O. Bx 10142 Pacific Centre
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Tel: 604 899-6854
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Alberta Securities Commission
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Financial and Consumer Affairs Authority of Saskakchewan
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Deputy Director
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Manitoba Securities Commission
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Financial & Consumer Services Commission (New Brunswick)
Deputy Director, Securities Division
Registration-inscription@fcnb.ca
Tel.: 506 658-3060

Nova Scotia Securities Commission
Executive Director
Suite 400, Duke Tower
5251 Duke Street
Halifax (NS) B3J 1P3
Tel.: 902 424-7768
Email: nsscexemptions@novascotia.ca

1.1.3 Notice of Ministerial Approval of the Memorandum of Understanding Between Financial Planning Standards Council and Ontario Securities Commission

NOTICE OF MINISTERIAL APPROVAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN FINANCIAL PLANNING STANDARDS COUNCIL AND ONTARIO SECURITIES COMMISSION

October 26, 2017

On October 10, 2017, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), the Memorandum of Understanding entered into with the Financial Planning Standards Council (the **Memorandum of Understanding**). The objective of the Memorandum of Understanding is to assist in the effective delivery of each organization's respective mandate through discussion and disclosure of information.

The Memorandum of Understanding came into effect on October 10, 2017. The Memorandum was published in the Bulletin on August 10, 2017 at (2017), 40 OSCB 6922.

Questions may be referred to:

Jean-Paul Bureaud
Director
Office of Domestic and International Affairs
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E-mail: jbureaud@osc.gov.on.ca

Marlene Costa
Legal Counsel
Compliance and Registrant Regulation
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E-mail: mcosta@osc.gov.on.ca

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Execution Access, LLC – s. 127, 127.1

IN THE MATTER OF
EXECUTION ACCESS, LLC

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5, at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on October 20, 2017 at 11:00 a.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated as of October 18, 2017 between Execution Access, LLC and Staff of the Commission ("Staff");

BY REASON OF the allegations set out in the Statement of Allegations of Staff dated October 18, 2017;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by a representative at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of the party and the party is not entitled to any further notice of the proceeding;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French on request of a party, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto, Ontario this 18th day of October, 2017.

"Grace Knakowski"
Secretary to the Commission

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

AND

IN THE MATTER OF
EXECUTION ACCESS, LLC.

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

A. Overview

1. This matter concerns a company carrying on business in Ontario as a marketplace without complying with National Instrument 21-101 (*Marketplace Regulation*) ("NI 21-101"). It is essential for the protection of investors that marketplaces are appropriately recognized as exchanges or registered in a manner that allows them to operate as an alternative trading system.

2. In 2013, Execution Access, LLC. ("EA" or "the Respondent") acquired the assets of a business (the "Initial Platform") that provided certain Canadian entities operating in Ontario with access to a trading platform for US treasury bills ("US Treasuries"). The assets acquired comprised the fully electronic portion of the asset vendor's benchmark U.S. Treasury brokerage, data and co-location service business. The Initial Platform was not operated as a recognized exchange or an alternative trading system pursuant to NI 21-101.

3. From 2013 to 2017 (the "Material Time") EA has operated the Nasdaq Fixed Income trading system ("NFI") (formerly called eSpeed), a fully executable central limit order book for electronic trading of U.S. Treasuries. NFI is an electronic system that brings together orders from multiple buyers and sellers and matches orders using established, non-discretionary methods. NFI therefore falls within the definition of "marketplace" in section 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"). Because EA provided access to NFI to entities operating in Ontario during the Material Time, EA is considered to be carrying on business in Ontario.

B. The Respondent

4. EA is a Delaware company. In June, 2013, EA was approved by the Financial Industry Regulatory Authority in the United States to operate as the broker-dealer for NFI.

C. Carrying on Business as ATS without registration

5. During the Material Time, EA operated NFI, to facilitate matching of client orders in U.S. Treasuries, in Ontario.

6. Subscribers to NFI are institutional entities, including but not limited to banks, broker-dealers and proprietary trading firms. EA has no natural person clients. Orders entered by subscribers may interact with other subscriber orders.

7. NFI is available to all subscribers with authorized access. Prospective subscribers must satisfy certain eligibility criteria, and are required to complete all onboarding documentation and execute an Electronic Trading Agreement ("ETA").

8. Pursuant to the terms of the ETA, subscribers have contractual obligations to abide by all applicable rules and regulations, and the procedural, operational and technical requirements of NFI. Subscribers have access to all NFI's features and functionalities once approved by EA.

9. During the Material Time, EA operated a marketplace in Ontario without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer so it could operate as an alternative trading system under NI 21-101.

10. By operating from June 2013 to July 2017 without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer with the Ontario Securities Commission, EA did not pay regulatory fees estimated in the amount of $470,000.

D. Conduct contrary to the public interest

11. By carrying on business in Ontario as a marketplace without complying with NI 21-101, EA acted contrary to the public interest.

12. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto, this 18th day of October, 2017.

1.5 Notices from the Office of the Secretary

1.5.1 Execution Access, LLC

FOR IMMEDIATE RELEASE
October 18, 2017

IN THE MATTER OF
EXECUTION ACCESS, LLC

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Execution Access, LLC.

The hearing will be held on October 20, 2017 at 11:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated October 18, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated October 18, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.2 Execution Access, LLC

FOR IMMEDIATE RELEASE
October 20, 2017

IN THE MATTER OF
EXECUTION ACCESS, LLC

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Execution Access, LLC and Staff of the Commission.

A copy of the Order dated October 20, 2017, Settlement Agreement dated October 18, 2017 and Oral Reasons for Approval of Settlement dated October 20, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.3 Dennis L. Meharchand and Valt.X Holdings Inc.

FOR IMMEDIATE RELEASE
October 24, 2017

IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

TORONTO – The Commission issued an Order in the above named matter which provides that the motion hearing and pre-hearing conference date of October 27, 2017 is vacated.

A copy of the Order dated October 24, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.4 Donna Hutchinson et al.

FOR IMMEDIATE RELEASE
October 24, 2017

IN THE MATTER OF
DONNA HUTCHINSON,
CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDERS and
PATRICK JELF CARUSO

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. by no later than November 24, 2017, Staff shall disclose to Donna Hutchinson, Cameron Edward Cornish, David Paul George Sidders and Patrick Jelf Caruso (collectively, the Respondents) all relevant non-privileged documents and things in the possession or control of Staff that are relevant to the hearing;

2. by no later than February 20, 2018, Staff shall provide preliminary witnesses lists and statements to the Respondents and shall indicate any intent to call an expert witness, including the name of the expert and the issue on which the expert will be giving evidence; and

3. the hearing is adjourned to February 26, 2018 at 9:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary.

A copy of the Order dated October 24, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Token Funder Inc.

Headnote

CSA Regulatory Sandbox – Application for relief from the dealer registration requirement – Applicant proposing to launch an initial token offering by way of a private placement under the offering memorandum prospectus exemption – relief granted subject to certain conditions set out in the decision, including the completion of know-your-client and suitability, restrictions on listing and trading on cryptocurrency exchanges and quarterly reporting requirements – decision is time-limited to allow the Applicant to operate in a test environment and will expire in twelve (12) months – relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative businesses in Canada – decision should not necessarily be viewed as a precedent for other applicants in the jurisdictions of Canada.

Statute cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 74.

Instrument cited

Multilateral Instrument 11-102 Passport System, s. 4.7.

October 17, 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
TOKEN FUNDER INC.
(the "Filer")

DECISION

Background

The Canadian Securities Administrators have launched a regulatory sandbox to support financial technology businesses seeking to offer innovative products, services and applications in Canada (the "**CSA Sandbox**"). The CSA Sandbox allows firms to obtain exemptive relief from the securities law requirements that may be an impediment to their innovative business models, provided that investor protection is not compromised.

In the context of the CSA Sandbox, the Filer submitted its business model and subsequently filed an application to be exempted from the dealer registration requirement. This Decision should not be viewed as a precedent for other filers.

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for exemptive relief pursuant to National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* ("**NP 11-203**") from the dealer registration requirement in the Legislation (the "**Registration Relief**").

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* ("**MI 11-102**") is intended to be relied upon in all of the provinces and territories of Canada.

Interpretation

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

Representations

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

The Filer

1. The Filer is a blockchain business incorporated under the *Business Corporations Act* (Ontario) on November 14, 2016. Its head office is located in Toronto, Ontario.

2. All of the outstanding common shares of the Filer are held by Leading Knowledge Ltd., an Ontario corporation wholly-owned by Alan Wunsche.

3. The Filer was established for the purposes of creating a platform, known as the smart token asset management platform (the "**STAMP**"), which is intended to, among other things, facilitate third-party issuers raising capital through the offering of blockchain-based securities, including tokens and coins. In addition to facilitating issuances of blockchain-based securities, STAMP intends to, among other things, provide token and coin management and governance services for issuers and, subject to any regulatory approvals and/or exemptive relief required, provide for certain transferability of tokens and coins to ensure that a particular token or coin can achieve the access or use function for which it has been principally created. Also, subject to any regulatory approvals and/or exemptive relief required, the Filer intends the STAMP to operate as a platform to facilitate the raise of capital in accordance with National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") or as a crowdfunding portal pursuant to Multilateral Instrument 45-108 – *Crowdfunding*.

4. The Filer is proposing to complete a private placement of FNDR Tokens (as hereinafter defined) by way of an "initial token offering" (the "**Offering**") to fund the completion of the STAMP and to facilitate subsequent transfers of FNDR Tokens pursuant to available prospectus exemptions.

5. The Filer will conduct know-your-client and a suitability review for each investor in the Offering. Each investor in the Offering will be required to undergo a comprehensive onboarding process, which will include the collection of information such its investment needs and objectives, financial circumstances and risk tolerance. This process will also include a survey to ensure the investor has a detailed understanding of crypto-currency and digital token offerings. This will also require a detailed disclosure of personal information and corresponding electronic verification.

6. To fund the establishment of the STAMP and its ongoing working capital needs, the Filer will be creating 1,000,000,000 digital tokens through a smart contract on the Ethereum Blockchain (each a "**FNDR Token**").

7. The Filer is not in default of securities legislation in any jurisdiction of Canada. Additionally, the Filer is not, and will not be as a result of the Offering, in default of securities legislation in any jurisdiction where it intends to offer FNDR Tokens.

The Offering

8. The Offering will be made pursuant to the offering memorandum prospectus exemption set out in Section 2.9 of 45-106 through the website of the Filer. For purposes of the Offering, it will be assumed that all participants are not "eligible investors" or "accredited investors", as such terms are defined in NI 45-106, and a maximum investment amount of CAD $2,500 (paid through the Ether equivalent thereof or through fiat currency) will be imposed by the Filer unless a participant provides additional support to evidence that it is an eligible investor or an accredited investor.

9. The Offering will consist of the distribution of up to 200,000,000 of the 1,000,000,000 FNDR Tokens established by the Filer for total gross proceeds to the Filer of up to approximately CAD $10,000,000 (depending on the exchange rate of Ether to Canadian dollars). The value of Ether, in respect of each subscription from an investor, will be determined at the time that such subscriber completes the onboarding process described in paragraph 5 above and is approved for participation in the Offering by the Filer. It will also be reconfirmed at the time that the subscription is completed to ensure that any applicable limit has not been exceeded. The Filer will take all reasonable measures to determine the value of Ether.

10. 100,000,000 FNDR Tokens will be held back by the Filer as payment currency for advisors in due course, including engineers, advisory board members and any other service provider that the Filer may determine it would be advantageous to compensate in this manner. Given the desire for many supporters of cryptocurrency to be compensated in this manner, this will enable the Filer to attract advisors to support the build-out of the STAMP. The remaining 700,000,000 FNDR Tokens created and not issued as a part of the Offering or reserved for advisors will be held back by the Filer for future financings and will be issued at such times as the Filer determines appropriate to fund the on-going operations of the Filer and development of the STAMP, subject to any regulatory approvals and/or exemptive relief required. It is not currently anticipated that any FNDR Tokens other than the FNDR Tokens issued to subscribers pursuant to the Offering will need to be issued.

11. The holders of the outstanding FNDR Tokens (other than the Filer) will share in the distributions from the Filer arising from the operation of the STAMP as set out in the Filer's offering memorandum. These distributions will be made if and when the board of the directors of the Filer determines it can reasonably do so without adversely impacting the on-going operations of the STAMP.

12. Holders of FNDR Tokens will receive updates from management of the Filer regarding the milestones for development of the STAMP and any other material events concerning the business

of the Filer, including all disclosure required pursuant to NI 45-106 and other applicable securities laws, and annual audited financial statements. These updates will be provided to the e-mail addresses provided to the Filer by the holders of FNDR Tokens and periodic updates will be provided on the Filer's website. The other material terms of the FNDR Tokens are described in the Filer's offering memorandum to be provided to investors in connection with the sale of the FNDR Tokens. Holders of FNDR Tokens will not have any voting rights in respect of the Filer's governance or operational matters; however, holders of FNDR Tokens, other than the Filer, will have certain voting rights on the entities entitled to use the STAMP.

13. Immediately following the completion of the Offering, the Filer will use the proceeds of the Offering to fund its build-out and launch of the STAMP, including concurrently seeking to become a registrant pursuant to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and any exemptive relief that may be required. The STAMP will not be launched prior to the Filer becoming a registrant and obtaining any exemptive relief that may be required.

14. Each subscriber shall subscribe for FNDR Tokens through a digital smart contract established by the Filer and using the Ethereum Blockchain and may subscribe by the payment of Ether or Canadian dollars. The suitability analysis conducted by the Filer results in a limit assigned to the subscriber in the smart contract. This limit shall not exceed CAD $2,500 unless an additional review is completed as described in paragraph 8 above. Proceeds from the Offering will be returned to subscribers in the event that a minimum of CAD $500,000 is not raised in the Offering. The smart contract established for purposes of the Offering will not permit the Filer to receive any Ether proceeds from the Offering if less than CAD $500,000 is raised in the Offering and it shall return such funds to the accounts provided by the subscribers for their digital currency (as applicable). Any Canadian dollar subscriptions will be held in an escrow account maintained by the Filer's legal counsel or an independent escrow agent and returned to subscribers if a minimum of CAD $500,000 (or the Ether equivalent thereof) is not raised in the Offering.

15. Accordingly, the Registration Relief is being granted on the basis that:

    (a) promptly upon the consummation of the Offering, the Filer will seek to become a registrant and will not facilitate any capital raising efforts by issuers through the STAMP in the absence of such registration;

    (b) the Registration Relief is only being sought for a limited period of time;

    (c) full and complete disclosure will be provided to all prospective investors in the FNDR Tokens through the Filer's offering memorandum, including audited financial statements required by applicable securities laws indicating all expenses incurred and paid or accrued by the Filer; and

    (d) know-your-client and suitability reviews will be conducted by the Filer despite the granting of the Registration Relief.

Decisions

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 Registration Relief sought is granted for a twelve (12) month period from the date of this Decision provided that the following conditions are met:

1. The Filer complies with the terms and conditions of this Decision with respect to the Registration Relief sought.

2. The Filer will conduct know-your-client and a suitability review for each investor and will determine for each investor who represents itself as either an eligible investor or an accredited investor, and who seeks to invest an amount exceeding CAD $2,500, whether the investor is an eligible investor or accredited investor, as the case may be.

3. The FNDR Tokens issued in the Offering will not be listed and traded on any exchange, cryptocurrency exchange or organized market unless such listing and trading is done in accordance with applicable securities laws and approved in advance by the Ontario Securities Commission.

4. The Filer will deal fairly, honestly and in good faith with its investors.

5. The Filer will establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices, including with respect to the Ethereum Blockchain, cybersecurity and conflicts of interest between the Filer and its investors.

6. The Filer or any representatives of the Filer do not provide recommendations or advice to any investor in FNDR Tokens.

7. In addition to any other reporting required by securities laws, including Form 45-106F1 *Report of Exempt Distribution*, the Filer must provide to the Ontario Securities Commission, in a format reasonably acceptable to staff, (i) details of investor complaints received by the Filer within 10 days of any such complaint, and (ii) quarterly reporting (within 10 days of the end of each quarter) with sufficient information on the following:

   (a) average subscriber purchase amounts, indicating Canadian dollar amounts and Ether amounts;

   (b) regional subscriber purchase totals, indicating Canadian and global subscriber participation; and

   (c) such other information as the Director may reasonably request.

   Notwithstanding the requirement to provide reporting within 10 days of each quarter, the Filer will provide the first report within 10 days of the earliest of (i) a capital raise of CAD $10,000,000, (ii) the closing of the Offering, and (ii) three months from the date hereof.

8. This Decision shall expire twelve (12) months after the date of the decision.

9. This Decision may be amended by the principal regulator from time to time upon prior written notice to the Filer.

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

"William J. Furlong"
Commissioner
Ontario Securities Commission

2.1.2 Cheverny Capital Inc. and Cordiant Capital Inc.

Headnote

Relief under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual acts as dealing, advising or associate advising representative of another firm registered in any jurisdiction of Canada. These individuals will have sufficient time to adequately serve both firms. The firms have policies in place to handle potential conflicts of interest. The firms are exempted from the prohibition.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

October 16, 2017

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

AND

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

AND

IN THE MATTER OF
CHEVERNY CAPITAL INC.
(Cheverny)

AND

CORDIANT CAPITAL INC.
(Cordiant) (the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirement in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**) pursuant to section 15.1 of NI 31-103 to permit Jean-François Sauvé (**Sauvé**) and James Kiernan (**Kiernan**), (together, the **Representatives**) to be registered as dealing representatives of the Filers and to permit Kiernan to be

registered as an advising representative of Cordiant (the **Exemption Sought**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba and Newfoundland and Labrador, and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filers are both corporations governed by the *Canada Business Corporations Act*.

2. The head office of each Filer is located in Montréal, Québec.

3. Cordiant is registered as an exempt market dealer in Alberta, Ontario and Québec and is registered as an investment fund manager and portfolio manager in Ontario and Québec. Cordiant is also registered with the U.S. Securities and Exchange Commission and Commission de surveillance du secteur financier (Luxembourg).

4. Cheverny is registered as an exempt market dealer in each of Alberta, British Columbia, Manitoba, Ontario, Québec and Newfoundland and Labrador.

5. Cordiant is an affiliate of Cheverny since they are wholly-owned by Dominion & Colonial Investment Partners Inc. (**D&C**). D&C is beneficially owned by Benn Mikula and the Representatives.

6. Neither Cheverny nor Cordiant are in default of any requirement of securities legislation in any jurisdiction of Canada.

7. Sauvé is registered as the ultimate designated person (**UDP**) of both Filers and as a dealing representative of Cheverny in Alberta, British Columbia, Manitoba, Ontario, Québec and Newfoundland and Labrador. If the Exemption Sought is granted, Sauvé will seek registration as a dealing representative of Cordiant in Québec, Alberta and Ontario.

8. Kiernan is registered as a dealing representative of Cheverny in Alberta, British Columbia, Manitoba, Ontario, Québec and Newfoundland and Labrador and is a director of Cordiant. If the Exemption Sought is granted, Kiernan will seek registration as a dealing representative of Cordiant in Québec, Alberta and Ontario and as an advising representative of Cordiant in Québec and Ontario.

9. The objective of the Representatives to be registered with both Filers is to ensure that, in their roles as senior executives of the Filers, they will be able to provide strategic guidance and leadership at each firm as well as be able to participate in client meetings.

10. At Cordiant, the Representatives are responsible for defining strategy and managing the company. As dealing representatives, the Representatives will be responsible for developing relations with large institutional investors in the context of seeking capital to manage in one of Cordiant's emerging market private debt funds. In addition, Kiernan will advise the funds managed by Cordiant, as an advising representative of Cordiant.

11. At Cheverny, the Representatives will interact with the senior leadership of large corporations and private equity groups in relation to strategy, mergers and acquisitions (M&A) issues and capital structure.

12. The dual registration of the Representatives at each of Cordiant and Cheverny will create operational efficiencies and optimization of resources for the two affiliated entities.

13. Sauvé will devote approximately 25 hours per week at Cordiant and 40 hours per week at Cheverny. Kiernan will devote his time evenly between Cordiant and Cheverny.

14. There will be minimal potential for conflicts of interest or client confusion because there is very little overlap between the activities of each Filer. Cordiant is an investment manager overseeing funds that invest in emerging and frontier market debt in Africa, Latin America and Asia. Cheverny focuses on M&A and corporate strategy for businesses in Canada and Europe. Moreover the client base of each Filer is different.

15. The Representatives will not engage in any discretionary trading or otherwise have any

discretionary authority in their capacity as dealing representatives of Cordiant.

16. The Representatives will have sufficient time and resources to adequately serve each Filer and its clients.

17. The Representatives will be subject to supervision by, and the applicable compliance requirements of, both Filers. The existing compliance and supervisory structures will apply depending on which regulatory entity on whose behalf the Representatives are acting.

18. The Representatives will act in the best interests of both the Cheverny clients and the Cordiant clients and deal fairly, honestly and in good faith with such clients.

19. In case Cheverny would be called upon to act in a transaction that might be of interest to Cordiant, all the parties (the client, the Filers and any other interested party) would be informed of any potential conflict.

20. Both Filers are subject to the conflict of interest requirements set out in NI 31-103 and such requirements will be complied with at all times.

21. Each of the Filers has policies and procedures to address conflicts of interest and all directors and officers of each Filer are aware of those policies and procedures.

22. The roles of the Representatives at the Filers will be disclosed to clients by the Representatives both verbally and via the websites of the Filers. Relevant written materials will disclose that the Filers are affiliates.

23. In the absence of the Exemption Sought, the Representatives would be prohibited under paragraph 4.1(1)(b) of NI 31-103 from acting as dealing representatives of Cordiant and from Kiernan acting as an advising representative of Cordiant, while the individuals are a dealing representative of Cheverny, even though the Filers are affiliates.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the representations described above in paragraphs 14, 15, 16, 17, 18, 19, 20, 21 and 22 remain true.

"Eric Stevenson"
Superintendent, Client Services and Distribution Oversight

2.1.3 BMG Management Services Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of their prospectus – Filer has applied for relief, on a pre-file basis, which may impact the prospectus disclosure – Extension of lapse date will not affect the currency or accuracy of the information contained in the funds' current prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

October 6, 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
BMG MANAGEMENT SERVICES INC.
(THE FILER)

AND

IN THE MATTER OF
BMG BULLIONFUND,
BMG GOLD BULLIONFUND AND
BMG SILVER BULLIONFUND
(THE BMG FUNDS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the BMG Funds, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an extension of the time limits pertaining to filing the renewal prospectus of the BMG Funds as if the lapse date of the simplified prospectus, annual information form and Fund Facts of the BMG Funds dated September 26, 2016, is November 13, 2017 (the **Requested Relief**).

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

1. the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and;

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (collectively, the **Other Jurisdictions**).

Interpretation

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

Representations

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

The Filer and the BMG Funds

1. The Filer is a corporation incorporated under the laws of Ontario. The Filer's head office is located in Toronto Ontario.

2. The Filer is registered as an investment fund manager under the securities legislation of each of Ontario, Québec and Newfoundland and Labrador. The Filer is the investment fund manager, trustee and promoter of the BMG Funds.

3. The BMG Funds are currently offered in Ontario and each of the Other Jurisdictions by way of a simplified prospectus, an annual information form and a fund facts, each dated September 26, 2016 (the **Current Offering Documents**) and have a lapse date of September 26, 2017.

4. Pursuant to section 2.5(4)(a) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, the BMG Funds recently filed a preliminary and pro forma simplified prospectus, a preliminary and pro forma annual information form, and preliminary and pro forma fund facts, each dated August 25, 2017 (the **Renewal Offering Documents**). The 'preliminary' part of the Renewal Offering Documents reflects the addition of new Class D units of the BMG Funds (the **Preliminary Part**).

5. The Preliminary Part of the Renewal Offering Documents was receipted by the OSC, as principal regulator, on August 25, 2017.

6. None of the BMG Funds is in default of the Legislation or the securities legislation of any of the Other Jurisdictions.

7. The Filer is not in default of the Legislation or the securities legislation of any of the Other Jurisdictions, except for certain registration filings pertaining to certain ownership changes, which have been disclosed to and discussed with the OSC and are in the process of being brought up-to-date.

Pre-Filing Application

8. The Filer and the BMG Funds filed a pre-filing application on September 12, 2017 with the OSC (the **Pre-Filing Application**). The Pre-Filing Application raises issues which if left unresolved, may potentially impact the prospectus disclosure of the BMG Funds.

9. As discussions with the OSC are ongoing regarding the Pre-Filing Application, and as the Filer needs additional time to consider and to respond to the comments of the OSC regarding the Pre-Filing Application, the Renewal Offering Documents cannot be finalized at this time.

10. The Filer and the BMG Funds need the Requested Relief so they have adequate time to address and discuss the Pre-Filing Application with the OSC.

11. There have been no material changes in the affairs of the BMG Funds since the date of the Current Offering Documents. Accordingly, the Current Offering Documents generally represent current information regarding the BMG Funds.

12. Given the disclosure obligations of the BMG Funds, should any material changes occur, the Current Offering Documents will be amended as required under the Legislation.

13. The Requested Relief will not affect the general accuracy of the information contained in the Current Offering Documents and will therefore not be prejudicial to the public interest.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted.

"Vera Nunes"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.4 Equium Capital Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to exchange-traded series of conventional mutual funds for continuous distribution of securities – relief to permit funds' prospectus to include a modified statement of investor rights – relief to permit funds' prospectus to not include an underwriter's certificate – relief from take-over bid requirements for normal course purchases of securities on the TSX – relief granted to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – relief granted from the requirement in NI 41-101 to prepare and file a long form prospectus for exchange-traded series provided that a simplified prospectus is prepared and filed in accordance with NI 81-101 – exchange-traded series and mutual fund series referable to same portfolio and have substantially identical disclosure – relief permitting all series of funds to be disclosed in same prospectus – disclosure required by NI 41-101 for exchange-traded series and not contemplated by NI 81-101 will be disclosed in prospectus under relevant headings.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 59(1), 147.
National Instrument 41-101 General Prospectus Requirements, s. 19.1.
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

October 17, 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
EQUIUM CAPITAL MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Equium Global Tactical Allocation Fund (the **Proposed ETF Fund**), the Proposed ETF Fund being an exchange traded series of a mutual fund, and such other exchange traded series mutual funds as are managed and may be managed by the Filer now or in the future and that are structured in the same manner as the Proposed ETF Fund (the **Other Funds** and together with the Proposed ETF Fund, the **Funds** and each individually, a **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that:

(a) exempts the Filer and each Fund from the requirement to prepare and file a long form prospectus for the ETF Securities (as defined below) in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**), subject to the terms of this decision and provided that the Filer files a prospectus for the ETF Securities in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), other than the requirements pertaining to the filing of a fund facts document (the **ETF Prospectus Form Requirement**);

(b) exempts the Filer and each Fund from the requirement to include a certificate of an underwriter in a Fund's prospectus (the **Underwriter's Certificate Requirement**); and

(c) exempts a person or company purchasing ETF Securities in the normal course through the facilities of the TSX or another Marketplace (as defined below) from the Take-over Bid Requirements (as defined below).

(collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that 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, Nova Scotia, Prince Edward Island, Newfoundland, North West Territories, Yukon and Nunavut (together with Ontario, the **Jurisdictions**).

Interpretation

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

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

Authorized Dealer means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

Basket of Securities means, in relation to the ETF Securities of a Fund, a group of securities or assets representing the constituents of the Fund.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the TSX or another Marketplace.

ETF Facts means a prescribed summary disclosure document required in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

ETF Securities means securities of an exchange-traded series of a Fund that are listed or will be listed on the TSX or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

Form 81-101F2 means Form 81-101F2 *Contents of Annual Information Form*.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations* that is located in Canada.

Mutual Fund Securities means securities of a non-exchange-traded series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Other Dealer means a registered dealer that acts as authorized dealer or designated broker to exchange-traded funds that are not managed by the Filer.

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Prospectus Delivery Decision means a decision granting relief from the Prospectus Delivery Requirement to an Affiliate Dealer, Authorized Dealer, Designated Broker or Other Dealer dated August 24, 2015 and any subsequent decision granted to an Affiliate Dealer, Authorized Dealer, Designated Broker or Other Dealer that grants similar relief.

Prospectus Delivery Requirement means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

Securityholders means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

Take-over Bid Requirements means the requirements of NI 62-104 relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each Jurisdiction.

TSX means the Toronto Stock Exchange.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*.

2. The head office of the Filer is located at 36 Toronto Street, Suite 1170, Toronto, Ontario M5C 2C5.

3. The Filer is registered as an investment fund manager in Ontario and Newfoundland and Labrador and as a portfolio manager and an exempt market dealer in Ontario.

4. The Filer is, or will be, the investment fund manager of each Fund.

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

6. The Proposed ETF Fund is established under the laws of Ontario as an investment fund that is an open-ended mutual fund trust. The Funds will be either trusts or corporations or classes thereof governed by the laws of the Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Fund offers or will offer ETF Securities and Mutual Fund Securities.

7. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.

8. The Proposed ETF Fund currently offers Series A and Series F units. These Mutual Fund Securities are currently distributed under a simplified prospectus dated March 23, 2017.

9. On September 1, 2017, a preliminary and pro forma prospectus in respect of the Mutual Fund Securities and the ETF Securities of the Proposed ETF Fund was filed with the securities regulatory authorities in each of the Jurisdictions.

10. The Filer will apply to list any ETF Securities of the Funds on the TSX or another Marketplace. The Filer will not file a final prospectus for any of the Funds in respect of the ETF Securities until the TSX or other applicable Marketplace has conditionally approved the listing of the ETF Securities.

11. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through qualified financial advisors or brokers.

12. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.

13. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

14. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.

15. The Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or the Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.

16. Each Fund will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

17. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.

18. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the TSX or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

ETF Prospectus Form Requirement

19. The Filer believes it is more efficient and expedient to include all of the series of each Fund in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the securities of the Funds by permitting disclosure relating to all series of securities to be included in one prospectus.

20. The Filer will ensure that any additional disclosure included in the simplified prospectus and annual information form relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes.

21. The Funds will comply with the provisions of NI 81-101 when filing any amendment or prospectus.

Underwriter's Certificate Requirement

22. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.

23. The Filer will generally conduct its own marketing, advertising and promotion of the Funds to the extent permitted by its registrations.

24. Authorized Dealers and Designated Brokers will not be involved in the preparation of a Fund's prospectus, will not perform any review or any independent due diligence to the content of a Fund's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the Funds or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.

Dealer Delivery

25. Securities regulatory authorities have advised that they take the view that the first re-sale of a Creation Unit on the TSX or another Marketplace will generally constitute a distribution of Creation Units under the Legislation and that the Authorized Dealers, Designated Brokers and Affiliate Dealers are subject to the Prospectus Delivery Requirement in connection with such re-sales. Re-sales of ETF Securities in the secondary market that are not Creation Units would not ordinarily constitute a distribution of such ETF Securities.

26. According to Authorized Dealers and Designated Brokers, Creation Units will generally be commingled with other ETF Securities purchased by the Authorized Dealers, Designated Brokers and Affiliate Dealers in the secondary market. As

such, it is not practicable for the Authorized Dealers, Designated Brokers or Affiliate Dealers to determine whether a particular re-sale of ETF Securities involves Creation Units or ETF Securities purchased in the secondary market.

27. Under the applicable Prospectus Delivery Decision, Authorized Dealers, Designated Brokers and Affiliate Dealers are exempt from the Prospectus Delivery Requirement in connection with the re-sale of Creation Units to investors on the TSX or another Marketplace. Under a Prospectus Delivery Decision, Other Dealers are also exempt from the Prospectus Delivery Requirement in connection with the re-sale of creation units of other exchange-traded funds that are either not managed by the Filer or that are managed by the Filer but are not structured as a separate series of a mutual fund.

28. Each Prospectus Delivery Decision includes a condition that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer undertakes that it will, unless it has previously done so, send or deliver to each purchaser of an ETF Security who is a customer of the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer and to whom a trade confirmation is required under the Legislation to be sent or delivered by the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer in connection with the purchase, the latest ETF Facts filed in respect of the ETF Security not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of the ETF Security.

29. The Filer will prepare and file with the applicable Jurisdictions on the System for Electronic Document Analysis and Retrieval (SEDAR) an ETF Facts for each class or series of ETF Securities and will make available to the applicable Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers the requisite number of copies of the ETF Facts for the purpose of facilitating their compliance with the Prospectus Delivery Decision within the timeframe necessary to allow Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers to effect delivery of the ETF Facts as contemplated in the Prospectus Delivery Decision.

Take-over Bid Requirements

30. As equity securities that will trade on the TSX or another Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-over Bid Requirements. However,

    a. it will not be possible for one or more Securityholders to exercise control or direction over a Fund as the constating documents of each Fund provide that only the Filer may call a meeting of the Securityholders;

    b. it will be difficult for the purchasers of ETF Securities of a Fund to monitor compliance with the Take-over Bid Requirements because the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by each Fund; and

    c. the way in which ETF Securities will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the net asset value of the ETF Securities.

31. The application of the Take-over Bid Requirements to the Funds would have an adverse impact on the liquidity of the ETF Securities because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Securityholder has reached the prescribed threshold at which the Take-over Bid Requirements would apply. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over the Funds.

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.

1. The decision of the principal regulator is that the Exemption Sought from the ETF Prospectus Form Requirement is granted, provided that the Filer will be in compliance with the following conditions:

    (a) the Filer files a simplified prospectus and annual information form in respect of the ETF Securities in accordance with the requirements of NI 81-101, NI 81-101F1 and Form 81-101F2, other than the requirements pertaining to the filing of a fund facts document;

    (b) the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1 or Form 81-101F2) in respect of the ETF Securities, in each Fund's simplified prospectus and/or annual information form, as applicable; and

(c) the Filer includes disclosure regarding this decision under the heading "Additional Information" and "Exemptions and Approvals" in each Fund's simplified prospectus and annual information form, respectively.

2. The decision of the principal regulator is that the Exemption Sought from the Underwriter's Certificate Requirement is granted provided that the Filer will be in compliance with the following conditions:

(a) the Filer provides or makes available to each Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer, the number of copies of the ETF Facts of each ETF Security that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer reasonably requests in support of compliance with its respective Prospectus Delivery Decision;

(b) each Fund's prospectus, as the same may be amended from time to time, will disclose the relief granted pursuant to the Exemption Sought and the Prospectus Delivery Decision;

(c) the Filer obtains an executed acknowledgement from each Authorized Dealer, Designated Broker and Affiliate Dealer, and uses its best efforts to obtain an acknowledgment from each Other Dealer:

(i) indicating each dealer's election, in connection with the re-sale of Creation Units on the TSX or another Marketplace, to send or deliver the ETF Facts in accordance with a Prospectus Delivery Decision or, alternatively, to comply with the Prospectus Delivery Requirement; and

(ii) if the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer agrees to deliver the ETF Facts in accordance with a Prospectus Delivery Decision:

(1) an undertaking that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer will attach or bind one Fund's ETF Facts with another Fund's ETF Facts only if the documents are being sent or delivered under the Prospectus Delivery Decision at the same time to an investor purchasing ETF Securities of each such Fund; and

(2) confirming that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer has in place written policies and procedures to ensure that it is in compliance with the conditions of the Prospectus Delivery Decision;

(d) the Filer will keep records of which Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers have provided it with an acknowledgement under a Prospectus Delivery Decision, and which intend to rely on and comply with the Prospectus Delivery Decision or intend to comply with the Prospectus Delivery Requirement;

(e) the Filer files with its principal regulator, to the attention of the Director, Investment Funds and Structured Products Branch, on or before January 31st in each calendar year, a certificate signed by its ultimate designated person certifying that, to the best of the knowledge of such person, after making due inquiry, the Filer has complied with the terms and conditions of this decision during the previous calendar year; and

(f) conditions (a), (b), (c), (d) and (e) above do not apply to the Exemption Sought after any new legislation or rule dealing with the Prospectus Delivery Decision takes effect and any applicable transition period has expired.

3. The decision of the principal regulator is that the Exemption Sought from the Take-over Bid Requirements is granted.

As to the Exemption Sought from the ETF Prospectus Form Requirement and the Take-Over Bid Requirements:

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

As to the Exemption Sought from the Underwriter's Certificate Requirement:

"Janet Leiper"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

2.1.5 Equium Capital Management Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Technical relief granted to mutual funds from Parts 9, 10 and 14 of NI 81-102 to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – Relief permitting funds to treat exchange-traded series in a manner consistent with treatment of other ETF securities in continuous distribution in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – Relief permitting funds to treat mutual fund series in a manner consistent with treatment of other conventional mutual fund securities in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – National Instrument 81-102 – Investment Funds – relief granted from certain mutual fund requirements and restrictions on borrowing from custodian and, if necessary, provision of a security interest to the custodian to fund distributions payable under the fund's distribution policy.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.6(a), 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 14.1, 19.1.

October 17, 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
EQUIUM CAPITAL MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Equium Global Tactical Allocation Fund (the **Proposed ETF Fund**), the Proposed ETF Fund being an exchange traded series of a mutual fund, and such other exchange traded series mutual funds as are managed and may be managed by the Filer now or in the future and that are structured in the same manner as the Proposed ETF Fund (the **Other Funds** and together with the Proposed ETF Fund, the **Funds** and each individually, a **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and each Fund as set forth below:

(a) an exemption from section 2.6(a)(i) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Fund to borrow cash from the custodian of the Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Security-holders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the Fund (the **Borrowing Requirement**); and

(b) an exemption to permit the Filer and each Fund to treat the ETF Securities and the Mutual Fund Securities (as defined below) as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10 and 14 of NI 81-102 (the **Sales and Redemptions Requirements**),

(collectively, the **Exemption Sought**).

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

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

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

Interpretation

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

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

Authorized Dealer means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

Basket of Securities means, in relation to the ETF Securities of a Fund, a group of securities or assets representing the constituents of the Fund.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the TSX or another Marketplace.

ETF Securities means securities of an exchange-traded series of a Fund that are listed or will be listed on the TSX or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations* that is located in Canada.

Mutual Fund Securities means securities of a non-exchange-traded series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

NI 81-101 means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

Other Dealer means a registered dealer that acts as authorized dealer or designated broker to exchange-traded funds that are not managed by the Filer and that has received relief under a Prospectus Delivery Decision.

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Prospectus Delivery Requirement means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

Securityholders means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

TSX means the Toronto Stock Exchange.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*.

2. The head office of the Filer is located at 36 Toronto Street, Suite 1170, Toronto, Ontario M5C 2C5.

3. The Filer is registered as an investment fund manager in Ontario and Newfoundland and Labrador and as a portfolio manager and an exempt market dealer in Ontario.

4. The Filer is, or will be, the investment fund manager of each Fund.

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

6. The Proposed ETF Fund is established under the laws of Ontario as an investment fund that is an open-ended mutual fund trust. The Funds will be either trusts or corporations or classes thereof governed by the laws of the Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Fund offers or will offer ETF Securities and Mutual Fund Securities.

7. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.

8. The Proposed ETF Fund currently offers Series A and Series F units. These Mutual Fund Securities are currently distributed under a simplified prospectus dated March 23, 2017.

9. On September 1, 2017, a preliminary and pro forma prospectus in respect of the Mutual Fund Securities and the ETF Securities of the Proposed ETF Fund was filed with the securities regulatory authorities in each of the Jurisdictions.

10. The Filer will apply to list any ETF Securities of the Funds on the TSX or another Marketplace. The Filer will not file a final prospectus for any of the Funds in respect of the ETF Securities until the TSX or other applicable Marketplace has conditionally approved the listing of the ETF Securities.

11. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through qualified financial advisors or brokers.

12. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.

13. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

14. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.

15. The Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or the Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.

16. Each Fund will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

17. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.

18. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the TSX or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

Borrowing Requirement

19. Section 2.6(a)(i) of NI 81-102 prevents a mutual fund from borrowing cash or providing a security interest over its portfolio assets unless the transaction is a temporary measure to accommodate redemption requests or to settle portfolio transactions and does not exceed five percent of the net assets of the mutual fund. As a result, a Fund is not permitted under section 2.6(a)(i) to borrow from the Custodian to fund distributions under the Distribution Policy.

20. Each Fund will make distributions on a monthly or quarterly basis or at such frequency as the Filer may, in its discretion, determine appropriate, may make additional distributions and, in each taxation year, will distribute sufficient net income and net realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada) (collectively, the **Distribution Policy**).

21. Amounts included in the calculation of net income and net realized capital gains of a Fund for a taxation year that must be distributed in accordance with the Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Fund from the

issuers of securities held in the Fund's portfolio (**Issuers**).

22. While it is possible for a Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with the Distribution Policy, maintaining such a cash position or making such a disposition (which would generally be followed, when the cash is actually received from the Issuers, by an acquisition of the same securities) impacts the Fund's performance. Maintaining assets in cash or disposing of securities means that a portion of the net asset value of the Fund is not invested in accordance with its investment objective.

23. The Filer is of the view that it is in the interests of a Fund to have the ability to borrow cash from the Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund from the Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction in the Fund's performance if the Fund had to hold cash instead of securities in order to fund the distribution.

Sales and Redemptions Requirements

24. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Exemption Sought, the Filer and the Funds would not be able to technically comply with those parts of the Instrument.

25. The Exemption Sought will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10 and 14 of NI 81-102. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10 and 14 of NI 81-102 as appropriate for the type of security being offered.

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.

1. The decision of the principal regulator under the Legislation is that the Exemption Sought from the Borrowing Requirement is granted, provided that the Filer will be in compliance with the following conditions:

   a. the borrowing by the Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the Fund but have not been received by the Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the Fund;

   b. the borrowing is not for a period longer than 45 days;

   c. any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;

   d. the Fund does not make any distribution to Securityholders where the distribution would impair the Fund's ability to repay any borrowing to fund distributions; and

   e. the final prospectus of the Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.

2. The decision of the principal regulator under the Legislation is that the Exemption Sought from the Sales and Redemptions Requirements is granted, provided that the Filer will be in compliance with the following conditions:

   a. with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and

   b. with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

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

2.2 Orders

2.2.1 OneREIT

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 18, 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
ONEREIT
(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 in 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, Yukon, Northwest Territories and Nunavut.

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

The decision of the Principal Regulator under the Legislation that the Order Sought is granted.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 IMPACT Silver Corp. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer is already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia are substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
IMPACT SILVER CORP.

ORDER
(clause 1(11)(b))

UPON the application of IMPACT Silver Corp. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to paragraph 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law;

AND UPON considering the application and the recommendations of the staff of the Commission;

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant was incorporated under the former *Company Act* (British Columbia) under the name Daer Gold Mines Ltd. on December 21, 1987 and transitioned under the British Columbia *Business Corporations Act* on April 26, 2004. The Applicant changed its name to I.M.P.A.C.T. Minerals Inc. on November 28, 1991, to IMPACT Minerals International Inc. on August 20, 1999, and to IMPACT Silver Corp. on August 16, 2005.

2. The Applicant's head office is located at 1100 - 543 Granville Street, Vancouver, BC V6C 1X8 and its registered office is located at 1800 – 510 West Georgia Street, Vancouver, BC V6B 0M3.

3. The authorized capital of the Applicant consists of an unlimited number of common shares without par value (the **Common Shares**), of which 85,566,840 Common Shares are issued and outstanding as at the date hereof.

4. The Applicant is a reporting issuer under the *Securities Act* (British Columbia) (the **BC Act**) and the *Securities Act* (Alberta) (the **Alberta Act**).

5. The British Columbia Securities Commission is the principal regulator for the Applicant and will continue to be the principal regulator for the Applicant once it has obtained reporting issuer status in Ontario.

6. As of the date hereof, the Applicant is not on the list of defaulting reporting issuers maintained pursuant to the BC Act or the Alberta Act, and is not in default of any of its obligations under the BC Act or the Alberta Act or the rules and regulations made thereunder.

7. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than British Columbia and Alberta.

8. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the requirements under the Act.

9. The continuous disclosure materials filed by the Applicant under the BC Act and the Alberta Act since April 22, 1997 are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**).

10. The Applicant's Common Shares are listed and posted for trading on the TSX Venture Exchange (**TSX-V**) under the symbol "IPT" and on the Frankfurt Stock Exchange under the symbol "IKL". The Applicant's securities are not traded on any other stock exchange or trading or quotation system.

11. The Applicant is not in default of any of the rules, regulations or policies of the TSX-V or the Frankfurt Stock Exchange.

12. The TSX-V requires all of its listed issuers, which are not otherwise reporting issuers in Ontario, to assess whether they have a significant connection with Ontario, as defined in Policy 1.1 of the TSX Venture Exchange Corporate Finance Manual, and, upon first becoming aware that it has a significant connection to Ontario, to promptly make a *bona fide* application to the Commission to be designated a reporting issuer in Ontario.

13. The Applicant has determined that it has a significant connection to Ontario in accordance with the policies of the TSX-V as 25.77% of the Applicant's Common Shares are held by registered and beneficial shareholders residing in Ontario.

14. The Applicant does not have a shareholder which holds sufficient securities of the Applicant to affect materially the control of the Applicant.

15. Neither the Applicant nor any of its officers or directors has:

    (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

16. Neither the Applicant nor any of its officers or directors is or has been the subject of:

    (a) any known ongoing or concluded investigation by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangement or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

17. None of the officers or directors of the Applicant is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

AND UPON the Commission being satisfied that to do so is in the public interest;

IT IS HEREBY ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED this 6th day of October, 2017.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.3 The Bank of Nova Scotia – 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, at a discounted purchase price, up to 4,000,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchase cannot be made through the TSX trading system – but for the fact that the proposed purchase cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchase exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make the proposed purchase unless it has first obtained written confirmation from the selling shareholder that, between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchase.

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 BANK OF NOVA SCOTIA

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of The Bank of Nova Scotia (the "**Issuer**") 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 purchase by the Issuer of up to 4,000,000 of its common shares (collectively, the "**Subject Shares**") in one tranche from The Toronto-Dominion Bank (the "**Selling Shareholder**");

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 14, 24 and 25 as they relate to the Selling Shareholder) having represented to the Commission that:

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

2. The Issuer's registered and head office is located at 1709 Hollis Street, Halifax, Nova Scotia, B3J 1W1 and its executive offices are at 44 King Street West, Toronto, Ontario, M5H 1H1.

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

4. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of preferred shares issuable in series. As of May 11, 2017, (a) 1,201,865,442 Common Shares; (b) 7,497,663 non-cumulative preferred shares series 18; (c) 6,302,337 non-cumulative preferred shares series 19; (d) 8,039,268 non-cumulative preferred shares series 20; (e) 5,960,732 non-cumulative preferred shares series 21; (f) 9,376,944 non-cumulative preferred shares series 22; (g) 2,623,056 non-cumulative preferred shares series 23; (h) 6,142,738 non-cumulative preferred shares series 30; (i) 4,457,262 non-cumulative preferred shares series 31; (j) 11,161,422 non-cumulative preferred shares series 32; (k) 5,184,345 non-cumulative preferred shares series 33; (l) 14,000,000 non-cumulative preferred shares series 34; (m) 20,000,000 non-cumulative preferred shares series 36; and (n) 20,000,000 non-cumulative preferred shares series 38, were issued and outstanding. To the best of the Issuer's knowledge, as of February 28, 2017, the "public float" for the Common Shares represented approximately 99.948% of all the issued and outstanding Common Shares for purposes of the TSX NCIB Rules (as defined below).

5. The registered and head office of the Selling Shareholder is located in the Province of Ontario.

6. The Selling Shareholder does not, directly or indirectly, own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 4,000,000 Common Shares. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after April 12, 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 to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of the Subject Shares pursuant to the Proposed Purchase.

10. The Selling Shareholder 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**"). The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. The Issuer announced on May 30, 2017 the renewal of its normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase for cancellation, during the 12-month period beginning on June 2, 2017 and ending on June 1, 2018, up to 24,000,000 Common Shares, representing approximately 2% of the issued and outstanding Common Shares as of the date specified in the Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") which was submitted to, and accepted by, the TSX. The Notice specifies that purchases made under the Normal Course Issuer Bid are to be conducted through the facilities of the TSX or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX or a securities regulatory authority in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**"), including pursuant to private agreements (each, an "**Off-Exchange Block Purchase**") or specific share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities. The TSX has been advised of the Issuer's intention to enter into the Proposed Purchase and has confirmed that it has no objection to the Proposed Purchase.

12. The Issuer also announced on May 30, 2017 the renewal of its automatic share purchase plan ("**ASPP**") to permit the Issuer to make purchases under its Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in the Common Shares, including during internal blackout periods (each such time, a "**Blackout Period**"). The ASPP was pre-cleared by the TSX and complies with the TSX NCIB Rules, applicable securities laws and this Order. Under the ASPP, at times it is not subject to blackout restrictions, the Issuer may, but is not required to, instruct the designated broker under the ASPP (the "**ASPP Broker**") to make purchases under its Normal Course Issuer Bid in accordance with the terms of the ASPP. Such purchases will be determined by the ASPP Broker in its sole discretion based on parameters established by the Issuer prior to any Blackout Period in accordance with TSX rules, applicable securities laws (including this Order) and the terms of the agreement between the ASPP Broker and the Issuer. If the Issuer determines to instruct the ASPP Broker to make purchases under the ASPP during a particular Blackout Period, the Issuer will instruct the ASPP Broker not to conduct a block purchase (a "**Block Purchase**") in reliance on the block purchase exception in clause 629(l)(7) of the TSX NCIB Rules in a calendar week in which either (a) the Issuer completed a Proposed Purchase, or (b) a Blackout Period ends and a new trading window of the Issuer opens.

13. As at the date hereof, the Issuer has not repurchased for cancellation any Common Shares under the Normal Course Issuer Bid, whether through the facilities of a marketplace or pursuant to Off-Exchange Block Purchases.

14. The Issuer and the Selling Shareholder intend to enter into an agreement of purchase and sale (the "**Agreement**") pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder before October 10, 2017 (the "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the Proposed Purchase.

15. The Subject Shares acquired under the Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

16. The purchase of any of the Subject Shares by the Issuer pursuant to the Agreement will constitute

an "issuer bid" for the purposes of NI 62-104, to which the applicable Issuer Bid Requirements would apply.

17. Because the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the Proposed Purchase, the Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to subsection 4.8(2) of NI 62-104.

18. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares through the facilities of the TSX as a Block Purchase in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to subsection 4.8(2) of NI 62-104.

19. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

20. For the Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

21. Management of the Issuer is of the view that: (a) through the Proposed Purchase, the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements available pursuant to subsection 4.8(2) of NI 62-104; and (b) the Proposed Purchase is an appropriate use of the Issuer's funds.

22. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect the control of the Issuer. To the knowledge of the Issuer, the Proposed Purchase will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then-prevailing market price. The Proposed Purchase will be carried out at minimal cost to the Issuer.

23. The Common Shares are "highly-liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

24. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer to the Selling Shareholder in connection with the Proposed Purchase.

25. At the time that the Agreement is entered into by the Issuer and the Selling Shareholder and at the time of the Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not make the Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of the Order and the date on which the Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchase.

27. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under the Normal Course Issuer Bid, such one-third being equal to 8,000,000 Common Shares as of the date of this Order.

28. The Agreement will not be negotiated or entered into during a time when the Issuer would not be permitted to trade in the Common Shares, including during a Blackout Period. If a Blackout Period is in effect, the Issuer will not purchase Subject Shares pursuant to the Proposed Purchase until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

29. Assuming completion of the purchase of the maximum number of Subject Shares, being 4,000,000 Common Shares, the Issuer will have

purchased under the Normal Course Issuer Bid an aggregate of 4,000,000 Common Shares pursuant to Off-Exchange Block Purchases, representing one-sixth of the maximum of 24,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied 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 connection with the Proposed Purchase, provided that:

(a) the Proposed Purchase will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week in which it completes the Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of the calendar day on which it completes the Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including under automatic trading plans and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following the Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of Subject Shares to the TSX;

(f) at the time that the Agreement is entered into by the Issuer and the Selling Shareholder and at the time of the Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchase, and (ii) that information regarding the Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") following the completion of the Proposed Purchase;

(h) the Issuer will report information regarding the Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 8,000,000 Common Shares; and

(j) the Issuer will not make the Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that between the date of this Order and the date on which the Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of the Subject Shares pursuant to the Proposed Purchase.

DATED at Toronto, Ontario this 2nd day of June, 2017.

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

2.2.4 Dennis L. Meharchand and Valt.X Holdings Inc. – s. 127(1)

IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

Timothy Moseley, Chair of the Panel

October 24, 2017

ORDER
(Subsection 127(1) of the
***Securities Act*, RSO 1990, c S.5)**

WHEREAS on October 24, 2017, the Ontario Securities Commission held a hearing in writing to consider the withdrawal of a motion to be brought by Dennis L. Meharchand and Valt.X Holdings Inc. (the **Respondents**); and

ON READING correspondence from Mr. Meharchand indicating the intent to withdraw the Respondents' motion, and the consent of both Staff and Mr. Meharchand to an order vacating the motion date and the pre-hearing conference scheduled to follow immediately after the motion;

IT IS ORDERED THAT the motion hearing and pre-hearing conference date of October 27, 2017 is vacated.

"Timothy Moseley"

2.2.5 Donna Hutchinson et al.

IN THE MATTER OF
DONNA HUTCHINSON,
CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDERS and
PATRICK JELF CARUSO

Mark J. Sandler, Commissioner and Chair of the Panel

October 24, 2017

ORDER

WHEREAS on October 24, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario.

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**), for David Paul George Sidders and for Patrick Jelf Caruso, no one appearing for Donna Hutchinson or Cameron Edward Cornish, although properly served as appears from the Affidavit of Service filed by Staff;

IT IS ORDERED THAT:

1. by no later than November 24, 2017, Staff shall disclose to Donna Hutchinson, Cameron Edward Cornish, David Paul George Sidders and Patrick Jelf Caruso (collectively, the **Respondents**) all relevant non-privileged documents and things in the possession or control of Staff that are relevant to the hearing;

2. by no later than February 20, 2018, Staff shall provide preliminary witnesses lists and statements to the Respondents and shall indicate any intent to call an expert witness, including the name of the expert and the issue on which the expert will be giving evidence; and

3. the hearing is adjourned to February 26, 2018 at 9:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary.

"Mark J. Sandler"

2.3 Orders with Related Settlement Agreements

2.3.1 Execution Access, LLC – ss. 127, 127.1

IN THE MATTER OF
EXECUTION ACCESS, LLC

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner

October 20, 2017

ORDER
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

THIS APPLICATION, made jointly by Execution Access, LLC (the Respondent) and Staff of the Commission (Staff) for approval of a settlement agreement dated October 18, 2017 (the Settlement Agreement), was heard on October 20, 2017 at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated October 18, 2017, and the Settlement Agreement, and on hearing the submissions of representatives of each of the parties, and on considering the Undertaking of the Respondent dated October 17, 2017 to make a payment of $970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

IT IS ORDERED THAT:

1. this Settlement Agreement be approved;

2. the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

3. the Respondent pay costs in the amount of $25,000, pursuant to section 127.1 of Act.

“D. Grant Vingoe”

“Deborah Leckman”

IN THE MATTER OF

EXECUTION ACCESS, LLC

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. This matter concerns a company carrying on business in Ontario as a marketplace without complying with National Instrument 21-101 (*Marketplace Regulation*) ("NI 21-101"). It is essential for the protection of investors that marketplaces are appropriately recognized as exchanges or registered in a manner that allows them to operate as an alternative trading system.

2. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing (the "Notice of Hearing") to announce that it will hold a hearing (the "Settlement Hearing") to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act"), it is in the public interest for the Commission to make certain orders against Execution Access, LLC. ("EA" or "the Respondent") in respect of the conduct described herein.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondent consents to the making of an order (the "Order") in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out herein.

4. For the purposes of the Proceeding, the Respondent agrees with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

A. Overview

5. In 2013, EA acquired the assets of a business (the "Initial Platform") that provided certain Canadian entities operating in Ontario with access to a trading platform for US treasury bills ("US Treasuries"). The assets acquired comprised the fully electronic portion of the asset vendor's benchmark U.S. Treasury brokerage, data and co-location service business. The Initial Platform was not operated as a recognized exchange or an alternative trading system pursuant to NI 21-101.

6. From 2013 to 2017 (the "Material Time") EA has operated the Nasdaq Fixed Income trading system ("NFI") (formerly called eSpeed), a fully executable central limit order book for electronic trading of U.S. Treasuries. NFI is an electronic system that brings together orders from multiple buyers and sellers and matches orders using established, non-discretionary methods. NFI therefore falls within the definition of "marketplace" in section 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"). Because EA provided access to NFI to entities operating in Ontario during the Material Time, EA is considered to be carrying on business in Ontario.

B. The Respondent

7. EA is a Delaware company. In June, 2013, EA was approved by the Financial Industry Regulatory Authority in the United States to operate as the broker-dealer for NFI.

C. Carrying on Business as ATS without registration

8. During the Material Time, EA operated NFI to facilitate matching of client orders in U.S. Treasuries, in Ontario.

9. Subscribers to NFI are institutional entities, including but not limited to banks, broker-dealers and proprietary trading firms. EA has no natural person clients. Orders entered by subscribers may interact with other subscriber orders.

10. NFI is available to all subscribers with authorized access. Prospective subscribers must satisfy certain eligibility criteria, and are required to complete all onboarding documentation and execute an Electronic Trading Agreement ("ETA").

11. Pursuant to the terms of the ETA, subscribers have contractual obligations to abide by all applicable rules and regulations, and the procedural, operational and technical requirements of NFI. Subscribers have access to all NFI's features and functionalities once approved by EA.

12. During the Material Time, EA operated a marketplace in Ontario without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer so it could operate as an alternative trading system under NI 21-101.

13. By operating from June 2013 to July 2017 without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer with the Commission, EA did not pay regulatory fees estimated in the amount of $470,000.

D. Mitigating Factors

13. Since Staff advised the Respondent that it was operating without recognition or registration, the Respondent has cooperated with Staff of the Market Regulation Branch to regularize its operations and its method of operation has been described in a public notice on which comment was invited. No comment was received on the proposed method of operation.

14. During the Material Time there have been no customer complaints to the Staff.

15. The Respondent has cooperated with Enforcement Staff.

PART IV – CONDUCT CONTRARY TO THE PUBLIC INTEREST

16. By carrying on business in Ontario as a marketplace without complying with NI 21-101, EA acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

17. The Respondent agrees to the terms of settlement set forth below.

18. The Respondent has given an undertaking (the "Undertaking") to the Commission in the form attached as Schedule "B" to this Settlement Agreement, which includes an undertaking to make a voluntary payment, before the commencement of the Settlement Hearing, in the amount of $970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

19. The Respondent consents to the Order, pursuant to which it is ordered that:

(a) this Settlement Agreement be approved;

(b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

(c) the Respondent pay costs in the amount of $25,000 pursuant to section 127.1 of the Act;

20. The amounts set out in paragraph 18 and sub-paragraph 19(c) shall be paid by EA in separate certified cheques to the Commission.

PART VI – FURTHER PROCEEDINGS

21. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

22. The Respondent acknowledges that, if the Commission approves this Settlement Agreement and the Respondent fails to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

23. The Respondent waives any defences to a proceeding referenced in paragraph 21 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

24. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168.

25. The Respondent will attend the Settlement Hearing by causing a representative to be present.

26. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

27. If the Commission approves this Settlement Agreement:

(a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) the parties will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

28. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

29. If the Commission does not make the Order:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and

(b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

30. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

32. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 17th day of October, 2017.

EXECUTION ACCESS, LLC

By: *"Christopher M. Setaro"*
Christopher M. Setaro
Chief Compliance Officer

DATED at Toronto, Ontario, this 18th day of October, 2017.

ONTARIO SECURITIES COMMISSION

By: *"Jeff Kehoe"*
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE "A"

IN THE MATTER OF EXECUTION ACCESS, LLC

[INSERT COMMISSIONERS OF THE PANEL]

___, 2017

ORDER (Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

THIS APPLICATION, made jointly by Execution Access, LLC (the "Respondent") and Staff of the Commission ("Staff") for approval of a settlement agreement dated ___, 2017 (the "Settlement Agreement"), was heard on ___, 2017 at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated ___, 2017, and the Settlement Agreement and on hearing the submissions of representatives of each of the parties, and on considering the Undertaking of the Respondent dated October ___, 2017 to make a payment of $970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

IT IS ORDERED THAT:

(a) this Settlement Agreement be approved;

(b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

(c) the Respondent pay costs in the amount of $25,000, pursuant to section 127.1 of the Act.

_____
Commissioner

_____
Commissioner

_____
Commissioner

SCHEDULE "B"

IN THE MATTER OF EXECUTION ACCESS, LLC

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated October 17, 2017 between Execution Access, LLC and Staff of the Commission.

2. Execution Access, LLC undertakes to the Commission to make a payment of $970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

DATED at Toronto, this 17th day of October, 2017.

EXECUTION ACCESS, LLC

By: *"Christopher M. Setaro"*
Christopher M. Setaro
Chief Compliance Officer

2.4 Rulings

2.4.1 EOX Holdings LLC – s. 74(1)

Headnote

Application for relief from dealer registration and prospectus requirements that may be applicable to certain trades in over-the-counter (OTC) derivatives with "permitted counterparties" – permitted counterparties will consist exclusively of persons or companies who are "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – relief sought in Ontario as interim response to current regulatory uncertainty associated with OTC derivatives in Ontario – relief granted subject to certain terms and conditions, including sunset provision of up to four years.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

October 17, 2017

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, Chapter S.5
(the OSA)

AND

IN THE MATTER OF
EOX HOLDINGS LLC

RULING & EXEMPTION
(Section 74(1) of the OSA)

Background

Upon the application (the **Application**) of EOX Holdings LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission** or **OSC**) for an order, pursuant to subsection 74(1) of the OSA, that the dealer registration requirement under subsection 25(1) of the OSA and the prospectus requirement under subsection 53(1) of the OSA that may otherwise be applicable to a trade in or distribution of an OTC Derivative (as defined below) made by either:

(i) the Applicant to a "Permitted Counterparty" (as defined below), or

(ii) by a Permitted Counterparty to the Applicant,

shall not apply to the Applicant or the Permitted Counterparty, as the case may be (the **Requested Relief**), subject to certain terms and conditions.

AND WHEREAS for the purpose of this ruling and exemption:

(i) **"CFTC"** means the U.S. Commodity Futures Trading Commission.

"Clearing Corporation" means an association or organization through which Options or futures contracts are cleared and settled.

"ECP" means an eligible contract participant as that term is defined in the U.S. *Commodity Exchange Act*.

"FINRA" means the Financial Industry Regulatory Authority in the U.S.

"Forward Contract" means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

"NFA" means the National Futures Association in the U.S.

"Option" means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

"OTC Derivative" means one or more of, or any combination of, an Option, a Forward Contract, or any instrument of a type commonly considered to be a derivative, in which:

(a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, swap or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

"Permitted Counterparty" means a person or company that is a "permitted client", as that term is defined in section 1.1 [*Definition of terms used throughout this Instrument*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

"SEC" means the United States Securities and Exchange Commission.

"Underlying Interest" means, for a derivative, the currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

(ii) terms used in the Decision that are defined in the OSA, and not otherwise defined in the Decision, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant is a limited liability company formed under the laws of the State of Delaware. Its head office is located in Houston, Texas, U.S.

2. The Applicant is a wholly-owned direct subsidiary of OTC Global Holdings LP (**OTC Global**), one of the largest independent institutional brokers of commodities in the U.S., covering physical and financial commodity instruments.

3. The Applicant is based in Houston, Texas, and operates as an inter-dealer broker in both exchange-traded and over-the-counter (**OTC**) energy commodities.

4. In order to provide these services, the Applicant is an approved member of and is regulated by the NFA (NFA ID number: 0409750) and is registered as an "introducing broker" with the CFTC. The Applicant is not a broker-dealer registered with the SEC, is not a member of FINRA and does not conduct a securities business in the U.S.

5. The Applicant is not registered in any capacity under the OSA. The Applicant does not rely on any exemption from registration in Canada.

6. The Applicant is not a member of any exchange, but it is considered to be a "broker participant" by and has entered into a broker clearing agreement with each of the following U.S. exchanges: CME (Nymex), ICE Futures U.S., NFX (Nasdaq energy futures exchange), and the Nodal exchange.

7. The Applicant is not in default of securities, commodity futures or derivatives legislation in any jurisdiction of Canada, other than in respect of the subject matter to which this Ruling relates.

8. The Applicant is in compliance in all material respects with U.S. securities, commodity futures and derivatives laws.

9. The principal business of the Applicant is providing:

   (a) brokerage services for over-the-counter and futures transactions in energy commodities to various financial institutions and utilities; and

   (b) in relation to customers who are deemed "US Persons", as defined under applicable U.S. law, introducing services for ECPs.

10. The Applicant will not maintain an office, sales force or physical place of business in Ontario.

11. The Applicant qualifies as a "permitted client" as that term is defined in section 1.1 of NI 31-103.

12. As the Applicant is not currently registered in any capacity with the SEC, it is unable to rely on the international dealer registration exemption available in section 8.18 of NI 31-103 in Ontario.

Proposed Conduct of OTC Derivative transactions

13. The Applicant proposes to enter into bilateral OTC Derivative transactions with counterparties located in Ontario that consist exclusively of persons or companies that are Permitted Counterparties. The Applicant understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between the Applicant and a Permitted Counterparty will consist of: a currency; a foreign exchange rate; a security; an economic indicator; an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.

14. The Applicant will not offer or provide credit or margin to any of their Permitted Counterparties for the purposes of an OTC Derivative transaction.

15. The Applicant seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada.

Regulatory uncertainty with the Regulation of OTC Derivative transactions in Canada

16. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as "securities" in the provinces and territories of Canada other than Quebec (the **Relevant Jurisdictions**).

17. In each of British Columbia, Prince Edward Island, the Yukon, the Northwest Territories and Nunavut, OTC Derivative transactions are regulated as securities on the basis that the definition of the term "security" in the securities legislation of each of these jurisdictions includes an express reference to a "futures contract" or a "derivative".

18. In Alberta, the term "security" no longer includes an express reference to a "futures contract". Following the introduction, effective October 31, 2014, of a new framework and terminology for the regulation of derivatives, Alberta securities legislation now includes a definition of "derivatives".

19. In each of Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia and Saskatchewan, it is not certain whether, or in what circumstances, OTC Derivative transactions are "securities" because the definition of the term "security" in the securities legislation of each of these jurisdictions makes no express reference to a "futures contract" or a "derivative".

20. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Notice 91-702**). OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (the **Ontario Act**) and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Applicant and a Permitted Counterparty may be subject to Ontario securities law.

21. In Quebec, OTC Derivative transactions are subject to the *Derivatives Act* (Quebec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Quebec's securities regulatory requirements.

22. In each of British Columbia, Alberta, Manitoba, New Brunswick and Nova Scotia and Saskatchewan (the **Blanket Order Jurisdictions**) and Quebec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as "Qualified Parties" in the Blanket Order Jurisdictions and "accredited counterparties" in Quebec.

23. The corresponding OTC Derivative Exemptions are as follows:

Province	OTC Derivatives Exemption
British Columbia	Blanket Order 91-501 *Over-the-Counter Derivatives*
Alberta	ASC Blanket Order 91-506 *Over-the-Counter Trades in Derivatives*
Saskatchewan	General Order 91-907 *Over-the-Counter Derivatives*
Manitoba	Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*
Quebec	Section 7 of the *Derivatives Act* (Quebec)
New Brunswick	Local Rule 91-501 *Derivatives*
Nova Scotia	NSSC Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*

24. Before March 27, 2010, section 3.3 [*Accredited investor*] of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provided an exemption from the dealer registration requirement for certain trades made to "accredited investors", which may have been relied upon by persons or companies entering into OTC Derivative transactions considered to be securities. However, in Ontario and Newfoundland and Labrador this exemption was not available to most "market intermediaries" due to section 3.0 [Removal of exemptions -- market intermediaries].

The Evolving Regulation of OTC Derivative Transactions as Derivatives

25. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Quebec, or indirectly through amendments to the definition of the term "security" in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.

26. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.

27. The Final Report of the Ontario Commodity Futures Act Advisory Committee published in January, 2007 concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.

28. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the Ontario Act that were made by the *Helping Ontario Families and Managing Responsibly Act, 2010* (Ontario).

29. The amendments to the Ontario Act establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed.

30. On August 25, 2015, the jurisdictions participating in the development of the Cooperative Capital Markets Regulatory System (Cooperative System) published for comment the revised consultation draft provincial/territorial *Capital Markets Act* (**CMA**) and draft initial regulations under the provincial/territorial legislation.

31. Part 4 [*Over-the-Counter Derivatives*] of Capital Markets Regulatory Authority (**CMRA**) Regulation 91-501 *Derivatives and Strip Bonds* contains registration and prospectus exemptions for trades in OTC Derivatives where each party to the trade is a "qualified party" (as defined in CMRA Regulation 91-501) or "permitted client" (as defined in NI 31-103), each acting as principal.

Rationale for Requested Relief

32. The Requested Relief would substantially address, for the Applicant and its Permitted Counterparties, the regulatory uncertainty that is currently associated with the regulation of OTC Derivative transactions, by permitting these parties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation in Ontario.

Books and Records

33. The Applicant will become a "market participant" as a consequence of this decision. For the purposes of the Ontario Act, and as a market participant, the Applicant is required by subsection 19(1) of the Ontario Act to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

34. For the purposes of its compliance with subsection 19(1) of the Ontario Act, the books and records that the Applicant will keep will include books and records that:

    (a) demonstrate the extent of the Applicant's compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with the policies and procedures of the Applicant for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Applicant, and each individual acting on its behalf, complies with securities legislation;

    (c) identify all OTC Derivative transactions conducted on behalf of the Applicant and each of its clients, including the name and address of all parties to the transaction and its terms; and

    (d) set out for each OTC Derivative transaction entered into by the Applicant, information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by the Applicant in reliance upon the "accredited investor" prospectus exemption in section 2.3 [*Accredited investor*] of NI 45-106.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to grant the order requested:

IT IS ORDERED, pursuant to 74(1) of the OSA, that the Requested Relief is granted, provided that:

(a) the counterparty to any OTC Derivative transaction that is entered into by the Applicant is a Permitted Counterparty;

(b) in the case of any trade made by the Applicant to a Permitted Counterparty, the Applicant does not offer or provide any credit or margin to the Permitted Counterparty; and

(c) the Requested Relief shall terminate on the date that is the earlier of:

    (i) the date that is four years after the date of this decision; and

    (ii) the coming into force in Ontario of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

"Janet Leiper"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

2.4.2 EOX Holdings LLC – s. 38 of the CFA and s. 6.1 of Rule 91-502 Trades in Recognized Options

Headnote

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that the Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. As an introducing broker, the Applicant will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside of Canada and that are cleared through clearing corporations located outside of Canada, including block trades, to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. The Applicant also sought exemptive relief from the requirement in section 3.1 of OSC Rule 91-503 Trades in Recognized Options that its salespersons, directors, officers and employees complete a specified Canadian course, provided that such persons remain registered in the U.S. to engage in the activity that is the subject of the decision.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22, 38.

October 17, 2017

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

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
EOX HOLDINGS LLC

RULING & EXEMPTION
(Section 38 of the CFA and Section 6.1 of Rule 91-502)

UPON the application (the **Application**) of EOX Holdings LLC (**EOX** or the **Applicant**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirement in the CFA (as defined below) or the trading restrictions in the CFA (as defined below) in connection with trades in Exchange-Traded Futures (as defined below) including Block Trades (as defined below), on Non-Canadian Exchanges (as defined below), where the Applicant is acting as agent in such trades to, from or on behalf of Permitted Clients (as defined below);

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client (as defined below) is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicant acts in respect of such trades on behalf of the Permitted Client pursuant to the above ruling; and

(c) a decision of the Director, pursuant to section 6.1 of OSC Rule 91-502 *Trades in Recognized Options* (**Rule 91-502**), exempting the Applicant and its salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with trades in Exchange-Traded Futures (as defined below);

AND WHEREAS for the purposes of this ruling and exemption (the **Decision**):

(a) The following terms shall have the following meanings:

(i) **"Block Trade"** means a trade in a large quantity of Exchange-Traded Futures entered into between ECPs (in this case, via an introducing broker) pursuant to a privately negotiated transaction that, pursuant to the applicable rules of a Non-Canadian Exchange, are permitted to be executed on the Non-Canadian Exchange apart from the public auction market established by the Non-Canadian Exchange subject to meeting specified quantity thresholds (which are different large amounts depending on the particular Non-Canadian Exchange) and provided that the price of the trade is entered and reported on the Non-Canadian Exchange within a specified time period following the trade;

(ii) **"CFTC"** means the U.S. Commodity Futures Trading Commission;

(iii) **"dealer registration requirement in the CFA"** means the provisions of section 22 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 22 of the CFA;

(iv) **"ECP"** means an eligible contract participant as that term is defined in the U.S. *Commodity Exchange Act*;

(v) **"Exchange"** means a marketplace where securities (including futures) can be traded and includes bulletin boards;

(vi) **"Exchange-Traded Futures"** means commodity futures contracts or commodity futures options that trade on one or more organized exchanges located outside of Canada and that are cleared through one or more clearing corporations located outside of Canada;

(vii) **"FINRA"** means the Financial Industry Regulatory Authority in the U.S.;

(viii) **"IDE"** means the international dealer exemption in section 8.18 of NI 31-103;

(ix) **"NI 31-103"** means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(x) **"NFA"** means the National Futures Association in the U.S.;

(xi) **"Non-Canadian Exchange"** means an exchange located outside of Canada;

(xii) **"OSA"** means the *Securities Act* (Ontario);

(xiii) **"Permitted Client"** means a client in Ontario that is a 'permitted client' as that term is defined in section 1.1. of NI 31-103;

(xiv) **"SEC"** means the United States Securities and Exchange Commission;

(xv) **"specified affiliate"** has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 Registration Information;

(xvi) **"trading restrictions in the CFA"** means the provisions of section 33 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 33 of the CFA; and

(xvii) **"U.S."** means United States of America; and

(b) Terms used in this Decision that are defined in the OSA, and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Applicant having represented to the Commission and the Director as follows:

1. The Applicant is a limited liability company formed under the laws of the State of Delaware. Its head office is located in Houston, Texas, U.S.

2. The Applicant is a wholly-owned direct subsidiary of OTC Global Holdings LP (**OTC Global**), one of the largest independent institutional brokers of commodities in the U.S., covering physical and financial commodity instruments.

3. The Applicant is based in Houston, Texas, and operates as an inter-dealer broker in both exchange-traded and over-the-counter (**OTC**) energy commodities.

4. In order to provide these services, the Applicant is an approved member of and is regulated by the NFA (NFA ID number: 0409750) and is registered as an "introducing broker" with the CFTC. The Applicant is not a broker-dealer registered with the SEC, is not a member of FINRA and does not conduct a securities business in the U.S.

5. The Applicant is not registered in any capacity under the CFA or the OSA. The Applicant does not rely on any exemption from registration in Canada.

6. The Applicant is not a member of any exchange, but it is considered to be a "broker participant" by and has entered into a broker clearing agreement with each of the following U.S. exchanges: CME (Nymex), ICE Futures U.S., NFX (Nasdaq energy futures exchange), and the Nodal exchange.

7. The Applicant is not in default of securities legislation or commodity futures legislation in any jurisdiction in Canada, other than in respect of the subject matter to which this Ruling relates.

8. The Applicant is in compliance in all material respects with U.S. securities and commodity futures laws.

9. The principal business of the Applicant is providing:

   (a) brokerage services for over-the-counter and futures transactions in energy commodities to various financial institutions and utilities; and

   (b) in relation to customers who are deemed "US Persons", as defined under applicable U.S. law, introducing services for ECPs.

10. Pursuant to its registrations and memberships, the Applicant is authorized to act as an introducing broker in the U.S., to handle customer orders, to effect Block Trades and, if applicable, to introduce customers to an executing broker registered as a futures commission merchant (a **FCM**). The rules of the CFTC and NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions including confirmations and statements, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, client identification, account-opening requirements, suitability requirements, anti-money laundering checks, dealing and handling customer order obligations, including managing conflicts of interest and best execution. These rules require the Applicant to treat Permitted Clients consistently with the Applicant's U.S. customers with respect to transactions made on exchanges in the U.S. In respect of Exchange-Traded Futures, the Applicant does not provide direct execution except to effect Block Trades, or clearing services, and is not authorized to receive or hold client money in any jurisdiction.

11. The Applicant proposes to offer certain of its Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures, primarily through Block Trades, and in connection with such trades the Applicant would act as an introducing broker and effect trades in Exchange-Traded Futures, including Block Trades, on Non-Canadian Exchanges.

12. The Applicant will handle the negotiation of the Exchange-Traded Futures, match buyers and sellers at the best possible price, execute trades in Exchange-Traded Futures on behalf of Permitted Clients in Ontario in the same manner that it would carry out these activities on behalf of its U.S. clients, all of which are ECPs. The Applicant will follow the same know-your-customer, suitability, and order handling procedures that it follows in respect of its U.S. clients. Permitted Clients in Ontario will be afforded the benefits of compliance by the Applicant with the statutory and other requirements of the regulators, self-regulatory organizations and exchanges located in the U.S. Permitted Clients in Ontario will have the same contractual rights against the Applicant as U.S. clients of the Applicant.

13. In transacting Block Trades for its customers, the Applicant, as the introducing broker, will match a buyer and a seller (both ECPs) in a privately negotiated trade for a large quantity of Exchange-Traded Futures. Pursuant to the rules of the applicable Non-Canadian Exchange, the trade is permitted to be executed apart from the public auction market established by the Non-Canadian Exchange. Once the terms of the trade are agreed upon between the buyer and the seller, the trade is submitted by the Applicant to the Exchange to be publicly reported within the required time period for Block Trades. Once submitted to the Non-Canadian Exchange, the clearing and settlement process by and through the customer's FCM will commence independent of the Applicant's involvement in the transaction.

14. The Applicant will not maintain an office, sales force or physical place of business in Ontario.

15. The Applicant will broker trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

16. The Applicant will only offer Permitted Clients in Ontario the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges.

17. The Exchange-Traded Futures to be traded by Permitted Clients in Ontario will include, but will not be limited to, Exchange-Traded Futures for energy and other commodity products.

18. Permitted Clients of the Applicant will be able execute trades in Exchange-Traded Futures through the Applicant by contacting one of the Applicant's twelve (12) execution desks, which are assigned by both location and product.

19. In the case of a trade in Exchange-Traded Futures that is a Block Trade involving a Permitted Client as a buyer or a seller, the Applicant, as the introducing broker, will match the Permitted Client in a privately negotiated trade, which will be executed apart from the public auction market established by the applicable Non-Canadian Exchange and submitted for public reporting to the Non-Canadian Exchange within the required time period applicable for Block Trades. Once submitted to the Non-Canadian Exchange, the clearing and settlement process by and through the Permitted Client's futures commission merchant in accordance with the rules and customary practices of the exchange will commence independent of the Applicant's involvement in the transaction. In no case will the Applicant enter into a give-up agreement with any executing broker registered as a FCM or clearing broker unless such firm is registered with the applicable regulatory bodies in the jurisdiction in which it executes the trades in Exchange-Traded Futures, and as with any executing broker registered as a FCM or clearing broker located in the U.S., unless such firm is registered with the SEC and/or CFTC, as applicable.

20. In the case of a trade in Exchange-Traded Futures that is not a Block Trade involving a Permitted Client, the Applicant will perform introducing functions, as the introducing broker, and will arrange to have the Permitted Client's order executed on the relevant Non-Canadian Exchange by an executing broker registered as a FCM in accordance with the rules and customary practices of the exchange. The executing broker will act to "give-up" the transacted trades to the Permitted Client's clearing broker. In such circumstances, the Permitted Client would be a client of both the Applicant and the executing broker. The Applicant will not enter into a give-up agreement with any executing broker registered as a FCM or clearing broker unless such firm is registered with the applicable regulatory bodies in the jurisdiction in which it executes the trades in Exchange-Traded Futures, and as with any executing broker registered as a FCM or clearing broker located in the U.S., unless such firm is registered with the SEC and/or CFTC, as applicable. Where the Applicant is listed as the executing broker in the relevant give-up agreement, the Applicant would remain responsible for all executions on the relevant Non-Canadian Exchange.

21. Clearing brokers and executing brokers will be subject to the rules of the exchanges of which each is a member and any relevant regulatory requirements, including requirements under the CFA, as applicable. Under an industry standard give-up agreement, an executing broker and the Permitted Client's clearing broker will represent that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's trades in Exchange-Traded Futures will be executed and cleared. The Permitted Client will enter into such give-up agreement.

22. As is customary for all trades in Exchange-Traded Futures, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures for Permitted Client orders that are submitted to the exchange in the name of the recognized exchange member and clearing broker. A Permitted Client of the Applicant is responsible to its clearing broker for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Permitted Client's clearing broker is in turn responsible to the clearing corporation/division for payment.

23. Permitted Clients will pay commissions for trades to the Applicant for its role as introducing broker and Permitted Clients will be responsible to pay any commissions to the executing brokers or clearing brokers directly, if applicable.

24. Absent this Decision, the trading restrictions in the CFA apply with respect to the Applicant's trades in Exchange-Traded Futures unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

25. If the Applicant were registered under the CFA as a FCM, it could rely upon certain exemptions from the trading restrictions in the CFA to effect trades in Exchange-Traded Futures to be entered into on certain Non-Canadian Exchanges.

26. Section 3.1 of Rule 91-502 states that any person who trades as agent in, or gives advice in respect of, a recognized option as defined in section 1.1 of Rule 91-502 is required to successfully complete the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

27. All Representatives of the Applicant who trade commodity futures and options in the U.S. have passed the National Commodity Futures Examination (Series 3), being the relevant futures and options proficiency examination, administered by FINRA.

AND UPON the Commission and Director being satisfied that it would not be prejudicial to the public interest to grant the ruling requested:

IT IS RULED pursuant to section 38 of the CFA that the Applicant is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures where the Applicant is acting as agent in such trades to, from or on behalf of Permitted Clients provided that:

(a) The Applicant only acts as agent in trades in Exchange-Traded Futures to, from or on behalf of clients in Ontario who are Permitted Clients;

(b) the executing broker and clearing broker have each represented to the Applicant, and the Applicant has taken reasonable steps to verify, that it is appropriately registered under the CFA, or has been granted exemptive relief from the registration requirements in the CFA, in connection with the Permitted Client effecting trades in Exchange-Traded Futures; provided that these requirements will not apply in the context of a Block Trade if the Applicant does not know and cannot reasonably determine the identity of the executing broker or the clearing broker at the time of the trade and would not have an opportunity to obtain such representations or take such steps;

(c) the Applicant only introduces and enters trades in Exchange-Traded Futures for Permitted Clients in Ontario on Non-Canadian Exchanges;

(d) at the time trading activity is engaged in, the Applicant:

  (i) has its head office or principal place of business in the U.S.;

  (ii) is registered in the category of introducing broker with the CFTC;

  (iii) is a member firm of the NFA; and

  (iv) engages in the business of an introducing broker in Exchange-Traded Futures in the U.S.;

(e) the Applicant has provided to the Permitted Client in Ontario the following disclosure in writing:

  (i) a statement that the Applicant is not registered in Ontario to trade in Exchange-Traded Futures as principal or agent;

  (ii) a statement that the Applicant's head office or principal place of business is located in Houston, Texas, United States;

  (iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

  (v) the name and address of the Applicant's agent for service of process in Ontario;

(f) the Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto;

(g) the Applicant notifies the Commission of any regulatory action initiated after the date of this ruling in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action; provided that the Applicant may also satisfy this condition by filing with the Commission (i) a copy of any notice filed by the Applicant pursuant to CFTC Regulation 1.12(k), (l) or (m) at the same time such notice is filed with the CFTC and the NFA, and (ii) on a quarterly basis (A) a copy of the regulatory actions appearing on the Applicant's

NFA Background Affiliation Status Information Center (BASIC) page and (B) a copy of any disclosures that would be required to be reported by the Applicant in the Regulatory Disclosures section of the Applicant's Annual Registration Update to the NFA;

(h) if the Applicant does not rely on the IDE, by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Applicant had relied on the IDE; and

(i) by December 1 of each year, the Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement in the CFA granted pursuant to this ruling by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*.

This Decision will terminate on the earliest of:

(i) the expiry of any such transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirement in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicant acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

"Janet Leiper"
Commissioner

"Frances Kordyback"
Commissioner

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant and its Representatives in respect of trades in Exchange-Traded Futures, provided that:

(a) the Applicant and its Representatives maintain their respective registrations with the CFTC and membership with the NFA which permit them to trade commodity futures options in the United States; and

(b) this Decision will terminate on the earliest of:

(i) the expiry of any such transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirement in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes _____ No _____

   If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

   If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Execution Access, LLC – ss. 127, 127.1

IN THE MATTER OF
EXECUTION ACCESS, LLC

ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

Citation: *Execution Access, LLC (Re)*, 2017 ONSEC 37

Date: 2017-10-20

Hearing:	October 20, 2017		
Decision:	October 20, 2017		
Panel:	D. Grant Vingoe	–	Vice-Chair and Chair of the Panel
	Deborah Leckman	–	Commissioner
Appearances:	Raphael T. Eghan Matthew Britton Cullen Price	–	For Staff of the Commission
	Rene Sorell	–	For Execution Access, LLC

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

[1] This hearing concerns a settlement agreement (the **Settlement Agreement**) between Staff of the Ontario Securities Commission (**Staff**) and Execution Access, LLC (**Execution Access**).

[2] As set out in the Settlement Agreement, in 2013, Execution Access acquired the assets of a business that provided an electronic trading platform to subscribers, which included certain sophisticated Canadian subscribers, enabling them to trade US treasury bills. It continued to operate a business with this functionality during the Material Time, defined in the Settlement Agreement as the period between 2013 and 2017. Execution Access engaged in this activity in Ontario without registering as a dealer in Ontario and complying with the rules applicable to alternative trading systems and without seeking the status of a recognized exchange.

[3] As a result of these non-compliant activities, Execution Access also failed to pay regulatory fees in the estimated amount of $470,000.

[4] As mitigating factors, the Settlement Agreement states that once Staff advised the Respondent that it was operating without the required recognition or registration, it cooperated with the Staff of the Market Regulation Branch of the Commission to regularize its operations, as described in a NASDAQ CXC Limited notice issued by the Commission entitled *Notice of Proposed Changes and Request for Comment, Access to NASDAQ Fixed Income Trading System*, the comment period for which ended on July 31st of this year.

[5] The Settlement Agreement states that no comments were received on the method of operation as a result of the NASDAQ CXC Notice. In addition, there have been no subscriber complaints to Staff resulting from these activities.

[6] A settlement will ordinarily be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness in light of the facts admitted in the settlement agreement, taking into account the settlement process and its benefits as well as mitigating factors. The agreed sanctions are not necessarily the sanctions that a panel would

have imposed after a hearing on the merits. Similarly, a panel, after a contested hearing, may or may not have found facts that are the same or different from those agreed to by the parties. In addition, even if substantially the same facts were found by the panel following a contested hearing, other sanctions than agreed might be imposed by such a panel.

[7] A panel considering a proposed settlement relies on Staff's negotiations in reaching the settlement. A panel cannot know of facts that are excluded in the settlement agreement or of the range of sanctions that were considered. A panel can only rely upon the facts agreed to by Staff in the settlement agreement and the context and responses to questions from the panel provided by the parties in a confidential settlement conference convened pursuant to Rules 12.1 to 12.5 of the Commission's *Rules of Procedure*. One such conference as I alluded to was held in this matter.

[8] In the case of a settlement, a Commission panel must be satisfied that the settlement is fair and reasonable and that approval of the settlement is in the public interest, based on the facts and sanctions agreed to by the parties, in light of applicable regulatory principles, prior Commission sanctions and the regulatory settlement process.

[9] The purpose of the Commission's sanctioning authority is to protect investors and the fair operation of our securities markets and to deter, both specifically and generally, future conduct that is inconsistent with securities laws or the public interest. These goals are furthered, in this case, by taking action against a marketplace using electronic facilities that operated across international borders into Ontario and that sought Ontario subscribers without obtaining the appropriate registration or recognition to conduct these activities.

[10] Marketplaces are among the most important entities in the securities regulatory environment, performing a critical role in bringing together buyers and sellers of securities, demonstrating available liquidity and facilitating price discovery. They are subject to regulatory supervision designed to ensure that marketplace structure, operations and governance are consistent with our goals of market integrity and investor protection. These goals cannot be advanced if marketplaces reach into Ontario without appropriate regulatory oversight.

[11] In this case, the operations of Execution Access are being brought into our structure of regulatory oversight, and Staff has stated that the firm has been cooperative. There is no evidence before us of investor losses due to this non-compliance.

[12] Approval of the settlement with Execution Access is in the public interest on the basis of the Agreed Facts and the agreed sanctions are within a reasonable range of appropriate sanctions.

[13] Execution Access has made a payment in the amount of $970,000, hereby designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Ontario *Securities Act*. It has also made a payment in the amount of $25,000 for costs of the Commission.

[14] The Respondent shall be reprimanded.

[15] The voluntary payment that has been paid and the terms and conditions of the Settlement Agreement, together with the steps that have been taken to regularize the operations of this trading facility, demonstrate the Respondent's acceptance of responsibility for this non-compliance. This acceptance is highlighted by the attendance here today of a representative of the Respondent, Mr. Stephen Matthews. We appreciate your attendance here today for that purpose. Execution Access is hereby reprimanded.

[16] For all of these reasons, the Panel has determined to approve the settlement and will sign an order substantially in the form of the order in Schedule "A" to the Settlement Agreement. So with that, the Panel wishes to thank counsel for their submissions in the settlement conference that preceded this hearing and in this hearing today. With that, the hearing is now concluded.

Dated at Toronto this 20th day of October, 2017.

"D. Grant Vingoe"

"Deborah Leckman"

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

THERE IS NOTHING TO REPORT THIS WEEK

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse

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 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:
Brompton Lifeco Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated October 19, 2017
NP 11-202 Preliminary Receipt dated October 19, 2017
Offering Price and Description:
Offerings: $250,000,000 Preferred Shares and Class A Shares
Price: $10.14 Preferred Shares
$7.15 Class A Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2684534

Issuer Name:
Arcs of Fire Tactical Balanced Fund
Principal Regulator – Alberta (ASC)
Type and Date:
Final Simplified Prospectus dated October 17, 2017
NP 11-202 Receipt dated October 17, 2017
Offering Price and Description:
Series A, F and I units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Arcs of Fire Investments Ltd.
Project #2672976

Issuer Name:
Discovery 2017 Flow-Through Limited Partnership
Principal Regulator – Alberta (ASC)
Type and Date:
Final Long Form Prospectus dated October 17, 2017
NP 11-202 Receipt dated October 18, 2017
Offering Price and Description:
$25,000,000 (maximum)
(maximum – 1,000,000 Units)
$5,000,000 (minimum)
(minimum – 200,000 Units)
@$25 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Canaccord Genuity Corp.
Middlefield Capital Corporation
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Raymond James Ltd.
Promoter(s):
Middlefield Resource Corporation
Project #2675660

Issuer Name:
Fidelity Global Asset Allocation Currency Neutral Private Pool
Fidelity Global Asset Allocation Private Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 13, 2017
NP 11-202 Receipt dated October 17, 2017
Offering Price and Description:
Series B, S5, S8, I, I5, I8, F, F5 and F8 securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Fidelity Investments Canada ULC
Project #2674371

Issuer Name:
Fidelity Global Innovators Class
Fidelity Global Innovators Currency Neutral Class
Fidelity Global Innovators Investment Trust
Fidelity Event Driven Opportunities Currency Neutral Class
Fidelity Global Concentrated Equity Currency Neutral Fund
Fidelity International Concentrated Equity Currency Neutral Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 13, 2017
NP 11-202 Receipt dated October 17, 2017
Offering Price and Description:
Series A, B, O, T5, T8, S5, S8, F, F5, F8, E1, E2, E3, E1T5, P1, P2, P3 and P1T5 units; and Series A, B, T5, T8, S5, S8, F, F5, F8, E1, E2, E3, E4, E5, E1T5, P1, P2, P3, P4, P5 and P1T5 shares @ Net Asset Value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Fidelity Investments Canada ULC
Project #2674370

Issuer Name:
Horizons Active A.I. Global Equity ETF
Horizons Active Intl Developed Markets Equity ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 17, 2017
NP 11-202 Receipt dated October 19, 2017
Offering Price and Description:
Class A units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2674046

Issuer Name:
Multi-Asset Equity Completion
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 13, 2017
NP 11-202 Receipt dated October 23, 2017
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
N/A
Project #2634928

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
NP 11-202 Receipt dated October 18, 2017
Offering Price and Description:
Series A, Advisor Series, Series D, Series F and Series O units @ Net Asset Value
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
NP 11-202 Receipt dated October 18, 2017
Offering Price and Description:
Series A, Advisor Series, Series D, Series F and Series O units @ Net Asset Value
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc.
Project #2628011

Issuer Name:
Purpose Canadian Financial Income Fund
Purpose Conservative Income Fund
Purpose Enhanced Dividend Fund
Purpose High Interest Savings ETF
Purpose International Dividend Fund
Purpose International Tactical Hedged Equity Fund
Purpose Premium Money Market Fund
Purpose Premium Yield Fund
Purpose Tactical Investment Grade Bond Fund
Purpose US Cash ETF
Purpose US Dividend Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 18, 2017
NP 11-202 Receipt dated October 23, 2017
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2674554

NON-INVESTMENT FUNDS

Issuer Name:
Aphria Inc. (formerly, Black Sparrow Capital Corp.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 20, 2017
NP 11-202 Preliminary Receipt dated October 20, 2017
Offering Price and Description:
$80,000,125.00 – 11,034,500 Common Shares Price: $7.25 per Common Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Cormark Securities Inc.
Canaccord Genuity Corp.
PI Financial Corp.
Promoter(s):
–
Project #2683818

Issuer Name:
CUP Capital Corp.
Principal Regulator – Ontario
Type and Date:
Amendment dated October 16, 2017 to Preliminary Long Form Prospectus dated September 26, 2017
NP 11-202 Preliminary Receipt dated October 19, 2017
Offering Price and Description:
Minimum Offering: $3,000,000.00 – 4,687,500 Units
Maximum Offering: $10,000,000.00 – 15,625,000 Units
Offering Price: $0.64 per Unit
Over-Allotment Option (as defined herein)
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
–
Project #2678520

Issuer Name:
Emblem Corp. (formerly Saber Capital Corp.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 20, 2017
NP 11-202 Preliminary Receipt dated October 20, 2017
Offering Price and Description:
$12,000,030.00 Offering of Units – (6,857,160 Units at a price of $1.75 per Unit)
– and -
$15,000,000.00 of 8.0% Convertible Unsecured Debentures due in 2020
(15,000 Debentures at a price of $1,000 per Debenture)
Underwriter(s) or Distributor(s):
Eight Capital
Canaccord Genuity Corp
Echelon Wealth Partners Inc.
GMP Securities L.P.
Promoter(s):
–
Project #2684928

Issuer Name:
iAnthus Capital Holdings, Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2017
NP 11-202 Preliminary Receipt dated October 18, 2017
Offering Price and Description:
Up to $*
Up to * Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Beacon Securities Limited
Cormark Securities Inc.
Echelon Wealth Partners Inc.
Haywood Securities Inc.
Promoter(s):
Hadley Ford
Project #2683985

Issuer Name:
Lithium X Energy Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2017
NP 11-202 Preliminary Receipt dated October 17, 2017
Offering Price and Description:
$13,015,000.00 – 6,850,000 Units
$1.90 per Unit
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Promoter(s):
Brian Paes-Braga
Project #2682586

Issuer Name:
Neo Performance Materials Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 17, 2017
NP 11-202 Preliminary Receipt dated October 17, 2017
Offering Price and Description:
C$ * – * Common Shares
Offering Price: C$ * per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
Cormark Securities Inc.
Promoter(s):
OCM Neo Holdings (Cayman), L.P.
Project #2683928

Issuer Name:
Nexa Resources S.A. (formerly, VM Holding S.A.)
Principal Regulator – Ontario
Type and Date:
Amendment dated October 17, 2017 to Preliminary Long Form Prospectus dated October 10, 2017
NP 11-202 Preliminary Receipt dated October 17, 2017
Offering Price and Description:
US$ * – 31,000,000 Common Shares
Price: US$ * per Common Share
Underwriter(s) or Distributor(s):
J.P. Morgan Securities Canada Inc.
BMO Nesbitt Burns Inc.
Morgan Stanley Canada Limited
Credit Suisse Securities (Canada), Inc.
Merrill Lynch Canada Inc.
Citigroup Global Markets Canada Inc.
Scotia Capital Inc.
Macquarie Capital Markets Canada Ltd.
MUFG Securities (Canada), Ltd.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Promoter(s):
–
Project #2677003

Issuer Name:
OSISKO GOLD ROYALTIES LTD
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated October 20, 2017
NP 11-202 Preliminary Receipt dated October 20, 2017
Offering Price and Description:
C$184,000,000.00 – 4.00% Convertible Senior Unsecured Debentures
Price: C$1,000.00 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
Macquarie Capital Markets Canada Ltd.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Haywood Securities Inc.
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
–
Project #2683719

Issuer Name:
POCML 4 Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated October 17, 2017
NP 11-202 Preliminary Receipt dated October 18, 2017
Offering Price and Description:
$200,000.00 – 2,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2683986

Issuer Name:
Sienna Senior Living Inc. (formerly Leisureworld Senior Care Corporation)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 20, 2017
NP 11-202 Preliminary Receipt dated October 20, 2017
Offering Price and Description:
$100,005,950.00 – 5,731,000 Common Shares
Price: $17.45 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Raymond James Ltd.
Eight Capital
Promoter(s):
–
Project #2683566

Issuer Name:
Solium Capital Inc.
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus dated October 18, 2017
NP 11-202 Preliminary Receipt dated October 18, 2017
Offering Price and Description:
3,903,000 Common Shares – C$40,005,750.00
Price: C$10.25 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Laurentian Bank Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Barclays Capital Canada Inc.
Promoter(s):
–
Project #2682991

Issuer Name:
Source Energy Services Ltd.
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus dated October 23, 2017
NP 11-202 Preliminary Receipt dated October 23, 2017
Offering Price and Description:
$25,050,000.00 – 3,000,000 Common Shares
Price $8.35 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Peters & Co. Limited
GMP Securities L.P.
Promoter(s):
–
Project #2683998

Issuer Name:
Stelco Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Amendment dated October 20, 2017 to Preliminary Long Form Prospectus dated September 27, 2017
NP 11-202 Preliminary Receipt dated October 23, 2017
Offering Price and Description:
$200,000,000.00 – * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Goldman Sachs Canada Inc.
BMO Nesbitt Burns Inc.
Credit Suisse Securities (Canada), Inc.
J.P. Morgan Securities Canada Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Promoter(s):
–
Project #2678797

Issuer Name:
Cobalt 27 Capital Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated October 17, 2017
NP 11-202 Receipt dated October 17, 2017
Offering Price and Description:
$300,000,000.00 – COMMON SHARES, DEBT SECURITIES, SUBSCRIPTION RECEIPTS, WARRANTS, SHARE PURCHASE CONTRACTS, UNITS
Underwriter(s) or Distributor(s):
–
Promoter(s):
Anthony Milewski
Project #2669548

Issuer Name:
Drone Delivery Canada Corp. (formerly Asher Resources Corporation)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 18, 2017
NP 11-202 Receipt dated October 19, 2017
Offering Price and Description:
$15,015,000.00 – 23,100,000 Common Shares
Price: $0.65 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
Tony Di Benedetto
Paul Di Benedetto
Richard Buzbuzian
Project #2681527

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated October 19, 2017
NP 11-202 Receipt dated October 20, 2017
Offering Price and Description:
Cdn$8,000,000,000.00 – Subordinate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Share Purchase Contracts, Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2682758

Issuer Name:
Home Capital Group Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated October 18, 2017
NP 11-202 Receipt dated October 19, 2017
Offering Price and Description:
$750,000,000.00
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2676747

Issuer Name:
Roots Corporation
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 18, 2017
NP 11-202 Receipt dated October 18, 2017
Offering Price and Description:
$200,004,000.00 – 16,667,000 Common Shares
Underwriter(s) or Distributor(s):
TD Securities Inc.
Credit Suisse Securities (Canada), Inc.
BMO Nesbitt Burns Inc.
Jefferies Securities, Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Promoter(s):
–
Project #2674913

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Dunsmuir Capital Partners Inc.	Exempt Market Dealer	October 17, 2017
New Registration	Bridgepoint Financial Securities Inc.	Exempt Market Dealer	October 17, 2017
Amalgamation	Bellwether Investment Management Inc. and Crestridge Asset Management Inc. To Form: Bellwether Investment Management Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	October 2, 2017
Change in Registration Category	Evolve Funds Group Inc.	From: Investment Fund Manager and Portfolio Manager To: Investment Fund Manager, Portfolio Manager and Commodity Trading Manager	October 18, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited – Proposed GEF Facility for an Exchange – OSC Staff Notice and Request for Comment

OSC STAFF NOTICE AND REQUEST FOR COMMENT
REGARDING PROPOSED GEF FACILITY FOR AN EXCHANGE
TO BE ESTABLISHED BY NASDAQ CXC LIMITED

This notice is being published by OSC Staff in connection with the application by Nasdaq CXC Limited (Nasdaq Canada) to be recognized as an exchange (Exchange Application) in accordance with section 21(2) of the *Securities Act* (Ontario) (Notice). Nasdaq Canada is proposing to introduce the GEF Facility, described below, in its operations when, subject to regulatory approval, it ceases to function as an ATS and commences operations as an exchange. Details of the Exchange Application were published for comment on October 12, 2017. In connection with the Exchange Application we are publishing this Notice for a 30 day comment period. Market participants are invited to provide the Commission with comment on the GEF Facility.

Comment on the proposed changes should be in writing and submitted by November 27th, 2017 to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: marketregulation@osc.gov.on.ca

And to

Matt Thompson
Chief Compliance Officer
Nasdaq CXC Limited
25 York Street, Suite 900
Toronto, ON M5J 2V5
Email: matthew.thompson@nasdaq.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

NASDAQ CANADA
REQUEST FOR COMMENT

NASDAQ CX2 GUARANTEED EXECUTION FACILITY

Definitions: The following definitions can be found in subsection 1.1 – Definitions of Nasdaq Canada's Trading Rules and Policies which are available on the OSC website.

TERM	DEFINITION
Assigned Security	a security for which a GEF Member has been appointed responsibility for meeting GEF Facility trading obligations
Board Lot	a standard trading unit as defined in UMIR
Designated Security	a security included in the GEF Facility
Exchange	Nasdaq CXC Limited (Nasdaq Canada)
Exchange Systems	the electronic systems operated by the Exchange for providing access to trading on the Exchange
GEF Member	a Member that has been approved by the Exchange to be responsible for meeting the Member's obligations as a GEF Member for the GEF Facility
GEF Member Committed Volume or GEF Member CV	the size of the auto execution commitment on one side, or both sides, of the market by a GEF Member for an Assigned Security throughout the Trading Day
GEF Eligible Order	see GEF Eligible Order section of this Notice
GEF Order	a GEF Eligible Order that is marked Immediate or Cancel (IOC)
GMV	the minimum GEF Member Committed Volume for an Assigned Security
Member	a person that has signed a Member Agreement and been approved by the Exchange to access the Exchange Systems
Odd Lot Members	a Member that has been approved by the Exchange to be responsible for meeting the Member's obligations as an Odd Lot Member for trading Odd Lot Orders
Total Consolidated Trading Volume (TCV)	The volume of trades across all marketplaces for each exchange listed security
Trading Book	the CXC Book, the CX2 Book or the CXD Book, or one of them.

Overview

The Nasdaq Canada CX2 Guaranteed Execution Facility (GEF, or GEF Facility) enables Members of Nasdaq Canada to receive guaranteed auto-executions of at least the size of the GMV for the residual portion of GEF Eligible Orders (defined below). GEF Members will provide auto-executions against residual portions of GEF Orders at the NBB or NBO after all visible quotes and visible portions of iceberg orders have been displaced on the Nasdaq CX2 Book (CX2) for a Designated Security. GEF auto-executions will only be available when there is a visible quote on CX2 at the NBB or NBO. GEF Eligible Orders that are not immediately marketable, or not marked IOC, will be canceled back. GEF auto-executions will not be available when there is a locked or crossed market on a Designated Security.

When a match occurs, Nasdaq Canada will send an unsolicited trade report to the GEF Member(s) responsible for meeting GEF obligations for that Designated Security and an execution message to the Member who entered the GEF Order. GEF Order execution messages are included in the CX2 market data feed and provided to the TMX Information Processor in accordance with National Instrument 21-101 Marketplace Operation. The GEF is available for GEF Designated Securities during between regular trading hours between of 9:30 a.m. and 4:00 p.m.

How it Works

Example 1 GEF Order is entered at the NBO

		BID	ASK	
GMV = 200				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member CV	200			200

Action: GEF Order to buy 400 shares is entered at the NBO (10.13)

Result: 200 shares is executed against the CX2 consolidated displayed offer at 10.13

The residual 200 shares is auto-executed at 10.13 in the GEF Facility

Example 2 GEF Order is entered at NBO when there is not a quote on CX2

		BID	ASK	
GMV = 200				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.14	200
GEF Member CV	200			200

Action: GEF Order to buy 400 shares is entered at the NBO (10.13)

Result: Auto-execution does not take place because CX2 does not have a visible quote at the NBO.

Example 3 GEF Order is entered with a limit price of 10.11 (inside the NBB)

		BID	ASK	
GMV = 200				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member CV	200			200

Action: GEF Order to sell 400 shares is entered at 10.11

Result: Auto-execution does not take place as the GEF Order was entered at a price inside the NBB (10.10) and is not marketable

GEF Members Committed Volume

Each GEF Member must commit to trade at least the size of the GMV for each Assigned Security against marketable GEF Orders entered at the NBB or NBO when there is a visible quote on CX2. GEF Members will have the option to increase or decrease the size of their auto-execution commitments on one side or both sides of the market for each Assigned Security throughout the trading day. GEF Member Committed Volume can be increased by Board Lot increments up to a maximum of 50 standard trading units. GEF Member Committed Volume can be decreased throughout the trading day but can never be set below the GMV. The total number of shares that can be traded against a GEF Order by all GEF Members assigned to a Designated Security will not exceed 50 standard trading units. Information about each GEF Member's Committed Volume is not made public and is only known by the Exchange Systems. Although the size of the GEF Member Committed Volume may be changed throughout the trading day, the GEF Member must always maintain a commitment to trade at least the size of the GMV.

GEF Members do not have responsibility to trade odd lot orders on their Assigned Securities. The obligation to auto-execute odd lot orders across all securities on each Trading Book is the responsibility of Odd Lot Members.

Competition between GEF Members

For each Designated Security there can be up to five GEF Members responsible for guaranteeing automatic immediate fills for incoming GEF Orders. Where there are multiple GEF Members for a Designated Security, GEF Members are able to compete with one another for a larger portion of incoming GEF Orders by increasing their GEF Committed Volume. Order allocation between GEF Members is determined on a pro-rata basis. Pro-rata share allotments are rounded up or down to the nearest Board Lot. This order allocation methodology is used to compensate GEF Members for the additional risk accepted by GEF Members when they are willing to trade larger size. The GMV for each Designated Security will be publicly available. GEF Member Committed Volume will not be disseminated and will only be known by the Exchange System.

How it Works

Example 1 GEF Order is entered at NBO when each GEF Member Committed Volume is the same

		BID	ASK	
GMV = 100				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member 1 CV	100			100
GEF Member 2 CV	100			100

Action: GEF Order to buy 400 shares is entered at the NBO (10.13)

Result: 200 shares is executed against the CX2 consolidated displayed offer at 10.13

GEF Member 1 auto-executes a sale of 100 shares at the NBO (10.13)

GEF Member 2 auto-executes a sale of 100 shares at the NBO (10.13)

Example 2 **GEF Order is entered at NBB when each GEF Member Committed Volume is the same**

		BID	ASK	
GMV = 100				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member 1 CV	100			100
GEF Member 2 CV	100			100

Action: GEF Order to sell 600 shares is entered at the NBB (10.10)

Result: 200 shares is executed against the CX2 consolidated displayed bid at 10.10

GEF Member 1 Auto-Executes a purchase of 100 shares at the NBB (10.10)

GEF Member 2 Auto-Executes a purchase of 100 shares at the NBB (10.10)

The remaining 200 shares is cancelled back to the Member

Example 3 **GEF Order is entered at NBO when GEF Member 2 has a larger GEF Member Committed Volume**

		BID	ASK	
GMV = 100				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member 1 CV	100			100
GEF Member 2 CV	400			400

Action: GEF Order to buy 300 shares is entered at the NBO (10.13)

Result: 200 shares is executed against the CX2 consolidated displayed offer at 10.13

GEF Member 2 auto-executes a sell of 100 shares at the NBO (10.13). (the GEF Facility provides auto-executions in increments of Board Lots only; GEF Member 2 is awarded the execution of the 100 residual shares because of a higher GMV)

Example 4 GEF Order is entered at NBO when GEF Member 2 has a larger GEF Member Committed Volume

		BID	ASK	
GMV = 100				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member 1 CV	200			200
GEF Member 2 CV	400			400

Action: GEF Order to buy 500 shares is entered at the NBO (10.13)

Result: 200 shares is executed against the CX2 consolidated displayed offer at 10.13

GEF Member 1 auto-executes a sale of 100 shares at the NBO (10.13) (the pro-rata distribution for GEF Member 1 is 200/600 * 300 which equals 100 shares)

GEF Member 2 auto-executes a sale of 200 shares at the NBO (10.13) (the pro-rata distribution for GEF Member 1 is 400/600 * 300 which equals 200 shares)

Example 5 GEF Order is entered at NBB when GEF Member 1 has a larger GEF Member Committed Volume

		BID	ASK	
GMV = 100				
NBBO		10.10	10.13	
CX2 BBO	200	10.10	10.13	200
GEF Member 1 CV	300			300
GEF Member 2 CV	100			100

Action: GEF Order to sell 500 shares is entered at the NBB (10.10)

Result: 200 shares is executed against the CX2 consolidated displayed bid at 10.10

GEF Member 1 auto-executes a purchase of 200 shares at the NBB (10.10) (the pro-rata distribution for GEF Member 1 is 300/400 * 300 which equals 225 shares rounded down to the nearest Board Lot or 200).

GEF Member 2 auto-executes a purchase of 100 shares at the NBB (10.10) (the pro-rata distribution for GEF Member 2 is 100/400 * 300 which equals 75 shares rounded up to the nearest Board Lot or 100).

GEF Member Criteria for Approval

The following criteria must be met by a Member to be eligible to serve as a GEF Member:

1. Execute the GEF Addendum to the Member Agreement;
2. Have policies and procedures in place to ensure compliance with UMIR and other regulatory requirements;
3. Have policies and procedures in place to monitor its conduct for compliance with its GEF Member obligations;

4. Carry out all obligations of an GEF Member in compliance with UMIR and other regulatory requirements; and

5. Have necessary resources (both training and technology) to carry out the obligations of a GEF Member.

GEF Member Obligations

Each GEF Member must meet the following three obligations:

1. Commit to at least trading the size of the GMV on both sides of the market for all Assigned Securities.

2. Maintain a one or two sided quote of at least one Board Lot at the NBBO for at least 25% of primary market trading hours per month through one or more UMIR IDs.

3. Trade at least a minimum percentage of Total Consolidated Trading Volume per listing exchange across all Trading Books per calendar month.[1]

GEF Member obligations will be monitored by the Exchange. If a GEF Members fails to meet its obligations in any given month it will be notified by the Exchange and placed on a watch list. If a GEF Member fails to meet its obligations in a second consecutive month, it will be removed from the program.

GEF Eligible Orders

A GEF Eligible Order is a client order entered by a certified GEF UMIR ID for a Designated Security where the entire size of the original parent order is less than or equal to a pre-determined multiple of the GMV determined by Nasdaq Canada, provided that the order is not:

- One of multiple orders for the same client on the same day;
- An order entered by a DEA client, unless the DEA client is a broker acting as an agent for retail client order flow;
- An order entered on behalf of a US dealer unless
    - The order is for a client of a US dealer, unless;
    - The dealer first confirms the order is for a client of the US dealer or;
- For a client that is generally involved in active and continuous trading on a daily basis.

In order for a GEF Eligible Order to be a GEF Order the order must be marked GEF and IOC.

GEF UMIR IDs

Members are required to certify all GEF UMIR IDs that are used to send GEF Orders. The Exchange will monitor each certified GEF UMIR ID using objective criteria including order to trade ratios, and message to trade ratios, to confirm that the certifications are in compliance with GEF Order eligibility.

Copies of the Nasdaq Canada Trading Rules and Policies, Trading Functionality Guide and Member Agreement reflecting the inclusion of the GEF Facility are available on the OSC website.

Any questions regarding these changes should be addressed to Matt Thompson, Nasdaq CXC Limited:
matthew.thompson@nasdaq.com, T: 416-647-6242.

[1] The TCV requirement is 1.0% for TSX Listed Securities and 0.25% for TSX-V listed securities.

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