The Ontario Securities Commission

OSC Bulletin

January 18, 2018

Volume 41, Issue 3

(2018), 41 OSCB

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

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Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

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

ISSN 0226-9325

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Toronto, Ontario
M1T 3V4

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Notices / News Releases

1.1 Notices

1.1.1 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of December 31, 2017 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

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

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
58-309	Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices	***Published October 5, 2017***
11-739	Reformulation Table of Concordance and List of New Instruments	***Published October 12, 2017***
94-101	Mandatory Central Counterparty Clearing of Derivatives – Amendments	***Published for comment October 12, 2017***
33-321	Cyber Security and Social Media	***Published October 19, 2017***
51-352	Issuers with U.S. Marijuana Related Activities	***Published October 19, 2017***
52-404	Approach to Director and Audit Committee Member Independence	***Published for comment October 26, 2017***
11-737	Securities Advisory Committee – Vacancies	***Published November 2, 2017***
81-102	Investment Funds – Amendments	***Ministerial approval published November 9, 2017***
81-104	Commodity Pools – Amendments	***Ministerial approval published November 9, 2017***
31-103	Registration Requirements, Exemtions and Ongoing Registrant Obligations – Amendments	***Ministerial approval published November 30, 2017***

New Instruments

Instrument	Title	Status
33-109	Registration Information – Amendments	***Ministerial approval published November 30, 2017***
33-506	(Commodity Futures Act) Registration Information – Amendments	***Ministerial approval published November 30, 2017***
11-337	Notice of Local Amendments and Changes in Alberta, Manitoba, and New Brunswick	***Published December 7, 2017***
23-319	Joint CSA/IIROC Staff Notice 23-319 Internalization in the Canadian Market	***Published December 7, 2017***
31-351	Joint CSA Staff Notice, IIROC Notice 17-0229, MFDA Bulletin #0736-M – Complying with requirements regarding the Ombudsman for Banking Services and Investments	***Published December 7, 2017***
91-102	Prohibition of Binary Options	***Ministerial approval published December 7, 2017***
13-315	Securities Regulatory Authority Closed Dates 2018	***Published December 14, 2017***
23-320	Consideration of the Markets in Financial Instruments Directive (MiFID II) Unbundling Requirements on the Regulatory Requirements in Canada	***Published December 14, 2017***
21-320	Update: National Instrument 21-101 Marketplace Operation and Related Companion Policy – Dealing with Government Transparency	***Published December 14, 2017***
72-503	Distributions Outside Canada	***Commission approval published December 21, 2017***

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January 18, 2018

1.5 Notices from the Office of the Secretary

1.5.1 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
January 11, 2018

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN,
File No. 2017-79

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

A copy of the Order dated January 11, 2018 is available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.5.2 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
January 11, 2018

BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY

TORONTO – Following a hearing held in the above noted matter, the Commission issued its Reasons and Decision on Motions Regarding Jurisdiction and Prematurity

A copy of the Reasons and Decision on Motions Regarding Jurisdiction and Prematurity dated January 10, 2018 is available at www.osc.gov.on.ca.

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1.5.3 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
January 11, 2018

MONEY GATE MORTGAGE INVESTMENT CORPORATION, MONEY GATE CORP., MORTEZA KATEBIAN and PAYAM KATEBIAN

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5, paragraph 1 of the Temporary Order is extended until the conclusion of the Merits Hearing.

A copy of the Order dated January 11, 2018 is available at www.osc.gov.on.ca.

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

FOR IMMEDIATE RELEASE
January 12, 2018

DENNIS L. MEHARCHAND and VALT.X HOLDINGS INC.

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

A copy of the Order dated January 12, 2018 is available at www.osc.gov.on.ca.

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

FOR IMMEDIATE RELEASE
January 15, 2018

DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

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

A copy of the Order dated January 15, 2018 is available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
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media_inquiries@osc.gov.on.ca

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Sun Life Institutional Investments (Canada) Inc. (formerly, Sun Life Investment Management Inc.)

Headnote

National Policy 11 -203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief to revoke and replace existing order – existing relief was from conflict of interest provisions in section 13.5 of NI 31-103 to permit trading between pooled funds and affiliates of Sun Life in respect of certain mortgages and fixed-income assets – variance needed to amend a condition of the original order that limited investment in the funds to permitted clients – variance is to allow investment in the pooled funds by key executive officers and directors and certain key employees of the fund manager or its affiliates – all such persons will be accredited investors – variance is consistent with the intent of original condition.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 144.

December 21, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
SUN LIFE INSTITUTIONAL INVESTMENTS (CANADA) INC.
(formerly, SUN LIFE INVESTMENT MANAGEMENT INC.)
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to revoke a decision granted by the principal regulator on February 24, 2014 (the **Original Decision**) and to replace the Original Decision with a decision exempting the Filer from paragraph 13.5(2)(b)(i) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit the Funds (as defined below) to purchase or sell a security from or to the investment portfolio of a responsible person, as further described below (the **Exemption Sought**).

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

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

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

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless otherwise defined.

Representations

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

The Filer and the Funds

1. The Filer is a corporation incorporated under the laws of Canada with its head office in Toronto, Ontario. The Filer is an indirect, wholly-owned subsidiary of Sun Life Financial Inc. (**SLF**), a company the shares of which are listed on, among others, the Toronto Stock Exchange.

2. Sun Life Assurance Company of Canada (**SLA**) is an insurance company authorized to carry on business under the *Insurance Companies Act* (Canada) (the **Insurance Act**) and regulated by the Office of the Superintendent of Financial Institutions (**OSFI**). SLA is a wholly-owned subsidiary of SLF and accordingly is an affiliate of the Filer.

3. The Filer is registered as an investment fund manager, adviser in the category of portfolio manager and dealer in the category of exempt market dealer in each of the Jurisdictions and as a commodity trading manager in Ontario.

4. Two limited partnerships, Sun Life Canadian Commercial Mortgage Fund (the **Mortgage Fund**) and Sun Life Private Fixed Income Plus Fund (the **PFI Fund**), have been established under the laws of the Jurisdiction (the Mortgage Fund and the PFI Fund are each referred to as a **Fund** and collectively referred to as the **Funds**). Securities of a Fund will be sold, pursuant to available exemptions from the prospectus requirements, only to investors who are either:

   (a) "permitted clients" as such term is defined in NI 31-103, other than those described in paragraph (k) of the definition, unless the client of the managed account is otherwise a permitted client (the **Permitted Clients**); or

   (b) "accredited investors", as such term is defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) who are either:

      (i) Executive officers and directors of the Filer or its affiliates or their permitted assigns; or

      (ii) Employees or consultants of the Filer or its affiliates that are directly involved in the provision of management, distribution or portfolio advisory services to the Fund, or such employees' or consultants' respective permitted assigns

   (together with the Permitted Clients, the **Permitted Investors**).

5. The Filer is the investment fund manager and portfolio adviser for each Fund.

6. None of the Filer, the Mortgage Fund or the PFI Fund is in default of securities legislation in the Jurisdiction.

7. The Mortgage Fund seeks to provide income while preserving capital over the long term by investing primarily in a portfolio of first mortgage loans and construction financing loans secured by properties located in Canada.

8. The Mortgage Fund seeks to invest in mortgage loans secured by properties located in growing metropolitan areas (typically with populations in excess of 100,000) and to qualified, financially-strong borrowers with expertise in the ownership, management and operation of commercial real estate and/or multi-family rental properties. The mortgage loans are diversified by geographic region and by property type.

9. Except for mortgages insured by Canada Mortgage and Housing Corporation (or another corporation with a similar function that may be established by a statute of Canada or of a province or territory in Canada from time to time) (**CMHC**), each mortgage purchased by the Mortgage Fund from SLA will not exceed 75% of the appraised value of the underlying real property at the time of investment. Each mortgage insured by CMHC will not exceed 85% of the appraised value of the underlying real property at the time of investment.

10. The PFI Fund seeks to achieve total return by providing income, while preserving capital over the long term, by investing primarily in a diverse portfolio of private and public fixed income assets. The private fixed income assets include long-term debt financing for power projects such as hydro, wind, co-generation and solar, as well as public private partnerships (P3) infrastructure projects including hospitals, bridges, roads, detention facilities, court houses

and public transit systems; senior secured and unsecured loans to high credit quality large corporate borrowers; investments secured by marquee or key strategic real estate assets often not financed through traditional mortgage structures; senior loans to mid-market companies which generally do not access the public debt markets; and investments in securitized lease/loan obligations supported by diversified pools of assets such as manufacturing equipment and transportation assets. The PFI Fund also invests in a wide range of securities available in public debt markets to seek to achieve positive active returns, neutralize exposure to unintended risks, enhance liquidity and manage the Fund's duration.

11. It is expected that approximately 50% to 90% of the PFI Fund's portfolio will be comprised of private debt securities (**PFI Securities**) at any given time.

In-Specie Transactions and Principal Trades

12. From time to time, each Fund proposes to purchase or sell securities from or to SLA. In exchange for the purchase or sale of such investments from or to SLA, the Fund will issue securities to or redeem securities from SLA (an **In-Specie Transaction**), and/or the parties will satisfy the price of the purchase or sale in cash (a **Principal Trade**).

13. The assets that the Mortgage Fund purchases from or sells to SLA include, or may include, mortgages originated by third parties, SLA or the Mortgage Fund.

14. The assets that the PFI Fund purchases from or sells to SLA include, or may include, PFI Securities and loans (or a portion of a loan) originated by third parties, SLA or the PFI Fund.

15. The Funds may invest in the same securities as SLA or affiliates of SLA.

16. There is a limited supply of PFI Securities and mortgages available to the Funds in the open market, and frequently the only source or buyer of PFI Securities and mortgages may be SLA. SLA has relatively large teams of professionals involved in the origination and sourcing of mortgages and private loans. Based on market information, SLA has a relatively sizable market share in each of the mortgage and private fixed income markets. The Filer believes that permitting the Mortgage Fund and the PFI Fund to purchase mortgages and PFI Securities, respectively, from SLA will allow the Funds to access investments that they may not be otherwise able to access in the market, and in a manner that will be efficient for the Funds, and permitting the Funds to sell mortgages and PFI Securities, respectively, to SLA will provide liquidity for the Funds.

17. Certain individuals who participate in the management of the proprietary portfolio of SLA are registered portfolio managers of the Filer. These individuals have access to, or participate in formulating, investment decisions made on behalf of the Funds or advice given to the Funds. Accordingly, SLA has access to investment decisions made on behalf of a client of the Filer or advice given to a client of the Filer. Therefore, SLA is a “responsible person” as defined in section 13.5(1) of NI 31-103.

18. Absent the Exemption Sought, the Filer is prohibited by paragraph 13.5(2)(b)(i) of NI 31-103 from causing the Funds to purchase or sell securities from or to SLA.

19. Each of the Filer and SLA has policies and procedures in place to address any potential conflicts of interest that may arise as a result of any purchase or sale of securities between a Fund and SLA and each of the Filer and SLA will be able to appropriately deal with any such conflicts.

20. Each Fund will only purchase securities from SLA that are consistent with, or necessary to meet, the Fund's investment objectives. Each Fund will only sell securities to SLA if the Filer has determined that disposing of such securities is appropriate for the Fund.

21. All decisions to purchase or sell securities on behalf of each Fund's portfolio from or to SLA will be made based on the judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

22. Securities sold by SLA to each Fund will only be those that are permitted to be owned by a life insurance company under the Insurance Act and the regulations and rules thereunder. The Insurance Act requires that the directors of an insurance company establish and the company adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return. There are also specific statutory and regulatory constraints such as aggregate limits for various categories of investments based on prudential principles and restrictions on the types of businesses in which life insurance companies can invest.

23. The Filer, on behalf of each Fund, has established an independent review committee (the **IRC**) consistent with section 3.7 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). The IRC of each Fund complies with the standard of care set out in section 3.9 of NI 81-107 as if each Fund were subject to that rule.

24. The Filer will refer the In-Specie Transactions and Principal Trades between SLA and a Fund to the IRC of such Fund.

25. Prior to a Fund making a purchase or sale of securities from or to SLA:

    (a) The IRC of the Fund will approve the transaction in accordance with section 5.2(2) of NI 81-107;

    (b) The Filer will comply with section 5.1 of NI 81-107; and

    (c) The Filer and the IRC of the Fund will comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transaction.

26. Each Fund will value portfolio securities under an In-Specie Transaction using the same values to be used to calculate the net asset value for the purpose of the issue price or redemption price of the securities of the Fund.

27. None of the securities which will be the subject of an In-Specie Transaction will be securities of an issuer that is a related party of the Filer.

28. The Filer will receive no remuneration with respect to any purchase or sale of securities between a Fund and SLA, and with respect to the delivery of securities, the only expenses which will be incurred by a Fund will be nominal administrative charges levied by the custodian and/or recordkeeper of the Fund for recording the trades and/or any charges by a dealer in transferring the securities, if applicable. In the case of syndicated PFI Securities in the PFI Fund, an agent bank may charge the PFI Fund nominal fees for the transfer or assignment of such syndicated PFI Securities.

29. For each purchase or sale of securities from or to SLA, each Fund keeps written records in a financial year of the Fund. These records reflect details of the securities received or delivered by the Fund and the value assigned to such securities. These records are retained for five years after the end of the financial year, the most recent two years in a reasonably accessible place.

30. The Filer discloses to each investor in the Funds that: (a) purchases and sale of securities between the Fund and SLA may occur from time to time, and (b) securities were transferred from SLA to the Fund at the Fund's inception. The Filer also discloses how the price of such securities is determined and the valuation procedure for such securities.

31. A description of each mortgage held in the Mortgage Fund's portfolio is available to an investor or a prospective investor from the Filer, upon request and conditional upon the investor or prospective investor agreeing to treat such information as confidential.

32. The Mortgage Fund purchases mortgages from, or sells mortgages to, SLA at an amount determined in accordance with section III(2)(2.4) of National Policy Statement 29 *Mutual Funds Investing in Mortgages* (**NP 29**) as if the Mortgage Fund were subject to that policy.

33. The Mortgage Fund values the mortgages in its portfolio in accordance with section III(2)(2.5) of NP 29 as if the Mortgage Fund were subject to that policy. So long as it is consistent with NP 29, the Mortgage Fund determines the value of each mortgage by discounting the expected future cash flows using a current market interest rate applicable to financial instruments with similar yield, credit quality and maturity characteristics as the mortgage. Valuation inputs typically include yields on benchmark government bonds and risk-adjusted spreads from current lending activities or loan issuances.

34. The Filer expects that with respect to the mortgages transferred from SLA to the Mortgage Fund, there will generally be observable and comparable market prices.

35. An independent and reputable valuation firm that is an accounting firm registered with the Canadian Public Accountability Board (**CPAB**) and the valuation services of which are provided by professionals who are active members of the Canadian Institute of Chartered Business Valuators was retained for the Mortgage Fund to (i) provide a valuation opinion as to the value of the mortgages transferred from SLA to the Mortgage Fund that formed part of the Mortgage Fund's initial portfolio; and (ii) review the models and methodologies developed and used by the Filer to determine the value attributed to the mortgages. The Filer relied upon such valuation opinion at the time of the sale of mortgages to the initial portfolio of the Mortgage Fund and the Filer continues to use such valuation models and methodologies to determine the price(s) at which mortgages will be purchased from or sold by the Mortgage Fund.

36. A public accounting firm that is registered with CPAB acts as auditor of the Mortgage Fund and carries out an audit, in accordance with Canadian generally accepted auditing standards, of the annual financial statements of the Mortgage Fund. The annual financial statements are prepared in accordance with International Financial Reporting Standards (**IFRS**). The financial statements present the mortgages at fair value as defined in IFRS 13 *Fair Value Measurement*, as the same may be amended or replaced from time to time, which sets out a framework for measuring fair value.

37. A description of the general characteristics (such as issuer description, industry, maturity date and indicative yield) of each PFI Security held in the PFI Fund's portfolio is available to an investor or a prospective investor from the Filer, upon request and conditional upon the investor or prospective investor agreeing to treat such information as confidential.

38. The PFI Securities to be purchased or sold by the PFI Fund from or to SLA will be securities that SLA determines to be of investment grade in accordance with SLA's internal policies and procedures for the purpose of SLA's proprietary account (the **SLA Credit Rating Policies**).

39. Currently, under the SLA Credit Rating Policies, PFI Securities are rated using scorecards that combine probability of default and loss given default to arrive at a credit risk rating. The rating, expressed using a point scale consistent with those used by external rating agencies, is based on detailed examination of the borrower's or issuer's credit quality and the characteristics of the specific instrument. The probability of default assessment is based on borrower-level or issuer-level analysis, which encompasses an assessment of industry risk, business strategy, competitiveness, strength of management, and other financial information. The loss given default assessment is based on instrument-level analysis, which considers the impact of guarantees, covenants, liquidity and other structural features. Under the SLA Credit Rating Policies, the ratings determined cannot be higher than the highest rating provided by nationally recognized statistical rating organizations on assets with similar credit quality and risk characteristics.

40. The Filer has developed a methodology to value PFI Securities. Currently, the methodology involves using one of the following approaches for valuing each PFI Security:

    (a) Use of an observed external market spread (if one exists) (the **First Category**);

    (b) If paragraph (a) above does not apply for a particular PFI Security, the Filer will use the observed credit spread of an externally priced comparable private fixed income asset of similar, or appropriately adjusted, average life, sector and credit risk (the **Private Comparable**) to serve as the basis for the credit spread for the PFI Security. The yield used for valuing the PFI Security will be a function of (i) the credit spread of the Private Comparable adjusted for illiquidity and other relevant factors, plus (ii) the interpolated risk-free yield for a term equal to the average life of the PFI Security. This yield will be used by the Filer to discount the cash flows of the PFI Security to establish its fair value (the **Second Category**);

    (c) If paragraph (b) above does not apply for a particular PFI Security, the Filer will use the observed credit spread of a externally priced comparable public fixed income asset of similar, or appropriately adjusted, average life, sector and credit risk (the **Public Comparable**) to serve as the basis for credit spread for the PFI Security. The yield used for valuing the PFI Security will be a function of (i) credit spread of the Public Comparable adjusted for illiquidity and other relevant factors, plus (ii) the interpolated risk-free yield for a term equal to the average life of the PFI Security. This yield will be used by the Filer to discount the cash flows of the PFI Security to establish its fair value (the **Third Category); and**

    (d) If paragraph (c) above does not apply for a particular PFI Security, the Filer will use the Private Placement Comparable Index (**PPCI**) matrix spreads maintained by SLA to serve as the basis for credit spread changes for the PFI Security held in the PFI Fund. SLA maintains the PPCI matrix which is a record of public bond spreads for different terms to maturity and credit ratings. The yield used for valuing the PFI Security will be a function of (i) its initial credit spread, plus (ii) changes in the credit spread for the relevant reference point in the matrix for the applicable average life and credit rating, plus (iii) the interpolated risk-free yield for a term equal to the average life of the PFI Security. This yield will be used by the Filer to discount the cash flows of the PFI Security to establish its fair value (the **Fourth Category**). Notwithstanding the foregoing, if a PFI Security that falls under the Fourth Category has a floating rate of interest, the value of such PFI Security will be determined by assigning a value to such security equal to par (its face amount), unless such PFI Security exhibits credit deterioration that warrants a reduction in its value.

41. The Filer has retained SLA to complete and maintain a standard template for each PFI Security that is transferred to the PFI Fund from SLA. This template records key information such as the maturity date, credit rating, average life, and other relevant quantitative or qualitative features. It also records the key information for valuing the PFI Securities, such as, for PFI Securities valued under the Second Category and Third Category, comparable public or private assets along with differences between those assets (such as geography, credit quality, project lifecycle, or breadth of deal

participation) versus the PFI Securities, and for PFI Securities valued under the Fourth Category, the initial spread over the PPCI matrix. This information is reviewed monthly by the Filer's Valuation Team, and any relevant changes (i.e. a credit rating change) is updated as required.

42. The Filer has established a Valuation Committee to provide oversight to the valuation process, models and methodology and to approve the PFI Fund's asset valuations. The Valuation Committee consists of members that are independent of the portfolio management team of the Filer, and includes the Chief Financial Officer, Chief Operating Officer, Chief Compliance Officer, and Senior Managing Director, Investments Strategic Research and Initiatives (or another executive performing a similar function) of the Filer. The Valuation Committee approves the pricing methodology used for new and existing assets in the PFI Fund and approves any changes to the valuation methodology to be applied to assets in the PFI Fund. Recommendations for changes to the valuation methodology or for valuation assumptions on assets of the PFI Fund are provided to the committee jointly by the Filer's Valuation Team and SLA's PFI team. The Valuation Committee provides a forum to discuss any idiosyncratic assets and valuation assumptions to ensure that the value attributed to each asset in the PFI Fund is fair and reasonable.

43. An independent and reputable valuation firm that is an accounting firm registered with CPAB and the valuation services of which are provided by professionals who are active members of the Canadian Institute of Chartered Business Valuators was retained for the PFI Fund to:

    (a) provide a valuation opinion as to the value of the PFI Securities in the initial portfolio;

    (b) review whether the models and methodologies developed and used by the Filer to determine the value attributed to the PFI Securities are fair and reasonable from the perspective of an independent third party. The Filer relied upon such valuation opinion at the time of the sale of PFI Securities to the initial portfolio of the PFI Fund and the Filer will continue to use such valuation models and methodologies to determine the price(s) at which PFI Securities will be purchased from or sold by the PFI Fund;

    (c) review whether the models and methodologies developed, amended (if applicable) and used by the Filer to determine the value attributed to the PFI Securities continue to be fair and reasonable from the perspective of an independent third party on an annual basis.

44. A public accounting firm that is registered with CPAB acts as auditor of the PFI Fund and carries out an audit, in accordance with Canadian generally accepted auditing standards, of the annual financial statements of the PFI Fund. The annual financial statements are prepared in accordance with IFRS. The financial statements present the PFI Securities and any publicly-traded fixed income securities at their fair values, which will be determined based on all applicable fair valuation principles set out in IFRS 13 *Fair Value Measurement*, as the same may be amended or replaced from time to time. These principles will consider the credit spreads and yields used by market participants in the fair market valuation of private debt securities and other market value influencing assumptions, to the extent that such information is publicly available, as well as other information considered to be relevant by the Filer.

45. Based on existing information and interpretation on fair value measurements under IFRS, the Filer expects that, under normal market conditions, PFI Securities valued under the First Category, Second Category and Third Category would be treated as Level II fair value under IFRS and the PFI Securities valued under the Fourth Category would be treated as Level III fair value under IFRS.

The Original Decision

46. The Original Decision granted the Filer relief from paragraph 13.5(2)(b)(i) of NI 31-103, to allow the Funds to engage in In-Species Transactions and Principal Trades with SLA. The Exemption Sought is to replace the terms and conditions of the Original Decision with the terms and conditions described herein.

Decision

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

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

1. Securities of each Fund are sold pursuant to available exemptions from the prospectus requirements, only to Permitted Investors

2. With respect to the mortgages to be purchased or sold by the Mortgage Fund from or to SLA:

(a) The mortgages are purchased and sold at an amount determined in accordance with section III(2.4) of NP 29; and

(b) The mortgages are valued in accordance with section III(2.5) of NP 29.

3. An independent and reputable valuation firm that is an accounting firm registered with CPAB and the valuation services of which are provided by professionals who are active members of the Canadian Institute of Chartered Business Valuators is retained for the Mortgage Fund to review the models and methodologies developed and used by the Filer to determine the value attributed to the mortgages.

4. A public accounting firm that is registered with CPAB is retained to act as auditor of the Mortgage Fund and to carry out an audit, in accordance with Canadian generally accepted auditing standards, of the annual financial statements of the Mortgage Fund. The annual financial statements are prepared in accordance with IFRS and present the mortgages at fair value as defined in IFRS 13 *Fair Value Measurement*, which sets out a framework for measuring fair value.

5. The PFI Securities to be purchased or sold by the PFI Fund from or to SLA are valued in accordance with the valuation methodology developed by the Filer and as reviewed by an independent valuation firm on an annual basis.

6. An independent and reputable valuation firm that is an accounting firm registered with CPAB and the valuation services of which are provided by professionals who are active members of the Canadian Institute of Chartered Business Valuators is retained for the PFI Fund to review whether the models and methodologies developed, amended (if applicable), and used by the Filer to determine the value attributed to the PFI Securities:

(a) are fair and reasonable from the perspective of an independent third party. The Filer uses such valuation models and methodologies to determine the price(s) at which PFI Securities are purchased from or sold by the PFI Fund; and

(b) continue to be fair and reasonable from the perspective of an independent third party on an annual basis.

7. A public accounting firm that is registered with CPAB is retained to act as auditor of the PFI Fund and to carry out an audit, in accordance with Canadian generally accepted auditing standards, of the annual financial statements of the PFI Fund. The annual financial statements are prepared in accordance with IFRS. The financial statements present the PFI Securities and any publicly-traded fixed income securities at their fair values, determined based on all applicable fair valuation principles set out in IFRS 13 *Fair Value Measurement*. The principles consider the credit spreads and yields used by market participants in the fair market valuation of private debt securities and other market value influencing assumptions, to the extent that such information is publicly available, as well as other information considered to be relevant by the Filer.

8. The PFI Fund shall not purchase PFI Securities on an on-going basis from SLA if, after the purchase, more than 20% of the net asset value of the PFI Fund would consist of PFI Securities that were purchased from SLA on an on-going basis and that were valued under the Fourth Category (but excluding such PFI Securities that were purchased from SLA at the PFI Fund's inception).

9. With respect to the amount of PFI Securities valued under the Fourth Category that the PFI Fund may sell to SLA, the PFI Fund shall be limited to selling only 20% of the net asset value of such PFI Securities in each calendar year, where such 20% limit may be allocated to one or more sales in the year and the net asset value of such PFI Securities shall be determined by reference to the net asset value at the time of sale.

10. For each sale or purchase of securities between a Fund and SLA:

(a) The Fund only purchases securities from SLA that are consistent with, or necessary to meet, the Fund's investment objectives;

(b) The IRC of the Fund approves the transaction in accordance with section 5.2(2) of NI 81-107;

(c) The Filer complies with section 5.1 of NI 81-107;

(d) The Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transaction;

(e) The Filer receives no remuneration with respect to the purchase or sale. With respect to the delivery of securities, the only expenses incurred by a Fund are nominal administrative charges levied by the custodian and/or recordkeeper of the Fund for recording the trades and/or any charges by a dealer in transferring the

securities, if applicable, and, in the case of syndicated PFI Securities in the PFI Fund, the nominal fees charged by an agent bank for the transfer or assignment of such syndicated PFI Securities;

(f) The Fund keeps written records in a financial year of the Fund. The records reflect details of the securities received or delivered by the Fund and the value assigned to such securities and are retained for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and

(g) The Filer discloses to each investor in the Mortgage Fund and the PFI Fund the fact that securities were transferred from SLA to the Fund at the Fund's inception and that further purchases and sales of securities between the Fund and SLA may occur from time to time. The Filer also discloses how the price of such securities is determined and the valuation procedure for such securities.

11. In respect of each In-Specie Transaction:

(a) The Fund values portfolio securities under the transaction using the same values used by the Fund to calculate the net asset value for the purpose of the issue price or redemption price of the securities of the Fund; and

(b) None of the securities in the transaction are securities of an issuer that is a related party of the Filer.

“Raymond Chan”
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.2 Adira Energy Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An issuer proposes to complete a reverse take-over transaction with a target company – The issuer applied for relief from the requirements in section 4.10(2)(a)(ii) of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) and Item 5.2 of Form 51-102F3 Material Change Report to file, in respect of the proposed transaction, historical audited annual financial statements of the target company – Target company is unable to provide the required historical financial statements due to being unable to access the proper accounting records of certain of the Target's subsidiaries in order to prepare consolidated financial statements for the period prior to July 1, 2015 – Litigation has failed to resolve this issue and continues to be ongoing – Issuer will provide alternative financial statements in the listing statement in respect of the target company including audited consolidated financial statements for the six-month period ended December 31, 2015, audited annual consolidated financial statements for the year ended December 31, 2016 and audited consolidated interim financial statements for the six month period ended June 30, 2017 – Relief granted, subject to condition that the listing statement contains the alternative financial statements and that the listing statement is filed on SEDAR following acceptance by the Canadian Securities Exchange.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 4.10(2)(a)(ii).
Form 51-102F3 Material Change Report, Item 5.2.

December 29, 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
ADIRA ENERGY LTD.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Applicant for a decision under the securities legislation (the **Legislation**) of the Jurisdiction for an exemption from the requirements in subparagraph 4.10(2)(a)(ii) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and item 5.2 of Form 51-102F3 *Material Change Report* (**Form 51-102F3**) to file audited annual financial statements for each of the two most recently completed financial years for the Target (as defined below) (the **Exemption Sought**).

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

(a) The Ontario Securities Commission is the principal regulator for this application (the **Principal Regulator**), and

(b) The Applicant has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta and British Columbia (together with Ontario, the **Reporting Jurisdictions**).

Interpretation

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

Representations

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

Adira

1. The Applicant was incorporated under the *Canada Business Corporations Act* on February 20, 1997 and has a financial year end of December 31.

2. The head office of the Applicant is located at 4101 Yonge Street, Suite 706, Toronto Ontario, M2P 1N6.

3. The Applicant is a reporting issuer in the provinces of British Columbia, Alberta and Ontario.

4. The common shares of the Applicant are currently listed for trading (with a current trade halt on the Applicant's common shares as of November 5, 2015 pending the completion of the Transaction (as defined below)) on the TSX Venture Exchange.

5. The Applicant is a reporting issuer under the Legislation in each of the Reporting Jurisdictions and is not in default of securities legislation in any jurisdiction.

Adira's Transaction with S.M.A.A.R.T. Holdings Inc.

6. The Applicant has entered into a letter of intent with S.M.A.A.R.T. Holdings Inc. (the **Target**) pur-

suant to which, among other things, the Target will conduct a reverse take-over of the Applicant (the **Transaction**) and the Applicant will list on the Canadian Securities Exchange (**CSE**).

7. The Target was incorporated under the *Business Corporations Act* (British Columbia) on April 28, 2015 with a financial year end of December 31, is a privately held company and is not a reporting issuer in any jurisdiction in Canada. The Target is not in default of securities legislation in any jurisdiction.

8. The Target operates a national network of physician-staffed medical cannabis clinics operating under the name Empower Clinics (**Empower**). In addition to the clinic business, Empower also expects to garner royalties from the sale of proprietary medical cannabis products manufactured, dispensed, and delivered by third party channel partners.

9. In accordance with the CSE's Form 2A (the **Listing Statement**), financial statement disclosure concerning the Target will be in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), which states that issuers like the Target are required to include two years of audited financial statements (similar to what is required for an IPO venture issuer).

10. As a result of an acquisition undertaken by the Target, it is unable to access the proper accounting records in order to prepare consolidated financial statements for the period prior to July 1, 2015. This is due to being unable to receive the proper authority to prepare and include same from the previous owner of certain of the Target's subsidiaries. Litigation has failed to resolve this issue and continues to be ongoing. The resulting lack of records and consent would result in the Applicant being unable to provide the mandated financial statements for the Target in both the Listing Statement and the applicable material change report to be filed in accordance with NI 51-102.

11. In addition to applying to the Principal Regulator for the Exemption Sought, the Applicant will also apply to the CSE for a waiver from the equivalent financial statement requirements in the Listing Statement.

Historical Financial Statements

12. In accordance the requirements of the CSE as outlined in the Listing Statement, financial statement disclosure for the Applicant will include the following (the **Applicant Financial Statements**):

    (a) audited annual financial statements of the Applicant for the years ended December 31, 2016 and December 31, 2015; and

    (b) unaudited interim financial statements of the Applicant for the nine-month period ended September 30, 2017 (with comparatives).

13. Subsection 4.10(2)(a) of NI 51-102 provides that if a reporting issuer completes a reverse takeover, it must file the following financial statements for the reverse takeover acquirer, unless the financial statements have already been filed:

    (a) financial statements for all annual and interim periods ending before the date of the reverse takeover and after the date of the financial statements included in an information circular or similar document, or under item 5.2 of the Form 51-102F3 *Material Change Report*, prepared in connection with the transaction; or

    (b) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction.

14. Item 5.2 of Form 51-102F3 requires a material change report filed in respect of a closing of the Transaction to include, for each entity that results from the Transaction, disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use.

15. The financial statement requirements for a prospectus are found in NI 41-101 and Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**). Item 32.1 (as modified by Item 32.4) of Form 41-101F1 includes the following requirements:

    The financial statements of an issuer required under this item to be included in a prospectus must include:

    (a) the financial statements of any predecessor entity that formed, or will form, the basis of the business of the issuer, even though the predecessor entity is, or may have been, a different legal entity, if the issuer has not existed for two years, and

(b) the financial statements of a business or businesses acquired by the issuer within two years before the date of the prospectus or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired, by the issuer.

16. Subsection 5.3(1) of the Companion Policy to NI 41-101 notes that a reverse takeover such as the Transaction is an example of when a reasonable investor might regard the primary business of the issuer to be the acquired business.

17. Absent the Exemption Sought, the Applicant will be required to file audited financial statements for the Target in accordance with item 32.2 of Form 41-101F1 including, *inter alia*, a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the Target that includes periods prior to July 1, 2015.

18. In lieu of the financial statements specified in paragraph 17 above, the Applicant will include in the Listing Statement the following financial statements in respect of the Target (the **Target Financial Statements**):

(a) audited consolidated financial statements of the Target for the six-month period ended December 31, 2015;

(b) audited annual consolidated financial statements of the Target for the year ended December 31, 2016; and

(c) audited consolidated interim financial statements for the Target for the six-month period ended June 30, 2017; and

(d) unaudited interim financial statements for the Target for the nine-month period ended September 30, 2017.

19. The Applicant Financial Statements and the Target Financial Statements, together with the other disclosure prescribed by the Listing Statement, will provide disclosure of all material facts relating to the Applicant following the completion of the Transaction, and the Target, and will contain sufficient information to permit investors to make a reasoned assessment of the Applicant's business following completion of the Transaction.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted provided that:

1. the Listing Statement includes the Target Financial Statements; and

2. the Listing Statement is filed on SEDAR forthwith following acceptance by the CSE.

"Sonny Randhawa"
Deputy Director, Corporate Finance Branch
Ontario Securities Commission

2.1.3 AlarmForce Industries Inc.

Headnote

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

Applicable Legislative Provisions

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

January 12, 2018

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

IN THE MATTER OF
ALARMFORCE INDUSTRIES INC.
(the Applicant)

DECISION

AlarmForce Industries Inc.
1 Carrefour Alexander Graham Bell
Tour A-7
Verdun, Quebec
Canada H3E 3B3

Dears Sirs/Mesdames:

Re: AlarmForce Industries Inc. (the Applicant) – Application for an order under subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) (the Act) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

In this order, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Commission that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, 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;

(c) the Applicant is not in default of securities legislation in any jurisdiction; and

(d) the Applicant will not be a reporting issuer in any jurisdiction of Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.1.4 Chicago Mercantile Exchange Inc.

Headnote

NI 94-102 – protection of customer cleared derivatives collateral and positions – applicants seeking relief from certain requirements relating to the commingling customer positions – relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions, ss. 30(b), 32(2), 48.

December 21, 2017

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

AND

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

AND

IN THE MATTER OF
CHICAGO MERCANTILE EXCHANGE INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**), in Alberta and in Ontario pursuant to section 49 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**) and in Québec pursuant to section 86 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, for exemptions from the requirement to hold all customer collateral in separate accounts, as provided for under subsection 30(b) of NI 94-102, and from the requirement to use customer collateral as specified in subsection 32(2) of NI 94-102. More specifically, the Filer seeks to

(a) commingle customer positions in Eurodollar and Treasury futures contracts and options on such futures contracts (collectively, **Interest Rate Futures**) and cleared-only interest rate swaps (**IRS**), each as further set out below in the representations at section 11, and any money, securities or property used to margin, guarantee or secure such Interest Rate Futures and IRS, in accounts subject to section 4d(f) of the United States *Commodity Exchange Act* (**Cleared Swaps Customer Accounts**); and

(b) commingle customer positions in certain futures and options on such futures and swaps products, as further set out below in the representations at section 12, (**Base Guaranty Fund Products**) that are significantly and reliably correlated, and any money, securities, or property received to margin, guarantee or secure such positions, in Cleared Swaps Customer Accounts

(collectively, the **Exemptive Relief Sought**).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and NI 94-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the laws of the State of Delaware. Its head office is located at 20 South Wacker Drive, Chicago, Illinois 60606, United States of America. It is a wholly owned subsidiary of CME Group Inc., a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market.

2. The Filer is registered with the U.S. Commodity Futures Trading Commission (the **CFTC**) as a derivatives clearing organization (a **DCO**) and as a designated contract market (**DCM**). The Filer's clearing house division is the DCO for contracts listed for trading on the Filer's DCM, being the Chicago Mercantile Exchange (**CME**), and its affiliates' DCMs, being the Chicago Board of Trade (**CBOT**), the New York Mercantile Exchange (**NYMEX**) and the Commodity Exchange, Inc. (**COMEX**). The Eurodollar futures that are a subject of this application are listed for trading on CME, and the Treasury futures that are a subject of this application are listed for trading on CBOT. The Base Guaranty Fund Products that are a subject of this application consist of exchange-traded futures or options on futures and are or will be listed on one of the Filer's or its affiliates' DCMs.

3. Each of CME, CBOT, NYMEX and COMEX is exempted from recognition as an exchange and from registration as a commodity futures exchange in Ontario. Each of CME, CBOT, NYMEX and COMEX is a foreign derivatives exchange recognized as an exchange in Alberta.

4. The Filer was granted an exemption from the requirement to be recognized as a clearing agency by the OSC on June 27, 2013. The Filer was granted an exemption from the requirement to be recognized as a clearing house by the Autorité des marchés financiers on October 31, 2014. The Filer was granted an exemption from the requirement to be recognized as a clearing agency by the Alberta Securities Commission on October 17, 2016. An affiliate of the Filer, CME Clearing Europe Limited, was granted an exemption from the requirement to be recognized as a clearing agency by the OSC on November 1, 2012.

5. The Filer is a regulated clearing agency under NI 94-102.

6. The Filer is not in any material respect in default of the Legislation and is in compliance in all material respects with applicable U.S. securities laws.

7. Pursuant to discretionary approval by the CFTC under Section 4d of the U.S. *Commodity Exchange Act* and CFTC Regulation 39.15(b)(2) of CME rules that govern portfolio margining, the Filer offers portfolio margining of (a) certain Interest Rate Futures and IRS and (b) certain Guaranty Fund Products, in each case, in Cleared Swaps Customer Accounts, in accordance with CME Rule 8G831 and CME Rule 831.

8. The Filer states that permitting local customers to portfolio-margin (a) IRS and Interest Rate Futures and/or (b) Base Guaranty Fund Products, in each case, in Cleared Swaps Customer Accounts, will not make such customers more susceptible to shortfalls in the event of an insolvency of a futures commission merchant (**FCM**) clearing member or impair their ability to port positions. Positions and collateral in the Cleared Swaps Customer Accounts in which swaps and commingled Interest Rate Futures and/or Base Guaranty Fund Products are held receive a greater level of protection from fellow customer risk than would ordinarily be available to positions and collateral held in customer omnibus accounts for futures. All swaps or commingled futures positions and collateral are held subject to the U.S. "legally segregated, operationally commingled" or "LSOC" regime, which is designed to minimize fellow customer risk by ensuring that the Filer and its clearing members cannot use the collateral of one customer to pay for an obligation of another customer.

9. The Filer also states that U.S. regulations require FCM clearing members to collect margin from customers at least at 100% of the exchange-set margin levels and margin all customer-level accounts on a gross basis. These requirements increase the likelihood that each customer account is fully margined at the time of a FCM clearing member's default and therefore facilitate the rapid and successful porting of customer positions to one or more solvent FCM clearing members.

10. If the Exemptive Relief Sought is granted, the Filer will offer to local customers as defined in NI 94-102:

(a) portfolio-margining of Interest Rate Futures and IRS positions and related collateral, as set out below in section 11, as conducted in accordance with CME Rule 8G831, and

(b) portfolio-margining of Base Guaranty Fund Products positions and related collateral, as set out below in section 12, conducted in accordance with CME Rule 831.

11. If the Exemptive Relief Sought is granted, the following Interest Rate Futures will be eligible for commingling with IRS in Cleared Swaps Customer Accounts for the purpose of portfolio margining:

(a) *Eurodollar Futures:* The specifications for these contracts are located in Chapter 452 (Three-Month Eurodollar Futures) of the CME Rulebook;

(b) *Treasury Futures:*

(i) *U.S. Treasury Bonds:* The specifications for these contracts are located in Chapters 18 (U.S. Treasury Bond Futures) and 40 (Long-term U.S. Treasury Bond Futures) of the CBOT Rulebook;

(ii) *2, 5 and 10-Year Treasury Notes:* The specifications for these contracts are located in Chapters 21 (Short-Term U.S. Treasury Note Futures (2-Year)), 20 (Medium-Term U.S. Treasury Note Futures (5-Year)), 26 (10-Year U.S. Treasury Note Futures) and 19 (Long-Term U.S. Treasury-Note Futures (6½ to 10-Year), respectively, of the CBOT Rulebook;

(iii) *30-Day Federal Funds Futures:* The specifications for these contracts are located in Chapter 22 (30-Day Federal Funds Futures) of the CBOT Rulebook;

(iv) *2, 5, 10 and 30-Year Interest Rate Futures:* The specifications for these contracts are located in Chapters 51 (2-Year US Dollar Interest Rate Swap Futures), 52 (5-Year US Dollar Interest Rate Swap Futures), 53 (10-Year US Dollar Interest Rate Swap Futures), and 54 (30-Year US Dollar Interest Rate Swap Futures), respectively, of the CBOT Rulebook;

(c) any other instruments that may in the future be eligible for commingling with Interest Rate Futures and IRS in Cleared Swaps Customer Accounts for which the Filer's clearing house division has determined that commingled positions in related products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC permits commingling.

12. If the Exemptive Relief Sought is granted, the following Base Guaranty Fund Products will be eligible for commingling in Cleared Swaps Customer Accounts for the purpose of portfolio margining:

(a) futures, options on futures and swaps for which the Filer's clearing house division has determined that commingled positions in related products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC has permitted commingling;

(b) any other instruments that may in the future be eligible for commingling with Base Guaranty Fund Products for which the Filer's clearing house division determines that commingled positions in such products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC permits commingling.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted, provided that, in respect of any other instruments that may be eligible for portfolio margining in accordance with CME Rule 8G831 or CME Rule 831, as described in sections 11(c)and 12(b) above, as applicable, after the date of this Decision, the Filer will provide each of the Decision Makers with copies of any submission to the CFTC, any correspondence between the Filer and the CFTC, and any notice of non-objection from the CFTC with respect to these other instruments.

"Kevin Fine"
Director, Derivatives Branch
Ontario Securities Commission

2.2 Orders

2.2.1 National Bank of Canada and The Toronto-Dominion Bank – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF
NATIONAL BANK OF CANADA AND
THE TORONTO-DOMINION BANK

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of National Bank of Canada (the "**Issuer**") and The Toronto-Dominion Bank ("**TD**", and together with the Issuer, the "**Filers**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 1,500,000 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from TD pursuant to a share repurchase program (the "**Program**");

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

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1 to 4, inclusive, 10 to 21, inclusive, 23 to 30, inclusive, 34, 36, 38, 39, 40, 42 and 43;

AND UPON TD and TD Securities Inc. ("**TDSI**", and together with TD, the "**TD Entities**") having represented to the Commission the matters set out in paragraphs 5 to 9, inclusive, 18, 21 to 24, inclusive, 29, 31 to 35, inclusive, 37, 41, 43 and 44 as they relate to the TD Entities;

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

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

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

4. The authorized share capital of the Issuer consists of: (a) an unlimited number of Common Shares; (b) an unlimited number of first preferred shares without par value, issuable for a maximum aggregate consideration of $5,000,000,000, or the equivalent thereof in foreign currencies, issuable in series; and (c) 15,000,000 second preferred shares without par value, and issuable for a maximum aggregate consideration of $300,000,000. As of November 30, 2017, the Issuer had the following shares outstanding:

	Number of shares outstanding
Common shares	340,191,781
First preferred shares, Series 30	14,000,000
First preferred shares, Series 32	12,000,000
First preferred shares, Series 34	16,000,000
First preferred shares, Series 36	16,000,000
First preferred shares, Series 38	16,000,000

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

6. TDSI is registered as an investment dealer under the securities legislation of the Jurisdictions. It is also registered as a futures commission merchant under the *Commodity Futures Act* (Ontario), as a derivatives dealer under the *Derivatives Act* (Québec), and as a dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). TDSI is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of TDSI is located in Toronto, Ontario.

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

8. TD is the beneficial owner of at least 1,500,000 Common Shares, none of which were acquired by, or on behalf of, TD in anticipation or contemplation of resale to the Issuer (such Common Shares over which TD has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by TD in the Province of Ontario, and all purchases of Inventory Shares by the Issuer from TD will be executed and settled in the Province of Ontario. No Common Shares were purchased by, or on behalf of, TD on or after November 13, 2017, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares by TD to the Issuer.

9. TD 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**"). TD is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

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

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

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

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

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

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

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

17. To the best of the Issuer's knowledge, the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at November 30, 2017 consisted of 339,497,969 Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the *Universal Market Integrity Rules* ("**UMIR**").

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

19. On October 4, 2017, the Commission granted the Issuer and Canadian Imperial Bank of Commerce ("**CIBC**") an order pursuant to section 6.1 of NI 62-104 exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 1,000,000 Common Shares from CIBC pursuant to a share repurchase program (the "**CIBC Program**", and together with the Initial TD Program, the "**Prior Programs**"). The Issuer purchased 1,000,000 Common Shares under the CIBC Program, which terminated on October 16, 2017.

20. As at December 13, 2017, the Issuer has purchased an aggregate of 2,000,000 Common Shares pursuant to the Normal Course Issuer Bid, including 1,500,000 Common Shares under the Prior Programs.

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

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

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

24. The Program will begin on or after January 15, 2018 and will terminate on the earlier of February 6, 2018 and the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the TD Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder, or a change in law or announced change in law that would have adverse consequences to the transactions under the Program or to the Issuer or either of the TD Entities.

25. At least two clear Trading Days (as defined below) prior to the commencement of the Program, the Issuer will issue and file a press release that has been pre-cleared by the TSX that: (a) describes the material features of the Program, including the Program Term; (b) discloses the Issuer's intention to participate in the Program during the Normal Course Issuer Bid; and (c) states that, immediately following the completion of the Program, the Issuer will issue and file the Completion Press Release (as defined below) (the "**Commencement Press Release**").

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

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

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

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

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

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

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

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

32. The aggregate number of Common Shares that will be acquired by TDSI in connection with the Program:

    (a) shall not exceed the Program Maximum; and

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

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

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

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

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

    (d) the Modified Maximum Daily Limit.

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

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

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

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

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

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

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

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

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

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

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

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

44. Each of the TD Entities:

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

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

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

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

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

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

(i) made in accordance with the NCIB Rules applicable to the Normal Course Issuer Bid, as modified by paragraph 31 of this Order;

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

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

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

(c) during the Program Term: (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker; (iii) no Plan Trustee is appointed and no Plan Trustee Purchases are conducted; and (iv) no ARP is implemented or operative;

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

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

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

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

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

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

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

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

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

DATED at Toronto, Ontario, this 10th day of January, 2018.

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

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

Headnote

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

Statutes Cited

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
ROYAL BANK OF CANADA AND
CANADIAN IMPERIAL BANK OF COMMERCE

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Royal Bank of Canada (the "**Issuer**") and Canadian Imperial Bank of Commerce ("**CIBC**", and together with the Issuer, the "**Filers**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("NI **62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 5,799,378 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from CIBC pursuant to a share repurchase program (the "**Program**");

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

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1 to 4, inclusive, 10 to 22, inclusive, 24 to 31, inclusive, 35, 37, 39 to 41, inclusive, 43 and 44;

AND UPON CIBC and CIBC World Markets Inc. ("**CIBC World Markets**" and together with CIBC, the "**CIBC Entities**") having represented to the Commission the matters set out in paragraphs 5 to 9, inclusive, 22 to 25, inclusive, 30, 32 to 36, inclusive, 38, 42, 44 and 45 as they relate to the CIBC Entities:

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

2. The Issuer's corporate headquarters are located at Royal Bank Plaza, 200 Bay Street, Toronto, Ontario, Canada, M5J 2J1 and its head office is located at 1 Place Ville-Marie, Montreal, Quebec, Canada.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**"), the New York Stock Exchange (the "**NYSE**") and the SIX Swiss Exchange under the symbols "RY","RY:US" and "RY", respectively. The Issuer is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Issuer consists of (a) an unlimited number of Common Shares without nominal or par value, and (b) an unlimited number of first preferred shares and second preferred shares without nominal or par value, issuable in series and whose classes may be issued for maximum consideration of $20 billion and $5 billion, respectively. As at December 11, 2017, the Issuer had the following shares outstanding:

Common Shares outstanding	1,453,076,783
First preferred shares outstanding	
Non-cumulative Series W	12,000,000
Non-cumulative Series AA	12,000,000
Non-cumulative Series AC	8,000,000
Non-cumulative Series AD	10,000,000
Non-cumulative Series AE	10,000,000
Non-cumulative Series AF	8,000,000
Non-cumulative Series AG	10,000,000
Non-cumulative Series AJ	13,578,815
Non-cumulative Series AK	2,421,185
Non-cumulative Series AL	12,000,000
Non-cumulative Series AZ	20,000,000
Non-cumulative Series BB	20,000,000
Non-cumulative Series BD	24,000,000
Non-cumulative Series BF	12,000,000
Non-cumulative Series BH	6,000,000
Non-cumulative Series BI	6,000,000
Non-cumulative Series BJ	6,000,000
Non-cumulative Series BK	29,000,000
Non-cumulative Series BM	30,000,000
Non-cumulative Series C-2	20,385

5. CIBC is a Schedule I bank governed by the *Bank Act* (Canada). The registered and head office and corporate headquarters of CIBC are located in Toronto, Ontario.

6. CIBC World Markets is registered as an investment dealer under the securities legislation of each of the Jurisdictions. It is also registered as: (a) a futures commission merchant under the *Commodity Futures Act* (Ontario); (b) a derivatives dealer under the *Derivatives Act* (Québec); and (c) a dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). CIBC World Markets is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of CIBC World Markets is located in Toronto, Ontario.

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

8. CIBC is the beneficial owner of at least 5,799,378 Common Shares, none of which were acquired by, or on behalf of, CIBC in anticipation or contemplation of resale to the Issuer (such Common Shares over which CIBC has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by CIBC in the Province of Ontario and all purchases of Inventory Shares by the Issuer from CIBC will be executed and settled in the Province of Ontario. No Common Shares were purchased by, or on behalf of, CIBC on or after November 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 by CIBC to the Issuer.

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

10. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") which was accepted by the TSX effective March 9, 2017, the Issuer is permitted to make a normal course issuer bid (the "**NCIB**") to purchase for cancellation, during the 12-month period beginning on March 14, 2017 and ending on March 10, 2018, up to 30,000,000 Common Shares, representing approximately 2% of the issued and outstanding Common Shares as of the date specified in the Notice. The Notice specifies that purchases under the NCIB will be conducted through the facilities of the TSX, the NYSE and other designated exchanges and Canadian alternative trading systems, if eligible, or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"), a securities regulatory authority, or applicable securities laws and regulations, including under automatic purchase plans and by private agreements or share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities.

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

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

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

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

15. The Notice also provides that, during the course of the NCIB, Common Shares may be purchased by trustees or administrators that are not independent of the Issuer (a "**Plan Trustee**") in the open market to satisfy net requirements of employee plans that have been specifically identified in the Notice (the Common Shares purchased under such specified plans, the "**Plan Common Shares**"). The maximum number of Common Shares that the Issuer is permitted to repurchase under the NCIB, being 30,000,000, will be reduced by the number of Plan Common Shares. In the event that the acquisition of Plan Common Shares is required during the Program Term, the Issuer will not provide instructions to CIBC pursuant to the Program in respect of the relevant Trading Day (as defined below) unless such instructions include the number of Plan Common Shares that will be acquired on that Trading Day.

16. The TSX granted the Issuer relief on December 1, 2003 from the applicable provisions of the TSX Rules in respect of NCIBs that deem six specified employee share purchase plans of the Issuer to have non-independent trustees (the "**Exempted Plans**"). As a result, any Common Shares purchased by Plan Trustees pursuant to Exempted Plans (the "**Exempted Plan Purchases**") do not count towards the Issuer's NCIB and the limits applicable thereto.

17. To the best of the Issuer's knowledge the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at October 31, 2017 consisted of 1,452,371,214 Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the *Universal Market Integrity Rules* ("UMIR").

18. On March 9, 2017, the Commission granted the Issuer two orders pursuant to section 6.1 of NI 62-104. The first of these orders was to the Issuer and The Toronto-Dominion Bank ("**TD**") exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 10,000,000 Common Shares from TD pursuant to a share repurchase program (the "**TD Program**"). The Issuer purchased 10,000,000 Common Shares under the TD Program, which terminated on March 31, 2017. The second of these orders was to the Issuer and The Bank of Nova Scotia ("**Scotia**") exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 5,000,000 Common Shares from Scotia pursuant to a share repurchase program (the "**Scotia Program**"). The Issuer purchased 5,000,000 Common Shares under the Scotia Program, which terminated on April 28, 2017.

19. On October 11, 2017, the Commission granted the Issuer and BMO Nesbitt Burns Inc. ("**BMO Nesbitt**") an order pursuant to section 6.1 of NI 62-104 exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 5,000,000 Common Shares from BMO Nesbitt pursuant to a share repurchase program (the "**Prior BMO Nesbitt Program**", and collectively with the TD Program and the Scotia Program, the "**Prior Programs**"). The Issuer purchased 5,000,000 Common Shares from BMO Nesbitt under the Prior BMO Nesbitt Program, which terminated on October 30, 2017.

20. Concurrently with the Application, the Issuer filed an additional application with the Commission for exemptive relief from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 3,500,000 Common Shares (the "**BMO Nesbitt Program Maximum**") from BMO Nesbitt pursuant to a share repurchase program (the "**BMO Nesbitt Program**", and together with the Program, the "**Programs**"). The BMO Nesbitt Program will terminate on the earlier of: (a) January 31, 2018; and (b) the date on which the Issuer will have purchased the BMO Nesbitt Program Maximum (the "**BMO Nesbitt Program Term**").

21. As at December 11, 2017, the Issuer has purchased for cancellation a total of 20,652,000 Common Shares under the NCIB, including 20,000,000 Common Shares under the Prior Programs.

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

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

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

25. The Program will commence on the Trading Day following completion or termination of the BMO Nesbitt Program and will terminate on the earlier of: (a) January 31, 2018; and (b) the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the CIBC Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder or a change in law or announced change in law that would have adverse consequences to the transactions contemplated under the Program Agreement or to the Issuer or either of the CIBC Entities.

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

27. The Program Maximum, together with the BMO Nesbitt Program Maximum, will be no greater than the number of Common Shares remaining that the Issuer is entitled to acquire under the NCIB, calculated as at the date of the Program Agreement.

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

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

30. During the Program Term, CIBC World Markets will purchase Common Shares on the applicable Trading Day in accordance with instructions received by CIBC from the Issuer on such day, which instructions will be relayed by CIBC to CIBC World Markets without modification and which instructions will be the same instructions that the Issuer would

have given to the Responsible Broker, as its designated broker in respect of the NCIB, if the Issuer was conducting the NCIB in reliance on the Exemptions.

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

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

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

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

33. The aggregate number of Common Shares that will be acquired by CIBC World Markets in connection with the Program:

    (a) shall not exceed the Program Maximum; and

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

34. On every Trading Day, CIBC World Markets will purchase the Number of Common Shares. The "**Number of Common Shares**" will be no greater than the least of:

    (a) the maximum number of Common Shares established in the instructions received by CIBC from the Issuer on such day, it being noted that such number of Common Shares, when taken together with the number of Plan Common Shares specified in the instructions and representing the number of Plan Common Shares that will be acquired on that Trading Day, will not exceed the Modified Maximum Daily Limit;

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

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

    (d) the Modified Maximum Daily Limit.

35. CIBC will deliver to the Issuer that number of Inventory Shares equal to the Number of Common Shares purchased by CIBC World Markets on a Trading Day under the Program on the Trading Day immediately thereafter (or such other Trading Day as agreed to between the parties to the Program Agreement), and the Issuer will pay CIBC a purchase price equal to the Discounted Price for each such Inventory Share on the date of delivery thereof. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer.

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

36. CIBC will not sell any Inventory Shares to the Issuer unless CIBC World Markets has purchased the equivalent Number of Common Shares on Canadian Markets under the Program. The number of Common Shares that are purchased by CIBC World Markets on Canadian Markets under the Program on a Trading Day will be equal to the Number of

Common Shares for such Trading Day. CIBC World Markets will provide CIBC with a daily written report of CIBC World Markets' purchases, which report will: (a) indicate, inter alia, the aggregate number of Common Shares acquired under the Program, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit; and (b) be provided by CIBC to the Issuer.

37. During the Program Term, the Issuer will: (a) not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (b) prohibit the Responsible Broker from acquiring any Common Shares on its behalf; (c) prohibit any Plan Trustee from acquiring a number of Plan Common Shares in excess of the number of Plan Common Shares specified in the instructions provided to CIBC pursuant to the Program in respect of the relevant Trading Day; and (d) not implement an ARP.

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

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

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

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

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

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

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

45. Each of the CIBC Entities:

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

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

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

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

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

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

(i) made in accordance with the NCIB Rules applicable to the NCIB, as modified by paragraph 32 of this Order;

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

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

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

(c) during the Program Term: (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker; (iii) the number of Plan Common Shares acquired by any Plan Trustee does not exceed the number of Plan Common Shares specified in the instructions provided to CIBC pursuant to the Program in respect of a relevant Trading Day; and (iv) no ARP is implemented or operative;

(d) the number of Common Shares purchased by CIBC World Markets under the Program on a particular Trading Day, when taken together with the number of Plan Common Shares specified in the instructions provided to CIBC pursuant to the Program and representing the number of Plan Common Shares that will be acquired on that Trading Day, does not exceed the Modified Maximum Daily Limit;

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

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

(g) at the time that the Program Agreement is entered into by the Filers and CIBC World Markets:

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

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

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

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

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

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

DATED at Toronto, Ontario, this 10th day of January, 2018.

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

2.2.3 Royal Bank of Canada and BMO Nesbitt Burns Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

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

Statutes Cited

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
ROYAL BANK OF CANADA AND
BMO NESBITT BURNS INC.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Royal Bank of Canada (the "**Issuer**") and BMO Nesbitt Burns Inc. ("**BMO Nesbitt**", and together with the Issuer, the "Filers") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 3,500,000 (the "**Program Maximum**") of its common shares (the "**Common Shares**") from BMO Nesbitt pursuant to a share repurchase program (the "**Program**");

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

AND UPON the Issuer having represented to the Commission the matters set out in paragraphs 1 to 4, inclusive, 9 to 21, inclusive, 23 to 30, inclusive, 34, 36, 38, 39, 40, 42 and 43;

AND UPON BMO Nesbitt and Bank of Montreal ("**BMO**" and together with BMO Nesbitt, the "**BMO Entities**") having represented to the Commission the matters set out in paragraphs 5 to 8, inclusive, 18, 21 to 24, inclusive, 29, 31 to 35, inclusive, 37, 41, 43 and 44 as they relate to the BMO Entities;

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

2. The Issuer's corporate headquarters are located at Royal Bank Plaza, 200 Bay Street, Toronto, Ontario, Canada, M5J 2J1 and its head office is located at 1 Place Ville-Marie, Montreal, Quebec, Canada.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**"), the New York Stock Exchange (the "**NYSE**") and the SIX Swiss Exchange under the symbols "RY","RY:US" and "RY", respectively. The Issuer is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Issuer consists of (a) an unlimited number of Common Shares without nominal or par value, and (b) an unlimited number of first preferred shares and second preferred shares without nominal or par value, issuable in series and whose classes may be issued for maximum consideration of $20 billion and $5 billion, respectively. As at December 11, 2017, the Issuer had the following shares outstanding:

Common Shares outstanding	1,453,076,783
First preferred shares outstanding	
Non-cumulative Series W	12,000,000
Non-cumulative Series AA	12,000,000
Non-cumulative Series AC	8,000,000
Non-cumulative Series AD	10,000,000
Non-cumulative Series AE	10,000,000
Non-cumulative Series AF	8,000,000
Non-cumulative Series AG	10,000,000
Non-cumulative Series AJ	13,578,815
Non-cumulative Series AK	2,421,185
Non-cumulative Series AL	12,000,000
Non-cumulative Series AZ	20,000,000
Non-cumulative Series BB	20,000,000
Non-cumulative Series BD	24,000,000
Non-cumulative Series BF	12,000,000
Non-cumulative Series BH	6,000,000
Non-cumulative Series BI	6,000,000
Non-cumulative Series BJ	6,000,000
Non-cumulative Series BK	29,000,000
Non-cumulative Series BM	30,000,000
Non-cumulative Series C-2	20,385

5. BMO Nesbitt is registered as an investment dealer under the securities legislation of each of the Jurisdictions. It is also registered as: (a) a futures commission merchant under the *Commodity Futures Act* (Ontario); (b) a derivatives dealer under the *Derivatives Act* (Québec); and (c) a dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). BMO Nesbitt is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of BMO Nesbitt is located in Toronto, Ontario.

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

7. BMO Nesbitt is the beneficial owner of at least 3,500,000 Common Shares, none of which were acquired by, or on behalf of, BMO Nesbitt in anticipation or contemplation of resale to the Issuer (such Common Shares over which BMO Nesbitt has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by BMO Nesbitt in the Province of Ontario and all purchases of Inventory Shares by the Issuer from BMO Nesbitt will be executed and settled in the Province of Ontario. No Common Shares were purchased by, or on behalf of, BMO Nesbitt on or after November 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 by BMO Nesbitt to the Issuer.

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

9. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") which was accepted by the TSX effective March 9, 2017, the Issuer is permitted to make a normal course issuer bid (the "**NCIB**") to purchase for cancellation, during the 12-month period beginning on March 14, 2017 and ending on March 10, 2018, up to 30,000,000 Common Shares, representing approximately 2% of the issued and outstanding Common Shares as of the date specified in the Notice. The Notice specifies that purchases under the NCIB will be conducted through the facilities of the TSX, the NYSE and other designated exchanges and Canadian alternative trading systems, if eligible, or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"), a securities regulatory authority, or applicable securities laws and regulations, including under automatic purchase plans and by private agreements or share repurchase programs under issuer bid exemption orders issued by securities regulatory authorities.

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

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

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

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

14. The Notice also provides that, during the course of the NCIB, Common Shares may be purchased by trustees or administrators that are not independent of the Issuer (a "**Plan Trustee**") in the open market to satisfy net requirements of employee plans that have been specifically identified in the Notice (the Common Shares purchased under such specified plans, the "**Plan Common Shares**"). The maximum number of Common Shares that the Issuer is permitted to repurchase under the NCIB, being 30,000,000, will be reduced by the number of Plan Common Shares. In the event that the acquisition of Plan Common Shares is required during the Program Term, the Issuer will not provide instructions to BMO pursuant to the Program in respect of the relevant Trading Day (as defined below) unless such instructions include the number of Plan Common Shares that will be acquired on that Trading Day.

15. The TSX granted the Issuer relief on December 1, 2003 from the applicable provisions of the TSX Rules in respect of NCIBs that deem six specified employee share purchase plans of the Issuer to have non-independent trustees (the "**Exempted Plans**"). As a result, any Common Shares purchased by Plan Trustees pursuant to Exempted Plans (the "**Exempted Plan Purchases**") do not count towards the Issuer's NCIB and the limits applicable thereto.

16. To the best of the Issuer's knowledge the "public float" (calculated in accordance with the TSX Rules) for the Common Shares as at October 31, 2017 consisted of 1,452,371,214 Common Shares. The Common Shares are "highly-liquid securities" as that term is defined in section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and section 1.1 of the *Universal Market Integrity Rules* ("**UMIR**").

17. On March 9, 2017, the Commission granted the Issuer two orders pursuant to section 6.1 of NI 62-104. The first of these orders was to the Issuer and The Toronto-Dominion Bank ("**TD**") exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 10,000,000 Common Shares from TD pursuant to a share repurchase program (the "**TD Program**"). The Issuer purchased 10,000,000 Common Shares under the TD Program, which terminated on March 31, 2017. The second of these orders was to the Issuer and The Bank of Nova Scotia ("**Scotia**") exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 5,000,000 Common Shares from Scotia pursuant to a share repurchase program (the "**Scotia Program**"). The Issuer purchased 5,000,000 Common Shares under the Scotia Program, which terminated on April 28, 2017.

18. On October 11, 2017, the Commission granted the Issuer and BMO Nesbitt an order pursuant to section 6.1 of NI 62-104 exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up

to 5,000,000 Common Shares from BMO Nesbitt pursuant to a share repurchase program (the "**Prior BMO Nesbitt Program**", and collectively with the TD Program and the Scotia Program, the "**Prior Programs**"). The Issuer purchased 5,000,000 Common Shares from BMO Nesbitt under the Prior BMO Nesbitt Program, which terminated on October 30, 2017.

19. Concurrently with the Application, the Issuer filed an additional application with the Commission for exemptive relief from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 5,799,378 Common Shares (the "**CIBC Program Maximum**") from Canadian Imperial Bank of Commerce pursuant to a share repurchase program (the "**CIBC Program**", and together with the Program, the "**Programs**"). The CIBC Program will begin on the Trading Day (as defined below) following the completion or termination of the Program and will terminate on the earlier of (a) January 31, 2018, and (b) the date on which the Issuer will have purchased the CIBC Program Maximum (the "**CIBC Program Term**").

20. As at December 11, 2017, the Issuer has purchased for cancellation a total of 20,652,000 Common Shares under the NCIB, including 20,000,000 Common Shares under the Prior Programs.

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

22. Pursuant to the terms of the Program Agreement (as defined below), BMO Nesbitt will be retained by BMO to acquire Common Shares through the facilities of the TSX and on Other Published Markets in Canada (each, a "**Canadian Other Published Market**" and collectively with the TSX, the "**Canadian Markets**") under the Program. No Common Shares will be acquired under the Program on a market that is not a Canadian Market.

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

24. The Program will terminate on the earlier of: (a) January 31, 2018; and (b) the date on which the Issuer will have purchased the Program Maximum under the Program (the "**Program Term**"). Neither the Issuer nor any of the BMO Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder or a change in law or announced change in law that would have adverse consequences to the transactions contemplated under the Program Agreement or to the Issuer or either of the BMO Entities.

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

26. The Program Maximum, together with the CIBC Program Maximum, will be no greater than the number of Common Shares remaining that the Issuer is entitled to acquire under the NCIB, calculated as at the date of the Program Agreement.

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

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

29. During the Program Term, BMO Nesbitt will purchase Common Shares on the applicable Trading Day in accordance with instructions received by BMO from the Issuer on such day, which instructions will be relayed by BMO to BMO Nesbitt without modification and which instructions will be the same instructions that the Issuer would have given to the Responsible Broker, as its designated broker in respect of the NCIB if the Issuer was conducting the NCIB in reliance on the Exemptions.

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

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

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

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

32. The aggregate number of Common Shares that will be acquired by BMO Nesbitt in connection with the Program:

    (a) shall not exceed the Program Maximum; and

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

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

    (a) the maximum number of Common Shares established in the instructions received by BMO from the Issuer on such day, it being noted that such number of Common Shares, when taken together with the number of Plan Common Shares specified in the instructions and representing the number of Plan Common Shares that will be acquired on that Trading Day, will not exceed the Modified Maximum Daily Limit;

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

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

    (d) the Modified Maximum Daily Limit.

34. BMO Nesbitt will deliver to the Issuer that number of Inventory Shares equal to the Number of Common Shares purchased by BMO Nesbitt on a Trading Day under the Program on the Trading Day immediately thereafter (or such other Trading Day as agreed to between the parties to the Program Agreement), and the Issuer will pay BMO Nesbitt a purchase price equal to the Discounted Price for each such Inventory Share on the date of delivery thereof. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer.

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

35. BMO Nesbitt will not sell any Inventory Shares to the Issuer unless BMO Nesbitt has purchased the equivalent Number of Common Shares on Canadian Markets under the Program. The number of Common Shares that are purchased by BMO Nesbitt on Canadian Markets under the Program on a Trading Day will be equal to the Number of Common Shares for such Trading Day. BMO Nesbitt will provide the Issuer with a daily written report of BMO Nesbitt's

purchases, which report will indicate, inter alia, the aggregate number of Common Shares acquired under the Program, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit.

36. During the Program Term, the Issuer will: (a) not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (b) prohibit the Responsible Broker from acquiring any Common Shares on its behalf; (c) prohibit any Plan Trustee from acquiring a number of Plan Common Shares in excess of the number of Plan Common Shares specified in the instructions provided to BMO pursuant to the Program in respect of the relevant Trading Day; and (d) not implement an ARP.

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

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

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

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

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

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

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

44. Each of the BMO Entities:

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

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

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

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

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

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

(i) made in accordance with the NCIB Rules applicable to the NCIB, as modified by paragraph 31 of this Order;

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

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

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

(c) during the Program Term: (i) the Issuer does not purchase, directly or indirectly, any Common Shares (other than Inventory Shares purchased under the Program); (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker; (iii) the number of Plan Common Shares acquired by any Plan Trustee does not exceed the number of Plan Common Shares specified in the instructions provided to BMO pursuant to the Program in respect of a relevant Trading Day; and (iv) no ARP is implemented or operative;

(d) the number of Common Shares purchased by BMO Nesbitt under the Program on a particular Trading Day, when taken together with the number of Plan Common Shares specified in the instructions provided to BMO pursuant to the Program and representing the number of Plan Common Shares that will be acquired on that Trading Day, does not exceed the Modified Maximum Daily Limit;

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

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

(g) at the time that the Program Agreement is entered into by the Filers and BMO:

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

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

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

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

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

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

DATED at Toronto, Ontario, this 10th day of January, 2018.

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

2.2.4 Money Gate Mortgage Investment Corporation et al.

File No.: 2017-79

IN THE MATTER OF
MONEY GATE MORTGAGE
INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN

Timothy Moseley, Vice-Chair and Chair of the Panel

January 11, 2018

ORDER

WHEREAS on January 11, 2018, 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 and the respondents;

IT IS ORDERED THAT the Second Appearance in this matter will be heard on May 9, 2018, at 10:00 a.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties.

"Timothy Moseley"

2.2.5 Money Gate Mortgage Investment Corporation et al. – s. 127(8)

IN THE MATTER OF
MONEY GATE MORTGAGE
INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN

Timothy Moseley, Vice-Chair and Chair of the Panel

January 11, 2018

ORDER
(Subsection 127(8) *Securities Act*, RSO 1990, c S.5)

WHEREAS on January 11, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, in relation to a motion by Staff of the Commission (**Staff**) for an order that paragraph 1 of the order issued April 27, 2017 in this matter (the **Temporary Order**) and extended until January 12, 2018, be extended until the conclusion of the hearing on the merits regarding the allegations contained in the Statement of Allegations filed by Staff with the Commission on December 19, 2017 and the Notice of Hearing issued by the Commission on December 21, 2017 in respect of that Statement of Allegations (the **Merits Hearing**);

ON READING the materials filed by Staff and hearing the submissions of the representatives for Staff and the respondents, and considering the consent of the respondents to the making of this order;

IT IS ORDERED THAT pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5, paragraph 1 of the Temporary Order is extended until the conclusion of the Merits Hearing.

"Timothy Moseley"

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

File No. 2017-4

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

Mark J. Sandler, Commissioner

January 12, 2018

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

WHEREAS on January 12, 2018, the Ontario Securities Commission (the **Commission**) held a confidential conference at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, and

ON HEARING the submissions of the representative for Staff of the Commission and of Dennis L. Meharchand on his own behalf and on behalf of Valt.X Holdings Inc., appearing in person;

IT IS ORDERED THAT pursuant to Rule 20 of the Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988, a confidential conference shall be held on February 6, 2018 at 3:30 p.m., and the parties are required to file materials with the Registrar in advance, by no later than 5:00p.m. on February 2, 2018, for use at the confidential conference, which materials shall remain confidential.

"Mark J. Sandler"

2.2.7 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, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Robert P. Hutchison, Commissioner

January 15, 2018

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

WHEREAS on January 12, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to schedule the Motion brought by Dennis L. Meharchand and Valt.X Holdings Inc. (the **Respondents**), seeking an Order for the recusal of certain Staff of the Commission (**Staff**) from this proceeding; and

ON HEARING the submissions of the Respondents and of the representative for Staff;

IT IS ORDERED THAT the Respondents' Motion shall be heard on January 22, 2018 at 10:00 a.m. and the parties shall rely on the evidence in the motion materials already filed.

"Timothy Moseley"

"Deborah Leckman"

"Robert P. Hutchison"

2.2.8 RB Energy Inc. – s. 144(1)

Headnote

Section 144(1) – Application to vary a cease trade order – cease trade order varied to permit beneficial shareholders, who are not insiders or control persons of the issuer, to sell securities outside of Canada, subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
RB ENERGY INC.

ORDER
(Section 144(1) of the Act)

WHEREAS the securities of RB Energy Inc. (the "**Issuer**") are subject to a temporary cease trade order issued by the Director on May 15, 2015 pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further cease trade order issued by the Director on May 27, 2015 pursuant to paragraph 2 of subsection 127(1) of the Act (the "**Cease Trade Order**"), directing that all trading in securities of the Issuer cease until further order by the Director;

AND WHEREAS a cease trade order with respect to the Issuer's securities was also issued by the British Columbia Securities Commission on May 12, 2015, the Manitoba Securities Commission on May 13, 2015 and the Alberta Securities Commission on August 12, 2015;

AND WHEREAS the Issuer's securities are not listed on and do not trade on any exchange in Canada;

AND WHEREAS as at January 11, 2018 the Issuer's securities trade on the OTC Marketplace (the "**OTC**");

AND WHEREAS a shareholder of the Issuer has made an application to the Commission pursuant to section 144(1) of the Act to vary the Cease Trade Order;

AND UPON the Director being satisfied that:

a) the terms and conditions to the Cease Trade Order put Ontario resident shareholders of the Issuer at a disadvantage to certain shareholders who are free to trade their shares over the OTC; and

b) it is not prejudicial to the public interest to vary the Cease Trade Order under section 144(1) of the Act;

IT IS ORDERED that, pursuant to section 144(1) of the Act, the Cease Trade Order be varied by including the following section:

> Despite this order, a beneficial shareholder of RB Energy Inc. who is not, and was not as at May 15, 2015, an insider or control person of RB Energy Inc. may sell securities of RB Energy Inc. acquired before May 15, 2015, if:
>
> 1. the sale is made through a market outside of Canada; and
>
> 2. the sale is made through an investment dealer registered in Ontario.

DATED this 16th day of January, 2018.

"Michael Balter"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.4 Rulings

2.4.1 Rosenthal Collins Group, LLC et al. – s. 38 of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement set out in section 22 of the CFA and the trading restrictions in section 33 of the CFA in connection with certain trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicants are acting as principal or agent in such trades to, from or on behalf of i) Permitted Clients, or ii) Specified Corporate Hedger Clients – relief subject to sunset clause.

Statutes Cited

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

January 9, 2018

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

AND

IN THE MATTER OF
ROSENTHAL COLLINS GROUP, LLC,
WHITE COMMERCIAL CORPORATION,
ADVANCE TRADING INC. AND
SWEET FUTURES 1 LLC

RULING
(Section 38 of the CFA)

UPON the application (the **Application**) of Rosenthal Collins Group, LLC (**RCG**), White Commercial Corporation (**White Commercial**), Advance Trading Inc. (**Advance Trading**) and Sweet Futures 1 LLC (**Sweet Futures**) (and together with RCG, White Commercial and Advance Trading, the **Applicants**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicants are not subject to the dealer registration requirements 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) on exchanges located outside Canada (**Non-Canadian Exchanges**) where the Applicants are acting as principal or agent in such trades to, from or on behalf of i) Permitted Clients (as defined below), or ii) Specified Corporate Hedger Clients (as defined below); and

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that neither a Permitted Client nor a Specified Corporate Hedger Client is subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicants act in respect of the trades in Exchange-Traded Futures on behalf of the Permitted Client and Specified Corporate Hedger Client pursuant to the above ruling.

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

(a) the following terms shall have the following meanings

"CEA" means the United States *Commodity Exchange Act*;

"CFTC" means the United States Commodity Futures Trading Commission;

"dealer registration requirements 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;

"Eligible Contract Participant" means an eligible contract participant as that term is defined in Section 1a(18) of the CEA, and includes, for clarity,

(a) a person or company, other than an individual, with more than $10 million in assets, or any entity guaranteed by such entity; and

(b) an entity with a net worth of at least $1 million that is hedging commercial risk.

"Exchange Act" means the United States Securities *Exchange Act of 1934*;

"Exchange-Traded Futures" means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and that is cleared through one or more clearing corporations located outside of Canada;

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

"Introducing Brokers" means White Commercial, Advance Trading and Sweet Futures, or individually an "Introducing Broker";

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

"NFA" means the National Futures Association in the United States;

"OSA Staff Notice 33-744" means OSC Staff Notice 33-744 *Availability of registration exemptions to foreign dealers in connection with trades in options and futures contracts under the Commodity Futures Act* (Ontario);

"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;

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

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

"Specified Corporate Hedger Client" means a person or company, other than an individual, that

(a) carries on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, becomes exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offsets that risk through trading in futures contracts and options on futures contracts on exchanges located outside Canada;

(b) is an eligible contract participant under the U.S. CEA; and

(c) holds a license issued by the federal or provincial government (or an agency thereof) relating to agriculture or commodity production including licenses issued under The Grains Act (Ontario) as an Elevator Operator and/or a Dealer in Grain as issued by Agricorp, a provincial Crown corporation (or a successor organization).

"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;

"U.S." means the United States of America; and

(b) terms used in this Decision that are defined in the *Securities Act* (Ontario) (**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 Applicants having represented to the Commission as follows:

Rosenthal Collins Group, LLC

1. RCG is a limited liability company organized under the laws of the state of Illinois. Its main office is located at 216 W Jackson Blvd., Suite 400, Chicago, IL 60606-6918, U.S.

2. RCG provides futures commission merchant (**FCM**) services including commodity clearing and execution services to a network of introducing broker offices, including the Introducing Brokers, as well as commercial hedgers and financial, industrial, and agricultural entities.

3. RCG is a privately held entity owned directly and indirectly by its two principals, Leslie Rosenthal and J. Robert Collins.

4. RCG is registered as an FCM with the CFTC and is a member of the NFA. RCG is not registered with the SEC, is not a member of FINRA and does not carry on a securities business in the U.S.

5. RCG is a clearing member of Intercontinental Exchange, Inc. (including ICE Futures U.S., Inc. and ICE Futures Europe), CME Group, Inc. (including Chicago Board of Trade, Chicago Mercantile Exchange and New York Mercantile Exchange), Minneapolis Grain Exchange and a non-clearing member of ICE Futures Canada, Inc., Eurex and Euronext Paris.

6. RCG is not registered in any capacity under the CFA or the OSA. Subject to the matter to which this Decision relates, RCG is (a) not in default of securities or commodity futures legislation in any jurisdiction of Canada, and (b) in compliance in all material respects with U.S. securities and commodity futures laws.

White Commercial Corporation

7. White Commercial is a company formed under the laws of Florida with a head office in Stuart, Florida.

8. Since 1971, White Commercial's primary business has been to educate and support grain businesses. White Commercial is dedicated to grain merchandising risk management and its clients include grain elevators, feedmills, and rice dryers.

9. White Commercial is a privately held entity owned directly and indirectly primarily by its two principals, Donald White and John Werner.

10. As part of its risk-management services, White Commercial is registered as an introducing broker with the CFTC and a member of the NFA. This registration allows White Commercial's clients to utilize futures and options on futures to hedge the risk between the buying and selling of their cash grains.

11. White Commercial is not registered with the SEC, is not a member of FINRA and does not carry on a securities business in the U.S. White Commercial is not a member of any exchanges.

12. White Commercial is not registered in any capacity under the CFA or the OSA. Subject to the matter to which this Decision relates, White Commercial is (a) not in default of securities or commodity futures legislation in any jurisdiction of Canada, and (b) in compliance in all material respects with U.S. securities and commodity futures laws.

Advance Trading Inc.

13. Advance Trading is a company formed under the laws of Illinois with a head office in Bloomington, Illinois, United States of America.

14. Since 1980, Advance Trading's primary business has been to provide risk management and market guidance to grain producers, commercial elevators, and end users including energy producers and livestock feeders.

15. Advance Trading is a privately held entity owned directly and indirectly primarily by its employees pursuant to an employee stock option plan.

16. As part of its risk management services, Advance Trading is registered as an introducing broker with the CFTC and a member of the NFA.

17. Advance Trading is not registered with the SEC, is not a member of FINRA and does not carry on a securities business in the U.S. Advance Trading is not a member of any exchanges.

18. Advance Trading is not registered in any capacity under the CFA or the OSA. Subject to the matter to which this Decision relates, Advance Trading is (a) not in default of securities or commodity futures legislation in any jurisdiction of Canada, and (b) in compliance in all material respects with U.S. securities and commodity futures laws.

Sweet Futures 1 LLC

19. Sweet Futures is a limited liability company formed under the laws of Illinois with a head office in Chicago, Illinois, United States of America.

20. Sweet Futures is an independent introducing broker that services retail, institutional and corporate clients in both listed and over-the-counter derivatives.

21. Sweet Futures is a privately held entity owned directly and indirectly primarily by its founder, Ian Sweet.

22. As part of its risk management services, Sweet Futures is registered as an introducing broker with the CFTC and a member of the NFA.

23. Sweet Futures is not registered with the SEC, is not a member of FINRA and does not carry on a securities business in the U.S. Sweet Futures is not a member of any exchanges.

24. Sweet Futures is not registered in any capacity under the CFA or the OSA. Subject to the matter to which this Decision relates, Sweet Futures is (a) not in default of securities or commodity futures legislation in any jurisdiction of Canada, and (b) in compliance in all material respects with U.S. securities and commodity futures laws.

Background to Application for relief from the dealer registration requirement

25. The Applicants have been providing FCM services, in the case of RCG, and introducing broker services, in the case of the Introducing Brokers, to certain non-individual clients in Ontario that are either Permitted Clients or Specified Corporate Hedger Clients based on a good faith belief that they may rely on one or more exemptions from the dealer registration requirement in the CFA when providing such services. However, having reviewed OSC Staff Notice 33-744 and other recent rulings of the Commission that have been granted to U.S. FCMs, the Applicants have now concluded that these exemptions may not be available and are seeking exemptive relief from the dealer registration requirement, on a time-limited basis, to be able to continue providing such services.

26. The Applicants understand that, in other recent rulings that have been granted to U.S. FCMs and introducing brokers, the relief has been granted by analogy to the international dealer exemption in section 8.18 of NI 31-103, and the relief has been limited to providing FCM or introducing broker services in relation to trades in Exchange-Traded Futures on Non-Canadian Exchanges to Permitted Clients. However, the Applicants have certain existing relationships with certain non-individual clients that are Specified Corporate Hedger Clients.

27. The Specified Corporate Hedger Clients

    (a) carry on agricultural, mining, forestry, processing, manufacturing or other commercial activities and, as a necessary part of these activities, become exposed from time to time to a risk attendant upon fluctuations in the price of a commodity and offset that risk through trading in futures contracts and options on futures contracts on exchanges located outside Canada;

    (b) are eligible contract participants under the U.S. CEA; and

    (c) hold a license issued by the federal or provincial government (or an agency thereof) relating to agriculture or commodity production including licenses issued under *The Grains Act* (Ontario) as an Elevator Operator and/or a Dealer in Grain as issued by Agricorp, a provincial Crown corporation (or a successor organization).

28. As set out in the conditions to this Decision, the Applicants will

    (a) take reasonable steps to confirm that the customer is a *bona fide* hedger for such trading activities and shall not solely rely on a customer's self-certification of its hedger status; and

    (b) as part of its account-opening procedures, require clients resident in Ontario to represent the following: i) it is a Specified Corporate Hedger Client; ii) it acknowledges that this representation is deemed to be repeated by it each time it enters an order for an Exchange-Traded Futures and that the customer must be a Specified Corporate Hedger Client for the purposes of each trade resulting from such an order; iii) it is only seeking to trade in Exchange-Traded Futures on Non-Canadian Exchanges; iv) the client agrees to notify the Applicants

if it ceases to be a Specified Corporate Hedger Client; and v) the client represents that it will only enter orders for its own account.

29. RCG has post-trade surveillance procedures in place to ensure that the Specified Corporate Hedger Clients trading in Exchange-Traded Futures are for hedging purposes and not for speculation.

30. As set out in the conditions to this Decision, RCG on behalf of itself and the Introducing Brokers, will submit a certificate no more than 30 days after its fiscal year end specifying the following:

    (a) Particulars of the dealer and any individual acting on its behalf that traded with a Specified Corporate Hedger Client;

    (b) Particulars of the Specified Corporate Hedger Client;

    (c) Annual cumulative trading data for the Specified Corporate Hedger Client;

    (d) A signed statement from the Specified Corporate Hedger Client confirming that it meets the definition of Specified Corporate Hedger Client and has entered into the futures trades solely for the purposes of hedging; and

    (e) A signed statement from the chief compliance officer of RCG or designate confirming that they have complied with the requirements of this Decision.

31. In the interest of not disrupting existing trading relationships with the Specified Corporate Hedger Clients, and in view of these additional steps being taken in respect of Specified Corporate Hedger Clients, RCG requests that the present relief from the dealer registration requirement be extended to include providing FCM services to Specified Corporate Hedger Clients.

Current authorizations of the Applicants under the U.S. CEA

32. Pursuant to its registrations and memberships, RCG is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the United States. Rules of the CFTC and NFA require RCG to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, account-opening requirements, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules require RCG to treat Permitted Clients and Specified Corporate Hedger Clients consistently with RCG's U.S. customers with respect to transactions made on U.S. exchanges. With respect to transactions made on U.S. exchanges, in order to protect customers in the event of the insolvency or financial instability of RCG, RCG is required to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of RCG and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the CEA and the rules promulgated by the CFTC thereunder (collectively, the **RCG Approved Depositories**). RCG is further required to obtain acknowledgements from any RCG Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against RCG's obligations or debts.

33. Pursuant to its registrations and memberships, each of the Introducing Brokers is authorized to introduce customers to an executing broker registered as a futures commission merchant, and otherwise act as an introducing broker in the United States. Rules of the CFTC and NFA require the Introducing Brokers to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, client identification and account-opening requirements, anti-money laundering checks, dealing and handling customer order obligations including managing conflicts of interests and best execution rules. These rules require the Introducing Brokers to treat Permitted Clients and Specified Corporate Hedger Clients consistently with the Introducing Brokers' U.S. customers with respect to transactions made on exchanges in the U.S. In respect of Exchange-Traded Futures, none of the Introducing Brokers provide direct execution or clearing services and are not authorized to receive or hold client money in any jurisdiction.

34. The Applicants propose to offer their Permitted Clients and Specified Corporate Hedger Clients in Ontario the ability to trade in Exchange-Traded Futures through RCG, in its capacity as FCM, and the Introducing Brokers, as an introducing broker to RCG.

35. Each of the Introducing Brokers will introduce Exchange-Traded Futures, and RCG will execute and clear such trades on behalf of Permitted Clients and Specified Corporate Hedger Clients in Ontario in the same manner that it introduces or executes and clears trades on behalf of its U.S. clients. Each of the Applicants will follow the same know-your-customer and segregation of assets procedures, or in the case of the applicable Introducing Broker, order handling procedures, that it follows in respect of its U.S. clients. Permitted Clients and Specified Corporate Hedger Clients will be afforded the benefits of compliance by the Applicants with the requirements of the CEA and the regulations thereunder, and the Exchange Act and the regulations thereunder. Permitted Clients and Specified Corporate Hedger Clients in Ontario will have the same contractual rights against the Applicants as U.S. clients of the Applicants.

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

37. The Applicants will solicit trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients or Specified Corporate Hedger Clients.

38. Permitted Clients and Specified Corporate Hedger Clients of the Applicants will only be offered the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges.

39. The Exchange-Traded Futures to be traded by Permitted Clients and Specified Corporate Hedger Clients will include, but will not be limited to, Exchange-Traded Futures for equity indices, interest rate, energy, currency, bond, agricultural and other commodity products.

40. Permitted Clients and Specified Corporate Hedger Clients of the Applicants will be able to submit orders and execute Exchange-Traded Futures orders by contacting the Introducing Brokers' client order handling desk, through RCG's global execution desk or by submitting orders electronically via RCG's proprietary electronic order routing system. Permitted Clients and Specified Corporate Hedger Clients may also be able to self-execute Exchange-Traded Futures orders electronically via an independent service vendor and/or other electronic trading routing. Permitted Clients and Specified Corporate Hedger Clients may also be able to execute Exchange-Traded Futures orders through third party brokers and then "give up" the transaction for clearance through RCG.

41. RCG may execute a Permitted Client's and Specified Corporate Hedger Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. RCG will remain responsible for all executions when RCG is listed as the executing broker of record on the relevant Non-Canadian Exchange.

42. RCG may perform both execution and clearing functions for trades in Exchange-Traded Futures or may direct that a trade executed by it be cleared through a carrying broker if RCG is not a clearing member of the Non-Canadian Exchange on which the trade is executed. Alternatively, the Permitted Client or the Specified Corporate Hedger Client will be able to direct that trades executed by RCG be cleared through clearing brokers not affiliated with RCG (each a **Non-RCG Clearing Broker**).

43. If RCG performs only the execution of a Permitted Client's or Specified Corporate Hedger Client's Exchange-Traded Futures order and "gives-up" the transaction for clearance to a Non-RCG Clearing Broker, such clearing broker will also be required to comply with the rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non-RCG Clearing Broker will represent to RCG, in an industry-standard give-up agreement, 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 or Specified Corporate Hedger Client's Exchange-Traded Futures order will be executed and cleared. RCG will not enter into a give-up agreement with any Non-RCG Clearing Broker located in the United States unless such clearing broker is registered with the CFTC and is registered or has obtained an exemption from the dealer registration requirement from the Commission.

44. 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 and Permitted Client and Specified Corporate Hedger Client orders that are submitted to the exchange in the name of the Non-RCG Clearing Broker or RCG or, on exchanges where RCG is not a member, in the name of another carrying broker. The Permitted Clients and the Specified Corporate Hedger Clients are responsible to RCG for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and RCG, the carrying broker or the Non-RCG Clearing Broker is in turn responsible to the clearing corporation/division for payment.

45. Permitted Clients and Specified Corporate Hedger Clients that direct RCG to give-up transactions in Exchange-Traded Futures for clearance and settlement by Non-RCG Clearing Brokers will execute the give-up agreements described above.

46. Permitted Clients and Specified Corporate Hedger Clients will pay commissions for trades to the Applicants or the Non-RCG Clearing Broker, or such commissions may be shared by the Applicants with the Non-RCG Clearing Broker.

47. The trading restrictions in the CFA apply 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.

48. If each of the Applicants were registered under the CFA as a "futures commission merchant", they 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.

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

IT IS RULED pursuant to section 38 of the CFA, that the Applicants are not subject to the dealer registration requirements set out in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures where the Applicants are acting as principal or agent in such trades to, from or on behalf of Permitted Clients and Specified Corporate Hedger Clients provided that:

(a) each client effecting trades in Exchange-Traded Futures is a Permitted Client or a Specified Corporate Hedger Client;

(b) any Non-RCG Clearing Broker has represented and covenanted to RCG, and RCG has taken reasonable steps to verify, that it is appropriately registered under the CFA, is entitled to rely on an exemption under the CFA, or has been granted exemptive relief from the registration requirements in the CFA, in connection with the Permitted Client or Specified Corporate Hedger Client effecting Futures Trades;

(c) the Applicants only introduce, in the case of the Introducing Brokers, and execute and clear, in the case of RCG, trades in Exchange-Traded Futures for Permitted Clients and Specified Corporate Hedger Clients on Non-Canadian Exchanges;

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

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

  (ii) is registered as an FCM with the CFTC;

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

  (iv) engages in the business of an FCM in Exchange-Traded Futures in the United States.

(e) at the time trading activity is engaged in, each of the Introducing Brokers:

  (i) has its head office or principal place of business in the United States;

  (ii) is registered as an 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 United States.

(f) each of the Applicants has provided to the Permitted Client or the Specified Corporate Hedger Client the following disclosure (**Client Disclosure Document**) 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 the U.S.;

  (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;

(v) the name and address of the Applicant's agent for service of process in Ontario; and

(vi) that any trading in the Exchange-Traded Futures with the Applicant are not protected by any investor protection scheme including the Canadian Investor Protection Fund or US Securities Investor Protection Corporation;

(g) the Applicants have submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto;

(h) each of the Applicants shall notify the Commission of any regulatory action initiated after the date of this ruling in respect of themselves, or any predecessors or specified affiliates of the applicable Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action;

(i) if RCG does not rely on the international dealer exemption in section 8.18 of NI 31-103, by December 31st of each year, RCG shall pay 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 RCG relied on the international dealer exemption;

(j) if the applicable Introducing Broker does not rely on the international dealer exemption in section 8.18 of NI 31-103, by December 31st of each year, the applicable Introducing Broker shall pay 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 applicable Introducing Broker relied on the international dealer exemption;

(k) by December 1st of each year, each Applicant shall notify the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*;

(l) with regards to the Specified Corporate Hedger Clients, the Applicants shall:

(i) take reasonable steps to confirm that the customer is a *bona fide* hedger for such trading activities and shall not solely rely on a customer's self-certification of its hedger status;

(ii) as part of its account-opening procedures, require clients resident in Ontario to represent the following: a) it is a Specified Corporate Hedger Client; b) it acknowledges that this representation is deemed to be repeated by it each time it enters an order for an Exchange-Traded Futures and that the customer must be a Specified Corporate Hedger Client for the purposes of each trade resulting from such an order; c) it is only seeking to trade in Exchange-Traded Futures on Non-Canadian Exchanges; d) the client agrees to notify the Applicants if it ceases to be a Specified Corporate Hedger Client; and e) the client represents that it will only enter orders for its own account.

(m) RCG, on behalf of itself and the Introducing Brokers, shall submit to the Commission no more than 30 days after its fiscal year end, a certificate which would include the following information:

(i) full name, address (including postal code) and telephone number of the dealer and any individual acting on behalf of the dealer that entered into the contract on the instructions of the Specified Corporate Hedger Client;

(ii) full name and address (including postal code) of the Specified Corporate Hedger Client;

(iii) annual cumulative trading data for the Specified Corporate Hedger Client setting out the futures contracts traded and on which exchange;

(iv) a signed statement from the Specified Corporate Hedger Client confirming that (x) it is a Specified Corporate Hedger Client; and (y) that it has entered into the futures trades disclosed solely for the purposes of hedging; and

(v) a signed statement from the Chief Compliance Officer of RCG or designate, confirming that (x) they have all necessary inquiries to determine whether the client qualifies as a Specified Corporate Hedger Client and (y) have complied with all of the requirements of this Decision with respect to the trades described in the form;

(n) this Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by operation of law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as provided by operation of law, after the coming into force of any amendment to Ontario commodity futures law or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements 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 neither a Permitted Client nor a Specified Corporate Hedger Client is 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 Applicants acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients and Specified Corporate Hedger Clients pursuant to the above ruling.

January 9, 2018

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

"Timothy Moseley"
Vice-Chair
Ontario Securities Commission

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

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decision

3.1.1 Benedict Cheng et al.

IN THE MATTER OF
BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY

REASONS AND DECISION ON
MOTIONS REGARDING JURISDICTION AND PREMATURITY

Citation: *Cheng (Re)*, 2018 ONSEC 1

Date: 2018-01-10

Hearing:	December 18-22, 2017	
Decision:	January 10, 2018	
Panel:	Janet A. Leiper	Chair of the Panel
Appearances:	Shara N. Roy Brian Kolenda	For Benedict Cheng
	David Hausman Jonathan Wansbrough	For Frank Soave
	Maureen Doherty	For Eric Tremblay
	Yvonne Chisholm Jennifer Lynch Christina Galbraith	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] On April 12, 2017, Staff of the Ontario Securities Commission issued a Statement of Allegations pursuant to section 127 of the *Securities Act* (the ***Act***)[1] against the respondents. The hearing on the merits of the allegations is scheduled for the weeks of April 16, 23 and 30, 2018. Staff intends to tender communications, from "Mr. K.", who is a lawyer, as a witness at the hearing on the merits.

[2] On December 18-22, 2017, Benedict Cheng brought a motion for relief on the basis that solicitor-client privilege attaches to certain evidence involving Mr. K.

[1] RSO 1990, c S.5.

[3] Staff brought a cross-motion to defer the privilege issue to the hearing on the merits on the basis that Mr. Cheng's motion is premature. Staff raised the question of whether a panel has jurisdiction to make evidentiary rulings in advance of a hearing on the merits, and if so, whether in this case it would be preferable to defer the privilege motion to the hearing.

[4] These reasons supplement the brief oral reasons given on December 18, 2017. The cross-motion was dismissed and the privilege motion proceeded on the question of whether a solicitor-client relationship existed between Mr. Cheng and Mr. K.

II. CAN A PANEL OTHER THAN THE MERITS PANEL MAKE RULINGS WITH RESPECT TO EVIDENCE IN ADVANCE OF THE MERITS HEARING?

[5] As part of its cross-motion, Staff submitted that there was a jurisdictional question as to whether a panel other than the merits panel can determine a question of the admissibility of evidence in advance of the merits hearing.

[6] The *Act*, the *Statutory Powers Procedure Act*[2] and the Commission's *Rules of Procedure*[3] are silent on this point. Staff provided examples of single-member panels determining pre-hearing matters at the Commission, including quashing a summons and hearing a motion a determination in respect of the admissibility of compelled transcripts.[4] In these cases, the Panel members also sat on the merits proceedings.

[7] Staff and Mr. Cheng provided case law from criminal and civil matters on this question as well.

[8] In criminal jury cases, pre-trial motions have been permitted by the trial judge prior to empanelling a jury by virtue of 1985 amendments to the *Criminal Code*.[5] In a procedural ruling made in *R v Curtis*[6] it was noted that it is practical for the same judge conducting an evidentiary hearing under these provisions to act as the trial judge as well. The judge in *Curtis* cited *Duhamel* for the proposition that one judge cannot bind another judge.[7]

[9] In *Duhamel*,[8] a decision of the Supreme Court of Canada, an evidentiary ruling made in one trial did not bind a different judge at a separate trial of a different offence, even though the same piece of evidence and the same accused were involved in both trials. *Duhamel* was not concerned with evidentiary rulings made in the same proceeding.

[10] Criminal procedure has moved on since *Curtis*. The *Criminal Code* now has explicit provisions for case management judges to exercise the powers of a trial judge, including the ability to adjudicate pre-trial matters such as the admissibility of evidence before the trial. Such rulings advance trial management and avoid delays. It is implicit that such rulings will be binding on the trial judge as part of the proceedings leading to the ultimate verdict.

[11] In *R v Wabason*[9] the pre-trial motion judge was not a case management judge as contemplated by the section of the Code.[10] The trial judge noted the comments from *R v Davis*[11] that underline the importance of retaining prior rulings to "avoid the time, expense and risk of conflicting decisions associated with re-litigation."[12] The trial judge applied the case management principle by analogy.

[12] In civil proceedings, interlocutory determinations on evidentiary questions, including those of privilege, are binding on the trial judge.[13]

[13] In these proceedings, the rights of appeal of the parties are provided for in subsection 9(1) of the *Act*. These will include any decisions made on pre-hearing matters and on the merits. The ability to make pre-hearing decisions on discrete issues that do not relate to the allegations on the merits ought to be encouraged as a matter of pre-hearing

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2 RSO 1990, c S.22.

3 *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules**).

4 *Waheed (Re)* (2012), 36 OSCB 1071; *Agueci (Re)* 2013, 36 OSCB 12133.

5 RSC 1985, c C-46 (the ***Criminal Code***).

6 RSC 1985, c C-46 (the ***Criminal Code***).

7 *Ibid*.

8 *R v Duhamel*, [1984] 2 SCR 555 (***Duhamel***).

9 2015 ONSC 6128 (***Wabason***).

10 *Criminal Code* at 551.3(1).

11 2012 ONSC 5526 (***Davis***).

12 *Wabason* at para 29, citing *Davis* at para 16.

13 *Toronto Dominion Bank v Leigh Instruments Ltd (Trustee of)* (1997), 35 OR (3d) 273 (Ont Gen Div [Commercial List]); *Hawley v North Shore Mercantile Corp*, 2009 ONCA 679 at paras 25-26.

management. The legislation and the Rules do not require the same panel to hear all aspects of the matter including appropriate pre-hearing management rulings and orders.

[14] I conclude that there is jurisdiction to hear a question of whether privilege attaches to evidence sought to be tendered at a merits hearing and to consider what relief should flow from such a finding, including whether to make a finding that privileged evidence is inadmissible.

[15] Having made this finding, the second question raised by Staff is whether it is preferable to defer the question to the merits panel on the basis that a complete factual record is preferable to determining relief that includes a motion for a stay of proceedings.

III. IS MR. CHENG'S PRIVILEGE MOTION PREMATURE?

[16] Mr. Cheng's motion hinges on whether there was a solicitor-client relationship between Mr. Cheng and Mr. K. This is a question that is distinct from the allegations that are to be heard at the merits hearing. A substantial record was compiled in advance of the motion on the question of this relationship. The oral evidence anticipated at the hearing was limited to three or four witnesses. The parties were ready to proceed and time set aside for the motion.

[17] In *Duhamel*, the Supreme Court noted the desirability of holding evidentiary hearings "outside the proceedings" where the issue to be determined does not relate to the substance of the offence.[14]

[18] In *Mega-C Power Corp (Re)*, the Commission has held that it is useful to ask the following questions when determining the stage at which a preliminary motion should be heard, in advance of the hearing on the merits:

a. Can the issues raised in the motion be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motion likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?

b. Is it necessary for a fair hearing that the relief sought in the motion be granted prior to the proceeding on its merits?

c. Will the resolution of the issues raised in the motion materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?[15]

[19] The evidence proposed to be tendered from Mr. K. appears to be a significant part of the case against the respondents. The preparation for his cross-examination at the merits hearing will be affected by a ruling on the admissibility of any or all of his evidence. The relief sought affects much of his oral evidence and a number of memos he wrote at the relevant times. Mr. Cheng argues that having a ruling on the question of solicitor-client privilege in advance will give the parties some certainty, potentially narrow the issues at the hearing and add to the efficiency of hearing preparation.

[20] A fair hearing would require adjudication of the issue of privilege before the merits hearing begins in any event to avoid potentially compromising the substantive and important protection for privileged communications.

[21] The questions set out in *Mega-C* as applied to this record, can all be answered in the affirmative. I am satisfied that the question of solicitor-client privilege and the relationship between Mr. K. and Mr. Cheng, is sufficiently discrete and capable of determination in advance of the merits hearing. The motion should proceed now.

Dated at Toronto this 10th day of January, 2018.

"Janet A. Leiper"

[14] *Duhamel* at para 11.

[15] 33 OSCB 8245 (***Mega-C***) at paras 34 and 35.

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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
Zanzibar Gold Inc.	05 January 2018	09 January 2018
Haltain Developments Corp.	08 January 2018	09 January 2018
Namaste Technologies Inc.	08 January 2018	09 January 2018

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Katanga Mining Limited	15 August 2017	

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Chapter 6

Request for Comments

6.1.1 Proposed Change to OSC Policy 15-601 Whistleblower Program – OSC Notice and Request for Comment

OSC NOTICE AND REQUEST FOR COMMENT

PROPOSED CHANGE TO
OSC POLICY 15-601 *WHISTLEBLOWER PROGRAM*

The Ontario Securities Commission (OSC, or the Commission) is publishing a proposed change to OSC Policy 15-601 *Whistleblower Program* (the Policy) for a 60-day comment period.

Substance and Purpose

Following further consideration as well as feedback received from the Law Society of Ontario subsequent to the publication of the final Policy, the Commission is proposing a change to the Policy. The purpose of the change is to clarify that in-house counsel who report information under the Policy in breach of applicable provincial or territorial bar or law society rules or equivalent rules applicable in another jurisdiction will not be eligible for a whistleblower award.

Background

The Policy came into effect in July 2016. It provides guidance on the OSC's Whistleblower Program (the Program). The Program is designed to encourage individuals to report and submit to the Commission information on serious securities-related misconduct. Under the Program, individuals who meet certain eligibility criteria and who voluntarily submit 'original information'[1] to Commission Staff (Staff) regarding a breach of Ontario securities law may be eligible for financial compensation (whistleblower award) if it is determined that the information submitted:(i) was of meaningful assistance to Staff in investigating the matter and obtaining a decision of the Commission under section 127 of the *Securities Act* (Ontario) (the Act) or section 60 of the *Commodity Futures Act* (Ontario) (the CFA), and (ii) results in an order for monetary sanctions (i.e., administrative penalties and/or disgorgement orders) and/or voluntary payments of $1,000,000 or more.

The Policy also sets out the practices generally followed by the Commission and Staff in administering the Program; the nature of the information that may be eligible for the payment of a whistleblower award and the criteria that would make an individual eligible for a whistleblower award; and the factors considered in determining eligibility for, and the amount of, a whistleblower award.

Eligibility of in-house counsel for a whistleblower award

The Policy is not intended to override applicable provincial or territorial bar or law society rules or equivalent rules applicable in another jurisdiction or to incent misconduct on the part of in-house counsel. Indeed, the following provisions in the Policy are intended to protect against conduct that would violate a lawyer's professional obligations:

- the definition of 'original information' that may qualify for a whistleblower award expressly excludes information that a whistleblower has obtained through a communication that was subject to solicitor-client privilege;
- subsection 14(3) of the Policy provides that no whistleblower award will be provided for information that Staff determines is subject to solicitor-client privilege;
- subsection 15(1) of the Policy provides that a lawyer will generally be considered ineligible for a whistleblower award unless the disclosure of the information would otherwise be permitted by the lawyer under applicable provincial or territorial bar or law society rules or equivalent rules applicable in another jurisdiction (see s. 15(1) (c) and (d)). (This reflects that fact that in some jurisdictions disclosure by a lawyer may now or in the future be permitted under applicable law society rules or the equivalent.); and

[1] The definition of "original information" in section 1 of the Policy specifically excludes information obtained through a communication that was subject to solicitor-client privilege.

- Part 4, item F of the Whistleblower Submission Form A requires in-house counsel to state whether disclosure of the information he or she is providing is permitted under applicable provincial or territorial bar or law society rules or the equivalent rules applicable in another jurisdiction.

The Policy contains exceptions from ineligibility for certain otherwise ineligible classes of individuals. They may be eligible for a whistleblower award if they fall within one or more of the exceptions set out in subsection 15(2) of the Policy, as follows:

(a) the whistleblower has a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the subject of the whistleblower submission from engaging in conduct that is likely to cause or continue to cause substantial injury to the financial interest or property of the entity or investors;

(b) the whistleblower has a reasonable basis to believe the subject of the whistleblower submission is engaging in conduct that will impede an investigation of the misconduct; or

(c) at least 120 days have elapsed since the whistleblower provided the information to the relevant entity's audit committee, chief legal officer, CCO (or their respective functional equivalents) or the individual's supervisor, or, at least 120 days have elapsed since the whistleblower received the information, if in the circumstances the whistleblower received the information, the whistleblower became aware that one or more of those individuals were already aware of the information.

The fact that these exceptions would apply to in-house counsel, among others, was in contemplation of situations where an employee serves both legal and non-legal functions within an organization and provides a whistleblower submission that relates to matters that arise while the in-house counsel is acting outside of their legal capacity. It was not intended to incent professional misconduct on the part of in-house counsel. In order to clarify this, the Commission proposes the change described below.

Proposed Change

We propose to change the Policy by replacing the words in subsection 15(2): "*A whistleblower listed in paragraphs 1(d) to (h)*" with the words "*A whistleblower listed in paragraphs (e) to (h)*", so that subsection 15(2) will read:

"*A whistleblower listed in paragraphs (1)(e) to (h) [of subsection 15(1)] may be eligible for an award if* ..."

The proposed change would mean that the exceptions from ineligibility set out in subsection 15(2) of the Policy would not apply to in-house counsel in respect of matters that arise while the in-house counsel is acting in a legal capacity. The change is also intended to further clarify that the Commission does not wish to receive information that is subject to solicitor-client privilege or the provision of which would otherwise be in breach of applicable provincial or territorial bar or law society rules or equivalent rules applicable in another jurisdiction. Specifically, the proposed change clarifies that in Ontario, in-house counsel acting in a legal capacity are ineligible for a whistleblower award because their duty to protect the confidentiality of their clients' information would preclude them from making a whistleblower submission under the rules governing the legal profession in the province.

Alternatives considered

We considered several alternatives for these purposes, including:

— Do not change the Policy because in-house counsel will understand that the exception in subsection 15(2) is not intended to override their professional obligations. Since we wish to ensure that the provision is clear, this is not an acceptable alternative.

— Change the Policy to require in-house counsel to first seek legal advice or report to the applicable law society before making a submission. The purpose would be to confirm that a proposed whistleblower submission would not be in breach of their obligations as counsel. However, this would create a more cumbersome process.

In our view, the proposed approach provides the greatest clarity to in-house counsel.

Impact of proposed change

We recognize that in some jurisdictions legal counsel are not prohibited from reporting client misconduct and in fact, may be required to report this to an appropriate authority, including a securities regulatory authority. As a result of the proposed change, in-house counsel acting in a legal capacity would be ineligible for an OSC whistleblower award unless the disclosure would otherwise be permitted under applicable law society rules. Any in-house counsel would have to consider when, how and in what capacity they acquired the subject information. If the in-house counsel is not acting in a professional legal capacity, this change should not affect them.

No unpublished study materials

In preparing this proposed change to the Policy, the Commission has not relied on any significant unpublished study, report or decision.

Comments

We request your comments on the proposed change to the Policy. You must submit your comments in writing via email by **March 20, 2018**. If you are sending your comments by email, you should also send an electronic file containing the submissions, using Microsoft Word. All comments received during the comment period will be made publicly available on the OSC website at www.osc.gov.on.ca for transparency of the policy-making process.

Please address and send your comments to:

Grace Knakowski, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: comments@osc.gov.on.ca

Questions

Please refer your questions to:

Andre Moniz
Acting Manager
Office of the Whistleblower – Enforcement
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: whistleblower@osc.gov.on.ca

Krista Martin Gorelle
Associate General Counsel
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: kgorelle@osc.gov.on.ca

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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:
Heritage Plans (formerly Heritage Scholarship Trust Plans)
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 12, 2018
Received on January 12, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2647534

Issuer Name:
Horizons Junior Marijuana Growers Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 9, 2018
NP 11-202 Preliminary Receipt dated January 10, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2716735

Issuer Name:
Impression Plan
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 12, 2018
Received on January 12, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2647540

Issuer Name:
Powershares Monthly Income Fund
Invesco Global High Yield Bond Fund
Invesco Canadian Bond Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus and Amendment #3 to AIF dated January 15, 2018
Received on January 15, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Invesco Canada Ltd.
Project #2636650

Issuer Name:
The Marijuana ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 11, 2018
NP 11-202 Preliminary Receipt dated January 12, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Evolve Funds Group Inc.
Project #2717578

Issuer Name:
Fidelity Investment Grade Total Bond Currency Neutral Fund
Fidelity Investment Grade Total Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 8, 2018
NP 11-202 Receipt dated January 9, 2018
Offering Price and Description:
Series A, B, E1, E2, E3, E4, E5, F, O, P1, P2, P3, P4, P5 units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2700369

Issuer Name:
Franklin Liberty Core Balanced ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 9, 2018
NP 11-202 Receipt dated January 10, 2018
Offering Price and Description:
units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Franklin Templeton Investments Corp.
Project #2683496

Issuer Name:
Mackenzie Canadian Aggregate Bond Index ETF
Mackenzie Canadian All Corporate Bond Index ETF
Mackenzie Canadian Equity Index ETF
Mackenzie Canadian Large Cap Equity Index ETF
Mackenzie Canadian Short-Term Bond Index ETF
Mackenzie China A-Shares CSI 300 Index ETF
Mackenzie International Equity Index ETF
Mackenzie International Equity Index ETF (CAD-Hedged)
Mackenzie US High Yield Bond Index ETF (CAD-Hedged)
Mackenzie US Investment Grade Corporate Bond Index ETF (CAD-Hedged)
Mackenzie US Large Cap Equity Index ETF
Mackenzie US Large Cap Equity Index ETF (CAD Hedged)
Mackenzie US TIPS Index ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 9, 2018
NP 11-202 Receipt dated January 10, 2018
Offering Price and Description:
units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2694289

Issuer Name:
Marquest Monthly Pay Fund
Marquest Monthly Pay Fund (Corporate Class)
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 20, 2017
NP 11-202 Receipt dated January 12, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2636257

Issuer Name:
Vanguard Balanced ETF Portfolio
Vanguard Conservative ETF Portfolio
Vanguard Global Liquidity Factor ETF
Vanguard Global Minimum Volatility ETF
Vanguard Global Momentum Factor ETF
Vanguard Global Value Factor ETF
Vanguard Growth ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 9, 2018
NP 11-202 Receipt dated January 12, 2018
Offering Price and Description:
units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Vanguard Investments Canada Inc.
Project #2692070

NON-INVESTMENT FUNDS

Issuer Name:
Apolo II Acquisition Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated January 10, 2018
NP 11-202 Preliminary Receipt dated January 10, 2018
Offering Price and Description:
Offering: $500,000.00 (5,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
–
Project #2717088

Issuer Name:
Aurora Cannabis Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 11, 2018
NP 11-202 Preliminary Receipt dated January 11, 2018
Offering Price and Description:
$200,000,000.00 aggregate principal amount of 5.0% Unsecured Convertible Debentures
Price per Debenture: $1,000.00
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
PI Financial Corp.
Beacon Securities Limited
Eight Capital
GMP Securities L.P.
Mackie Research Capital Corporation
Promoter(s):
–
Project #2716085

Issuer Name:
Cherry Street Capital Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated January 12, 2018
NP 11-202 Preliminary Receipt dated January 15, 2018
Offering Price and Description:
Minimum of $500,000.00 -1 ,000,000 Common Shares
Maximum of $750,000.00 – 1,500,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2717719

Issuer Name:
Liberty Health Sciences Inc. (formerly, SecureCom Mobile Inc.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 10, 2018
NP 11-202 Preliminary Receipt dated January 10, 2018
Offering Price and Description:
$20,000,001.00 – 9,523,810 Units
Price: $2.10 per Unit
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Altacorp Capital Inc.
Promoter(s):
–
Project #2715847

Issuer Name:
MedReleaf Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 15, 2018
NP 11-202 Preliminary Receipt dated January 15, 2018
Offering Price and Description:
$132,500,000.00 – 5,000,000 Units
Price: $26.50 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
GMP Securities L.P,
Clarus Securities Inc.
Cormark Securities Inc.
Beacon Securities Limited
Echelon Wealth Partners Inc.
Eight Capital
PI Financial Corp.
Promoter(s):
–
Project #2716533

Issuer Name:
The Hydropothecary Corporation
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated January 12, 2018
NP 11-202 Preliminary Receipt dated January 12, 2018
Offering Price and Description:
$130,000,000.00 – 32,500,000 Units
Price: $4.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2716375

Issuer Name:
Choice Properties Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated January 9, 2018
NP 11-202 Receipt dated January 9, 2018
Offering Price and Description:
$2,000,000,000.00 – Units, Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
Loblaw Companies Limited
Project #2715415

Issuer Name:
Platform Eight Capital Corp.
Principal Regulator – Ontario
Type and Date:
Final CPC Prospectus (TSX-V) dated January 9, 2018
NP 11-202 Receipt dated January 10, 2018
Offering Price and Description:
Minimum Offering: $200,000.00 or 2,000,000 Common Shares
Maximum Offering: $500,000.00 or 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
John Travaglini
Project #2698708

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	First Avenue Investment Counsel Inc.	From: Exempt Market Dealer and Portfolio Manager To: Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	January 9, 2018
New Registration	Lemaitre Capital Management Inc.	Commodity Trading Manager	January 10, 2018
New Registration	First Affiliated Family Office Group Inc.	Portfolio Manager	January 10, 2018
Consent to Suspension (Pending Surrender)	Tetrem Capital Management Ltd.	Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	December 21, 2017
Change in Registration Category	Steepe & Co. Ltd.	From: Exempt Market Dealer To: Investment Fund Manager and Exempt Market Dealer	January 10, 2018
Name Change	From: Triumph Asset Management Inc. To: Amadeus Investment Partners Inc.	Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	January 2, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – The Proposed IIROC Dealer Member Plain Language Rule Book – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

THE PROPOSED IIROC DEALER MEMBER PLAIN LANGUAGE RULE BOOK

IIROC is republishing for public comment certain sections of the proposed IIROC Dealer Member plain language rule book (the proposed PLR Rule Book), with the primary objective to rewrite, reformat, rationalize, and reorganize its Dealer Member Rules in plain language (the PLR Project).

The PLR Project was initiated in 2008 by IIROC's predecessor, the Investment Dealers Association of Canada, and was initially drafted and published for comment in a number of discrete tranches. The separately published tranches were compiled to create the full proposed PLR Rule Book which was published for comment in March 2016 (IIROC Notice 16-0052) and in March 2017 (IIROC Notice 17-0054).

IIROC is now republishing for comment those sections of the proposed PLR Rule Book with substantive changes (the Proposed Amendments) that respond to comments received on the March 2017 republication from the public, the Canadian Securities Administrators, other interested stakeholders, and from IIROC's own continuing work on the PLR Project.

A copy of the IIROC Notice and appendices, which includes the Proposed Amendments, is also published on our website at http://www.osc.gov.on.ca. The comment period is 45 days which ends on March 5, 2018.

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