The Ontario Securities Commission

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1.1.1 Notice of Ministerial Approval of OSC Rule 72-503 Distributions Outside Canada and Consequential Amendments

NOTICE OF MINISTERIAL APPROVAL OF
ONTARIO SECURITIES COMMISSION RULE 72-503 *DISTRIBUTIONS OUTSIDE CANADA*
AND
CONSEQUENTIAL AMENDMENTS

On February 12, 2018, the Minister of Finance approved, pursuant to section 143.3 of the *Securities Act* (Ontario), the following rules made by the Ontario Securities Commission (the **Rule and Consequential Amendments**):

- Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*; and
- amendments to Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

The Rule and Consequential Amendments will come into force on **March 31, 2018**. The Rule and Consequential Amendments were previously published in the Bulletin on December 21, 2017, and are published in Chapter 5 of this Bulletin.

March 22, 2018

1.1.2 OSC Staff Notice 11-779 Seniors Strategy

OSC Staff Notice 11-779 *Seniors Strategy* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

OSC Staff Notice 11-779 *Seniors Strategy*

March 20, 2018

Introduction

As part of our continued efforts to deliver strong investor protection and responsive regulation, the Ontario Securities Commission (OSC, or we) has developed a Seniors Strategy (the Strategy) and corresponding action plan to respond to the needs and priorities of Ontario seniors. The Strategy which is appended to this Notice outlines some of the new initiatives the OSC is pursuing in relation to older individuals and our plans to continue to build on existing initiatives.

Purpose

The OSC's vision is a stronger and more secure financial future for all Ontario seniors. We seek to achieve this through a comprehensive approach that recognizes that there are multiple tools in our toolkit, including policy, operational changes, research, education and outreach. The Strategy also reflects the fact that we can't do it alone: the way to achieve our vision is dependent in part on engagement and partnerships with stakeholders, including the financial industry, working together to achieve our shared goals.

The financial lives of older Canadians have grown increasingly complex relative to previous generations. As a regulator, we believe that we have a role to play in ensuring that the needs of older Ontarians are appropriately met by the province's securities industry.

In November 2017, the Government of Ontario published *Aging with Confidence*, its renewed action plan for dealing with some of the broader challenges faced by many Ontario seniors, listing new initiatives that build on its 2013 action plan for seniors.[1] Under the plan, the Government of Ontario establishes a vision to help older individuals remain independent, healthy and active, safe and socially connected, and lays out a framework for supporting that vision through guiding principles that focus on inclusion, diversity, safety, and self-determination. The OSC Strategy reflects this vision and its principles, building on it in a securities regulatory context.

Substance

We look to achieve our vision of a stronger and more secure financial future for all Ontario seniors through a Strategy that is *inclusive*, *social* and *responsive*. These three principles will shape our policy-making, operational changes, research, education and outreach initiatives with respect to older Ontarians.

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[1] Ontario, *Aging with Confidence: Ontario's Action Plan for Seniors* (November 2017), https://files.ontario.ca/ontarios_seniors_strategy_2017.pdf

The key elements outlined in the Strategy include:

- Developing a flexible and responsive framework to address issues of financial exploitation and cognitive impairment among older investors, which includes:
    - a requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information for a client's "trusted contact person" that may be reached if there is a concern about a client's behaviour or transactions in a client's account;
    - enabling registered firms and their representatives (for example, through a safe harbour) to place a temporary hold on disbursements from a client's account or make a disclosure to a trusted contact person when they:
        - have a reasonable belief that financial exploitation or fraud has occurred, is occurring or will be attempted; or
        - have a reasonable belief that a client's judgement may be impaired;
    - guidance for registered firms and their representatives when engaging with older clients, such as collecting sufficient information about a client, supervising client accounts and communicating effectively with clients and supporting their decision-making as they age.
- Addressing registered firms' and their representatives' use of confusing and misleading titles, designations, and marketing practices, including issues related to older investors.
- Strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors.
- Breaking down silos and working with other regulators and organizations toward a common goal of designing policies and programs that serve the interests of older individuals in areas such as powers of attorney and privacy laws.
- Building capacity among our staff to continually improve the ways in which we work with older investors and undertake various enhancements to our operational activities.
- Further research on the challenges and issues faced by different segments of older investors, which is vital to ensuring that our policy-making, education and outreach activities remain responsive to the circumstances and needs of older Ontarians. This includes working with the Behavioural Insights Team to examine behavioural barriers related to retirement planning and possible intervention tactics to overcome those barriers.
- Enhancing our education and outreach activities to provide tools and resources for older investors, their families and caregivers who support them, as well as their registered firms and representatives, and improving the ways in which we deliver information through written materials, digital publications and in-person engagement. Among other things, this will include:
    - developing a series of white label resources (such as forms, discussion guides and educational materials) for firms to adopt and deploy to their representatives and clients;
    - creating a "resource hub" to aggregate and organize resources available to older Ontarians in a central online location; and
    - implementing an education and outreach strategy for new Canadians that includes a focus on older investors.

In developing the Strategy, we consulted with a number of stakeholders, including the Seniors Expert Advisory Committee (SEAC, an OSC advisory committee composed of experts in financial services, medical sciences, law, seniors advocacy, and other fields), the investment industry, retail investors, and community groups reached through our OSC in the Community program as well as other outreach and engagement initiatives. We also drew significantly from the findings of a roundtable focused on seniors' issues that we held together with our Investor Advisory Panel in 2014, and performed extensive research and consultation with our regulatory counterparts both here in Canada and abroad.

We will provide an update on our progress in implementing the Strategy in one year and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation. Over this period, we expect that registered firms and their representatives will review and develop ways to improve their own practices with respect to older investors and play a significant role in the broader, ongoing conversation with respect to the needs and priorities of older investors.

Questions

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ONTARIO SECURITIES COMMISSION

Seniors Strategy

March 20, 2018

OSC STAFF NOTICE 11-779

OSC ONTARIO SECURITIES COMMISSION

CONTENTS

ONTARIO SECURITIES COMMISSION
Seniors Strategy

I.

EXECUTIVE SUMMARY

It is time to change the conversation around older investors.

As part of our continued efforts to deliver strong investor protection and responsive regulation, the Ontario Securities Commission (OSC) has developed a strategy and action plan to respond to the needs and priorities of Ontario seniors.

In November 2017, the Government of Ontario published *Aging with Confidence*, its renewed action plan for dealing with some of the broader challenges faced by many Ontario seniors, listing new initiatives that build on its 2013 action plan for seniors.[1] Under the plan, the Government of Ontario establishes a vision to help older individuals remain independent, healthy and active, safe and socially connected, and lays out a framework for supporting that vision through guiding principles that focus on inclusion, diversity, safety, and self-determination. The OSC Seniors Strategy reflects this vision and its principles, building on it in a securities regulatory context.

The OSC's vision is a stronger and more secure financial future for all Ontario seniors. We seek to achieve this through a comprehensive approach that recognizes that there are multiple tools in our toolkit, including policy, operational changes, research, education and outreach. The strategy also reflects the fact that we can't do it alone: the way to achieve our vision is dependent in part on engagement and partnerships with stakeholders, including the financial industry, working together to achieve our shared goals.

It is important that the OSC develop a seniors strategy because, as a regulator, we must be responsive to the needs and priorities of older Ontarians and recognize the challenges that investors often face in the financial services market as they age.

The data tells us that Ontarians are living longer than ever, and older Ontarians make up a growing portion of Ontario's population: the Ontario government has projected that one in four Ontarians will be aged 65 or older by 2041.[2] At the same time, the financial lives of individuals aged 65 and older are becoming more complex, with incomes coming from more potentially volatile sources, higher debt levels and a greater share of their assets in less liquid assets, such as real estate, than was the case 20 years ago.[3]

These trends indicate that Ontarians will be called upon to make complex financial judgments later in life, and with higher stakes, than may have been the case for previous generations. But for many people, aging can also be accompanied by health, mobility, or cognitive changes that may affect their ability to make these judgments later in life, as well as their susceptibility to financial exploitation and fraud.

We recognize that these trends give rise to heightened concerns about the ability of older investors to access financial products and services that respond to their needs as they age. That said, it is also important to avoid the ageist tendency of regarding all seniors as "vulnerable" or unable to protect their own interests. While much of this document discusses changes and risks that may

become relevant to individuals as they age, it is important to recognize that these factors may affect different individuals at different points in their lives, and to significantly different degrees.

We look to achieve our vision of a stronger and more secure financial future for all Ontario seniors through a strategy that is *inclusive*, *social* and *responsive*. Being *inclusive* means recognizing that seniors are not a homogenous group – that policy responses and education and outreach initiatives must take into account, among other things, differences in mobility, vision, hearing, and literacy, including financial literacy. We also need to recognize that financial decisions are *social* in nature, in that individuals tend to consider the effects of their actions on others and seek others' advice before taking action; this means designing policy and programs in ways that engage these individuals and help them meaningfully participate in conversations about aging and retirement planning. Being *responsive* means delivering timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, which in turn means paying close attention to emerging trends and changes in circumstances affecting the financial lives of older individuals.

In developing this strategy, we consulted with a number of stakeholders, including the Seniors Expert Advisory Committee (SEAC, an OSC advisory committee composed of experts in financial services, medical sciences, law, seniors advocacy, and other fields), the investment industry, retail investors, and community groups reached through our OSC in the Community program as well as other outreach and engagement initiatives. We also drew significantly from the findings of a roundtable focused on seniors' issues (the Seniors Roundtable) that we held together with our Investor Advisory Panel in 2014,[4] and performed extensive research and consultation with our regulatory counterparts both here in Canada and abroad.

This strategy builds on our existing work to better understand and serve the interests of older investors, including our establishment of SEAC, our work to strengthen the Ombudsman for Banking Services and Investments (OBSI) as an independent and impartial service for resolving financial consumer complaints, the Canadian Securities Administrators' (CSA) policy project to enhance the obligations that regulated dealers and advisers (often referred to in this document as "registered firms") and their representatives have with their clients so that the interests of clients come first, our diverse education and outreach initiatives that speak directly to investors through a variety of channels, and our ongoing research into the changing needs and priorities of investors.

Key elements outlined in this strategy include:

- Developing a flexible and responsive framework to address issues of financial exploitation and cognitive impairment among older investors, which includes:
  - a requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information for a client's "trusted contact person" that may be reached if there is a concern about a client's behaviour or transactions in a client's account;
  - enabling registered firms and their representatives (for example, through a safe harbour) to place a temporary hold on disbursements from a client's account or make a disclosure to a trusted contact person when they:
    - have a reasonable belief that financial exploitation or fraud has occurred, is occurring or will be attempted; or
    - have a reasonable belief that a client's judgement may be impaired;
  - guidance for registered firms and their representatives when engaging with older clients, such as collecting sufficient information about a client, supervising client accounts and communicating effectively with clients and supporting their decision-making as they age.
- Addressing registered firms' and their representatives' use of confusing and misleading titles, designations, and marketing practices, including issues related to older investors.

- Strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors.
- Breaking down silos and working with other regulators and organizations toward a common goal of designing policies and programs that serve the interests of older individuals in areas such as powers of attorney and privacy laws.
- Building capacity among our staff to continually improve the ways in which we work with older investors and undertake various enhancements to our operational activities.
- Further research on the challenges and issues faced by different segments of older investors, which is vital to ensuring that our policy-making, education and outreach activities remain responsive to the circumstances and needs of older Ontarians. This includes working with the Behavioural Insights Team to examine behavioural barriers related to retirement planning and possible intervention tactics to overcome those barriers.
- Enhancing our education and outreach activities to provide tools and resources for older investors, their families and caregivers who support them, as well as their registered firms and representatives, and improving the ways in which we deliver information through written materials, digital publications and in-person engagement. Among other things, this will include:
    - developing a series of white label resources (such as forms, discussion guides and educational materials) for firms to adopt and deploy to their representatives and clients;
    - creating a "resource hub" to aggregate and organize resources available to older Ontarians in a central online location; and
    - implementing an education and outreach strategy for new Canadians that includes a focus on older investors.

We recognize that appropriately addressing the full scope of issues affecting older investors may require work beyond these elements and that there is more that we can learn and do to continually improve the way we respond to the interests of older investors. As such, we see this strategy as a living document: a roadmap for targeted approaches to address older investors' needs. We recognize that, in our efforts to remain flexible and responsive to the changing needs of older individuals, we must be open to adapting our roadmap over time to meet these needs.

We will provide an update on our progress in implementing this strategy in one year and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation. Over this period, we expect that registered firms and their representatives will review and develop ways to improve their own practices with respect to older investors and play a significant role in the broader, ongoing conversation with respect to the needs and priorities of older investors. We look forward to continuing this dialogue with the financial sector as well as investors, community organizations, government, and other stakeholders as we move forward with implementing the various initiatives contemplated by this strategy.

II.

LITERATURE REVIEW

The discussion below summarizes findings from research relevant to the financial lives of older Canadians. After briefly addressing the challenge of defining what it means to be a "senior" in 2018, this section describes current data with respect to the economic and social circumstances of older Canadians.

This data indicates that Canadians will be called upon to make complex financial decisions later in life, and with higher stakes, than may have been the case for previous generations. It also indicates that, while older Canadians may be better equipped to address this complexity than may have been the case in the past, maintaining financial knowledge later in life remains a challenge.

This section then discusses challenges that many older Canadians are likely to face at some stage in their lives, and that may impact their ability to make difficult financial decisions later in life and leave them more susceptible to financial exploitation and fraud. These factors range from behavioural biases that affect people of all ages, such as overconfidence, to changes in cognition and health that are often associated with advancing age.

A. Who is a "senior?"

Before understanding the factors that may affect the financial lives of seniors, it is necessary to clarify what one means by the word "senior." The term is often associated with people who have reached a particular age – Statistics Canada, for example, uses age 65 as a marker for when an individual should be considered a senior, and *Investing As We Age*, a 2017 study by the OSC's Investor Office, found that 76 per cent of Ontarians aged 65 and older view themselves as seniors.[5]

The study also found, however, that many Ontarians do not view "senior" as a binary, "in or out" category: some said that they see themselves as seniors only sometimes, such as when accessing certain discounts and benefits or when experiencing issues with health or mobility.[6] When turning to focus on how they would define someone else as a senior, a majority of respondents said they viewed someone age 65 or older as a senior, but others pointed to factors relating to health or life stage, such as retirement, as also relevant for determining whether someone is a senior.[7]

It is unsurprising that many Ontarians viewed age as the most relevant marker for determining whether someone is a senior. Age is often used as a rough marker for knowing when one is expected to reach certain life milestones, such as pursuing an education, joining the labour force, starting a family, or retiring.[8] Perhaps in part because of this, age also is often a requirement for accessing benefits, from pensions and income supports to seniors' discounts at supermarkets and other stores; or as a threshold for additional responsibilities, such as seniors' driver testing; or as the basis on which particular activities are restricted, as with mandatory retirement.[9] In collecting and analyzing data with respect to seniors, age can be a useful simplifying metric, and this literature review makes significant use of data that focuses on Canadians aged 65 or older.

That being said, our consultations with stakeholders and research on this topic have made clear to

The OSC Investor Office's 2017 *Investing As We Age* study found that 76% of Ontarians aged 65 and older view themselves as "seniors."

76%

us that, for the OSC's purposes as a regulator, age should not be viewed as the only indicator for determining whether a person is a senior. Relying on age alone fails to capture the specific characteristics, lifestyles and personal and financial needs of each investor. With life expectancies lengthening, the health of individuals who reach the age of 65 improving, and the share of individuals continuing to participate in the labour force at age 65 increasing,[10] it becomes increasingly important not to treat Canadians aged 65 and over, or seniors, for that matter, as a single, homogenous group.

It is also important to avoid the ageist tendency of regarding all seniors as "vulnerable" or unable to protect their own interests. While much of this document discusses changes and risks that may become relevant to individuals as they age, it is important to recognize that these factors may affect different individuals at different points in their lives, and to significantly different degrees. It is also important to recognize that older Canadians often lead healthy and productive lives well into their "senior" years. For example, older Canadians occupy positions of significant responsibility within the capital markets: a 2014 study on directors of publicly traded companies in Canada found that these directors have an average age of 63, and that 17 per cent of these directors are aged 71 or older.[11]

Some organizations have instead taken a "life stage" approach to identifying individuals who could be considered seniors, looking for changes

in life circumstances (such as entering retirement) to determine when investors may be considered seniors. The Investment Industry Regulatory Organization of Canada (IIROC), for example, has defined "senior clients" as those "who are retired or about to retire."[12] The Investment Industry Association of Canada (IIAC) similarly defines "senior investors" as "investors who have retired or are nearing retirement," noting that "the term 'senior investor' does not readily lend itself to a simple numerical age measure, as tempting as that may be for simplicity of application."[13] As IIAC notes, however, in any event, both "a client's age and life stage are critical components of an investor's KYC [know your client] profile and firms cannot meet their regulatory obligations without considering these factors."[14]

B. Older Canadians: A snapshot

The financial situation of the typical Canadian age 65 and older has changed significantly over the past 20 years. As levels of public pension and other retirement benefits have stalled in real terms, older Canadians have sought to fill the gap with income from employment and private pensions and savings—sources of income that depend in large part on older Canadians' continued health and employment, as well as the outcomes of their personal investment decisions. At the same time, their balance sheets have become more leveraged and less liquid, with debt levels rising faster than asset levels, and a greater portion of older households' assets in real estate.

While, as a whole, older households' balance sheets remain resilient—overall debt levels remain relatively low and older households still hold significant quantities of more liquid, financial assets—the trends outlined above mean that older individuals, in managing their wealth, may need to make significant financial decisions later in life to a greater extent than may have been required of previous generations.

Incomes increasingly from potentially volatile sources

Household expenses typically fall when one retires or reaches retirement age, but they do not

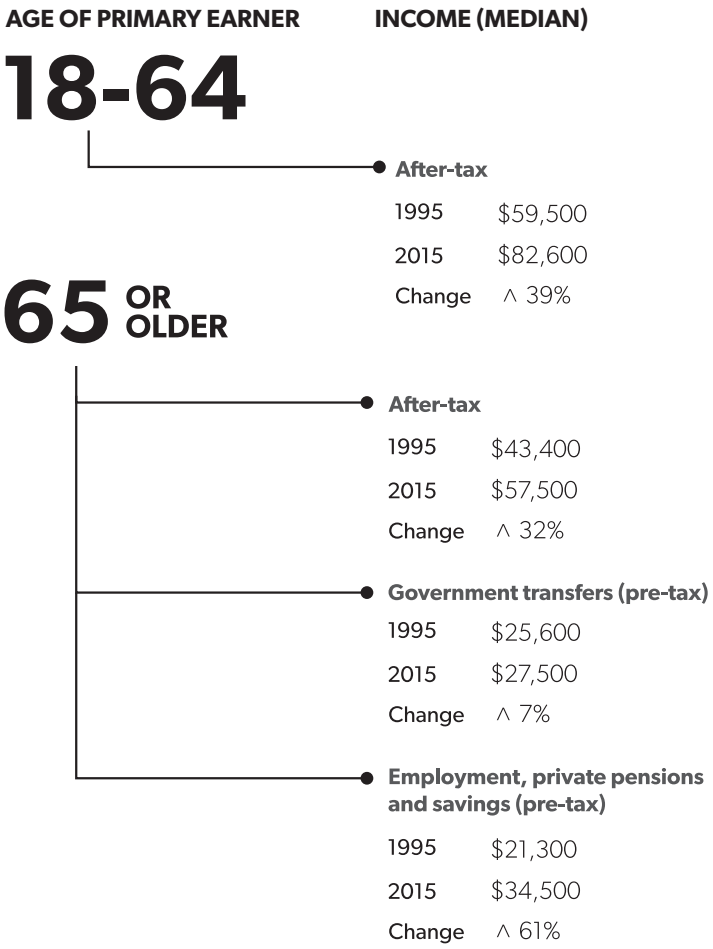
disappear: as a result, older Canadians generally seek to maintain a level of income sufficient to maintain the standard of living they enjoyed in their peak working years, through a combination of government benefits; private pensions, savings, and other assets; and continued full-time or part-time employment.

Over the past two decades, families with a primary income earner aged 65 or older kept pace, for the most part, with increases in incomes enjoyed by families with a primary earner aged 18-64, indicating that many older Canadians have succeeded in maintaining their standard of life in retirement. In 1995, the median income of a family with a primary earner aged 65 or older was 73 per cent that of a family with a primary earner aged 18 to 64; this percentage fell slightly to 70 per cent in 2015.[15]

But the composition of older Canadians' incomes has shifted significantly over this period. The role of government benefits in helping older Canadians replace their working-age incomes has diminished over time, as increases in these benefits have not kept pace with increases in the incomes of working-age families: between 1995 and 2015, the median after-tax income of families with a primary earner aged 18-64 increased by 39 per cent, but the median income from government transfers for families with a primary earner aged 65 and older grew by only 7 per cent.[16] Canadians aged 65 and older have been bridging this gap with higher employment income and income from private pensions and savings: median income from these sources among families with a primary earner aged 65 or older rose by 61 per cent between 1995 and 2015.[17]

At the same time as Canadians aged 65 and older have come to rely to a greater extent on market income, the composition of this category of income has also been changing: the share of Canadian workers enrolled in defined benefit pension plans, and registered pension plans more generally, has fallen,[19] and the share of Canadians aged 65 and older in the labour force has increased.[20] While recent changes to the Canada Pension Plan are projected to enhance public pension benefits for

Median incomes of Canadian families, compared (2015 constant dollars)[18]



many younger Canadians, increases in benefits for those who are now beginning to approach retirement age (i.e., those who will turn 60 in 2025) are projected to be relatively modest.[21] Accordingly, these changes are unlikely to substantially affect the makeup of older Canadians' incomes over the near- to medium-term.

In short, older Canadians' incomes are less likely to come from fixed sources—such as government benefits or defined benefit pension plans—than was the case 20 years ago, and more likely to come from sources that are more volatile, such as private savings and investments, including in home equity, continued employment, and defined contribution pension plans. The stability of these sources of income depends on broader market conditions as well as older Canadians' ability to continue working and the outcomes of their personal investment choices, both before and after retirement.

Balance sheets increasingly leveraged and illiquid

At the same time that older Canadians' sources of income became less stable, their balance sheets became more leveraged. While total assets held by Canadian households aged 65 and older rose by 6.6 per cent per year between 1999 and 2016, total debts rose by 11.1 per cent per year—the fastest rate of growth of any age group—and the percentage of households in this age group holding some form of debt rose from 27.4 per cent to 42 per cent over this period.[22] Total assets owned by households aged 65 or older still far exceed total debts owed overall, but many households are feeling the impact of rising debt: the percentage of "highly indebted households" (with debts of more than 350 per cent of household incomes) aged 65 and older nearly doubled from 2.9 per cent over 2005–2007 to 5.5 per cent over 2012–2014.[23]

Real estate was responsible for much of the growth in older Canadians' asset values, rising by 8.1 per cent per year between 1999 and 2016, and representing 41.2 per cent of the assets held by households 65 and older as of 2016.[25] Households 65 or older were the only age group to see their homeownership levels rise over the past decade.[26] While real estate assets can be of significant help in financing retirement, this asset class is less liquid, and therefore more difficult and potentially costly to sell, than financial assets such as exchange-traded funds (ETFs), mutual funds, stocks, and bonds. Accessing home equity requires substantial planning and the exercise of judgment by older homeowners, both in determining when to access this equity and how to do so (whether by downsizing or by taking out a reverse mortgage or home equity line of credit).[27]

Real estate played a role not only in the growth of older Canadians' assets, but in the substantial and rapid growth in older Canadians' debt levels over 1999–2016. Mortgage debt grew by 11 per cent annually over this period, and represented 67.6 per cent of the debt held by households aged 65 or older as of 2016.[28] Growth in mortgage debt was outpaced, however, by growth in amounts owed under lines of credit (which include home equity lines of credit), which rose by nearly 15 per cent between 1999 and 2016, representing a further 19 per cent of total debt owed by these households as of 2016.[29]

Low interest rates are likely one driver of higher debt levels. Interest rates fell significantly in the wake of the 2007–08 financial crisis and, in part due to slower growth in the labour force and in global investment spending, interest rates are expected to remain relatively low over the coming years.[30] Lower interest rates have significant effects on households' economic choices, creating incentives to take on higher debt and reducing incentives to save. It should be unsurprising that debt levels among Canadian households of all ages have risen and savings levels have fallen, relative to historical levels.[31] Low interest rates also spur increases in

Balance sheets of Canadian households aged 65 and older, selected line items (2016 constant dollars)[24]

	1999		2016		Increase per year (%)
	$ (millions)	% of total	$ (millions)	% of total	
Total assets	1,040,747	100.0%	3,102,752	100.0%	6.6%
Real estate	341,237	32.8%	1,279,522	41.2%	8.1%
Private pension assets	375,610	36.1%	977,512	31.5%	5.8%
Financial assets, non-pension	207,100	19.9%	541,054	17.4%	5.8%
Total debts	20,671	100.0%	123,592	100.0%	11.1%
Mortgages	14,105	68.2%	83,592	67.6%	11.0%
Lines of credit	2,319(1)	11.2%	23,564	19.0%	14.6%

(1) Use with caution due to the high sampling variability associated with the estimate.

asset prices, helping drive significant increases in Canadian home prices over the past decade,[32] and leading many Ontarians to pivot toward relying on their homes as a source of wealth in retirement—the OSC's *Investing As We Age* study found that nearly half of pre-retired Ontario homeowners aged 45 and older were relying on rising home prices to provide for their retirement.[33] Savers may also respond to low interest rates by engaging in a "search for yield," moving their savings out of low-yielding products such as savings accounts and Guaranteed Investment Certificates (GICs) into higher-risk, more volatile investments. This search for yield may also make savers more susceptible to fraudulent "get rich quick" scams.[34]

Intergenerational pressures are likely another driver of higher debt levels. Undergraduate tuition in Ontario has risen by, on average, 57 per cent over the past decade (from $5,388 in the 2007-08 school year to $8,454 in the 2017-18 school year),[35] and housing costs have also risen steadily, with new house prices in Ontario rising by 35.2 per cent (and 42.5 per cent in Toronto) between December 2007 and December 2017.[36] Parents have played a key role in helping their adult children overcome these financial challenges so that they could establish households of their own. This support often comes in the form of financial assistance:

- 60 per cent of Canadian parents with children under 25 report directing some of their retirement savings toward their child's education.[37]
- 43 per cent of millennial first-time home buyers report receiving financial help with their down payment from their parents (compared to 12 per cent of baby boomers who reported receiving help when buying their first home).[38]

But assistance can also come in the form of parents' letting adult children stay in the family home longer so that they can build up savings more quickly:

- As of 2016, more than 2 in 5 Ontarians aged 20 to 34 (42.1 per cent) were living with their parents, compared to 35 per cent in 2001.[39]
- Multi-generational households are the fastest growing type of household in Canada.[40]
- In 2016, over half (50.3 per cent) of grandparents aged 45 and older living with their grandchildren reported having some financial responsibility in their household.[41]

Parents report that this support has encumbered their retirement plans: 62 per cent of baby boomers say that providing for their "boomerang" children is preventing them from saving enough for retirement, and over half (58 per cent) report being financially stressed.[42]

Better educated and more engaged in their communities

While older Canadians' financial situations have become significantly more complex over the past 20 years, their capacity to deal with this complexity arguably has increased considerably. Older Canadians are more educated than ever before: the proportion of Canadians aged 55 and over with a university degree rose from 9 per cent in 1996 to 20 per cent in 2016, while the proportion of those with only a high school diploma or less fell from 68 per cent to 45 per cent.[43] Higher education levels are linked to better health, less social isolation, and other indicators of wellbeing,[44] and data on older Canadians appears to support this relationship. Overall, most older Canadians are in good mental health and have a positive outlook on life, tending to report less psychological distress than younger Canadians.[45] In addition, 87 per cent of Ontarians aged 65 and older report feeling "a lot" younger than their actual age.[46]

Older Canadians are more likely to be working than was the case in the past: the percentage of Canadians 55 and older participating in the labour force rose from 24 per cent in 1996 to 38 per cent in 2016, hitting a record high.[47] In 2015, one in five Canadians aged 65 and older (19.8 per cent) reported working during the year, generally in part-time or part-year employment.[48] Higher employment in part reflects higher education levels, better health, and higher wages.[49] The rise in two-income households also helps explain this increase, as one income earner may delay retirement so that they can retire at the same time as their spouse.[50] But working later in life may not be positive for everyone: it may also reflect older Canadians' having to cope with higher debt levels, insufficient retirement savings, and the need to provide financial support for their adult children.[51]

Older Canadians also contribute to their communities and families as volunteers and caregivers. Thirty-eight per cent of Canadians aged 65–74, and 27 per cent of those aged 75 and over, volunteered in 2013; older Canadians who volunteered contributed higher hours on average than most other age groups, with volunteers aged 65–74 and 75 and over spending the highest and third-highest number of hours volunteering, respectively, of any age group.[52]

Older Canadians are more likely to live in their own homes, and less likely to live alone, than was the case in the past. As noted above, Canadians aged 65 and over were also the only age group in Canada whose rate of home ownership increased over the past decade, rising from 72.2 per cent in 2006 to 74.6 per cent in 2016.[53] This is, in part, due to differences in life expectancy, with women aged 65 and older substantially more likely to live alone than men in the same age group (33 per cent, compared to 17.5 per cent), though recent gains in male life expectancy are helping to narrow this gap.[54] As reflected in the table above, between 2001 and 2016, the proportion of women aged 80 and older living alone fell by 7.5 percentage points, while the share of those living as part of a couple rose by 7.7 percentage points.[55]

Contrary to stereotypes, older Canadians are using technology in greater numbers than ever before: internet use among 65- to 74-year-olds rose from 65 per cent in 2013 to 81 per cent in 2016, and internet use among those aged 75 and older rose from 35 per cent to 50 per cent over this period.[57] In addition, substantial percentages of older Canadians own smartphones, including 18 per cent of Canadians aged 75 or older as of 2016.[58]

A 2014 Statistics Canada study found that women aged 65 and older had the lowest financial knowledge scores out of women of any age group, and that men aged 65 and older had the lowest financial knowledge scores out of men of any age group other than 18- to 24-year-olds.

Challenges with financial planning, education, literacy, and numeracy persist

Having achieved a higher level of education early in life does not necessarily mean that an individual is planning for their financial future: the Investor Office's 2017 *Investing As We Age* found that only 14 per cent of Ontarians age 45 or older have a formal, written retirement plan, while 54 per cent have no retirement plan at all.[59] It also is no guarantee that an individual will maintain, later in life, the level of financial knowledge necessary to make informed financial decisions. Changes in cognition that occur as individuals age have been associated with a decline in financial literacy.[60] These changes do not, however, affect individuals' confidence in their ability to manage their own finances, and many do not reach out for help with financial decisions.[61]

Research carried out in Canada appears to support these findings. Canadians aged 65 and older still tend to underperform, compared to younger Canadians, when it comes to financial knowledge. A 2014 study found that women aged 65 and older had the lowest financial knowledge scores out of women of any age group, and that men aged 65 and older had the lowest financial knowledge scores out of men of any age group other than 18- to 24-year-olds.[62] This study also found a significant gender gap between men and women aged 65 and older, with only 11.6 per cent of women (compared to 18.5 per cent of men) answering correctly five key financial knowledge questions.[63]

The Investor Office's 2017 *Investing As We Age* study indicates an inverse relationship between financial knowledge as found by Statistics Canada and reported financial confidence: despite their lower financial knowledge scores, Canadians aged 65 and older were more likely than Canadians aged 45–64 to report feeling that they have a "good" or "excellent" understanding of investing.[64] A significant gender gap persisted, however, with only 31 per cent of women aged 65 and older, compared to 55 per cent of men in this age group, reporting this level of knowledge.[65]

Low financial knowledge makes the roles of registered firms and their representatives even more important to helping older Canadians meet their financial goals. *Investing As We Age* found that a majority of investors aged 65 and older work with at least one registered firm;[66] research has also found that registered firms and their representatives have a significant influence on their clients' investment choices,[67] and that investors working with a registered firm place significant trust and confidence in that firm and its representatives.[68] However, as discussed below, older investors face significant challenges and risks that many registered firms and representatives may feel ill-equipped to address for a variety of reasons, including feeling that they lack the appropriate training and concern that existing policies and processes do not provide sufficient guidance regarding an older client's instructions and financial decisions.

C. Aging and financial decision-making

High education, good health, and strong connections to family and community naturally lead to optimism in one's ability to manage financial challenges. But optimism can be hazardous when it leads us to overlook the possibility that circumstances may change for the worse, and research into behavioural insights indicates that people of all ages tend to be overconfident about themselves and their choices.[69] This tendency may lead a healthy individual who is working or recently retired to ignore or underestimate the possibility

that they will experience adverse changes to their health later in life, or to assume that they will recognize changes to their health as they occur.[70] In fact, OSC-commissioned research carried out in 2015 found that six in ten Canadians aged 50 and older experienced a major life event that challenged their prior financial plans.[71]

Aging minds and bodies

Individuals' minds and bodies change as they age, and these changes can affect their financial decisions. Over time, the brain becomes less able to multitask, carry out mental math, and properly assess risks.[72] It becomes more likely to make inconsistent and irrational choices,[73] and more likely to focus on the positive and ignore negative information.[74] It tends to rely more heavily on *crystallized intelligence* (its store of existing knowledge) relative to *fluid intelligence* (its ability to process new information and adapt to new situations).[75]

These normal changes in cognition may not have a noticeable effect on one's ability to perform routine financial tasks, such as paying bills, but they can become more obvious when one faces more complex or unfamiliar contexts, such as financial planning or deciding to buy or sell investments: individuals may try to cope by considering less information before making decisions or by avoiding making decisions altogether.[76] Individuals may also become less willing or able to scrutinize the trustworthiness of others.[77]

The risk of Alzheimer's disease and other forms of dementia increases substantially as individuals get older: while only 7 per cent of Canadians over 65 years of age are affected by dementia, this percentage is 35-40 per cent among Canadians over 85 years of age.[78] Dementia affects daily life: in addition to impaired memory and difficulties with language and with processing decisions, symptoms include suspicion and anxiety, agitation over breaks in routine, frustration, and becoming easily distracted or upset by background noise.[79] It has been suggested that impaired financial decisions are "often one of the earliest clinical signs of emerging dementia."[80]

Serious illness, impaired mobility, impaired vision and hearing, and concurrent use of multiple medications can all affect an individual's ability to make financial decisions.[81] In 2012, 26.3 per cent of Canadians aged 65 to 74, and 42.5 per cent of Canadians aged 75 and older, reported having a disability.[82] The percentage of Canadians reporting hearing and vision problems rises from 3.4 per cent and 2.1 per cent, respectively, among Canadians aged 65 to 74, to 12.8 per cent and 16.5 per cent, respectively, among Canadians aged 85 and over.[83]

These risks, as well as the types of normal cognitive changes that occur with age discussed above will affect different individuals in different ways and to different degrees.[84] But on average, the associated risks and changes tend to become prevalent at a time in individuals' lives when they are likely to have accumulated greater wealth (relative to when they were younger), but also have less time to bounce back from financial mistakes or loss of assets.[85] The financial consequences of mistakes triggered by diminished capacity later in life can therefore be serious.[86] These consequences are compounded by the economic circumstances in which older Canadians find themselves: circumstances in which their levels of income depend to a greater extent on their own financial judgment than was the case in the past, and in which their balance sheets are more leveraged and thus sensitive to changes in economic and personal circumstances.

Compounding effects of social isolation

Social isolation (low quantity and quality of contact with others), as well as loneliness (the subjective feeling of lack of connection with others), can compound and accelerate declines in cognitive ability as well as broader physical and mental health.[87] As of 2008–09, 19 per cent of Canadians aged 65 and older "felt a lack of companionship, left out, or isolated from others,"[88] and a 2006 study found that over 30 per cent of Canadians in this age group are "at risk of social isolation."[89] Social isolation has been identified as "the number one emerging issue facing seniors in Canada."[90]

While Canada's older population has undergone significant changes over the past decade that have likely helped reduce feelings of social isolation and loneliness—including increases in the proportion of older Canadians living in their own homes and a decrease in the percentage of older women living alone[91]—social isolation and its possible effects on financial decision-making remain important concerns.

Caregiving by family and friends, which can range from assistance with routine tasks to making larger decisions about housing, health care and finances, can also help care receivers preserve their connection to their communities. However, it can also have negative effects on the caregiver, particularly if the caregiver is older: the caregiver may become more socially isolated as a result of the demands on time and energy involved in caregiving.[92] In 2012, 12 per cent of Canada's approximately 13 million caregivers were aged 65 or older, and 8 per cent of caregivers provided care for their spouse.[93] The 65 and older group was more likely than any other age group to spend 20 hours or more per week on caregiving tasks,[94] a sign that this group may be especially at risk of becoming socially isolated as a result of their caregiving work.

The largest group of caregivers, however, appears less likely to suffer social isolation as a result of their caregiving work. Most commonly, caregivers are adult children or grandchildren, and nearly half (44 per cent) of caregivers are between the ages of 45 and 64.[95] While pre-retired adult children or grandchildren may have more resilient social networks that leave them less susceptible to social isolation, it must be kept in mind that caregivers of all ages often report stress and financial difficulty stemming from their caregiving responsibilities,[96] both of which may affect their own ability to plan ahead for retirement.

Caregiving responsibilities most often fall to women: a majority of caregivers are women (54 per cent), and women who are caregivers are more likely to spend 20 or more hours per week on caregiving tasks than their male counterparts (17 per cent, compared to 11 per cent of male caregivers).[97]

Susceptibility to financial exploitation, fraud, and other undue influences

Having strong connections with others, including friends and family acting as caregivers, may reduce one's susceptibility to financial fraud,[98] which generally encompasses investment and other financial scams, often involving the sale of worthless or non-existent products.[99] One in 25 Canadians is a victim of investment fraud, and one in five Canadians believe they have been approached with a fraudulent investment opportunity.[100] Those who were approached were most often contacted by phone or email and did not have a strong relationship with the potential fraudster; however, one in ten reported having been introduced to a potential fraudster through a friend, neighbour, co-worker, or family member, and about one in five reported developing a strong level of trust in the person who approached them.[101]

Canadians aged 65 and older are the age group most likely to say that they have invested money in what turned out to be a fraudulent investment.[102] Fraudsters may directly target older individuals because of the relatively high levels of assets they hold as a result of a lifetime of saving and investing; other factors that influence older individuals' susceptibility to fraud include cognitive decline,[103] as well as the absence of any "trustworthy friends or relatives to safeguard their assets."[104]

But the existence of a caregiving or other social relationship with a family member or friend does not necessarily reduce one's risk of becoming a victim of financial exploitation. Financial exploitation has

been defined in a variety of ways by a variety of organizations and authors;[105] it may come in the form of theft, misuse or underuse of funds intended for care and other household expenses, or abuses of a power of attorney or other authority over the older person's decision-making.[106] Unlike financial fraud, financial exploitation is most often committed by friends or family members, with adult children and grandchildren, followed by a spouse, being the most common perpetrators; other perpetrators included co-workers and service providers.[107] In the context of a relationship between a client and the representative of a registered firm, the position of power that the representative holds over the client's financial assets may also create potential for an abuse of trust that could expose the client to some form of financial exploitation.

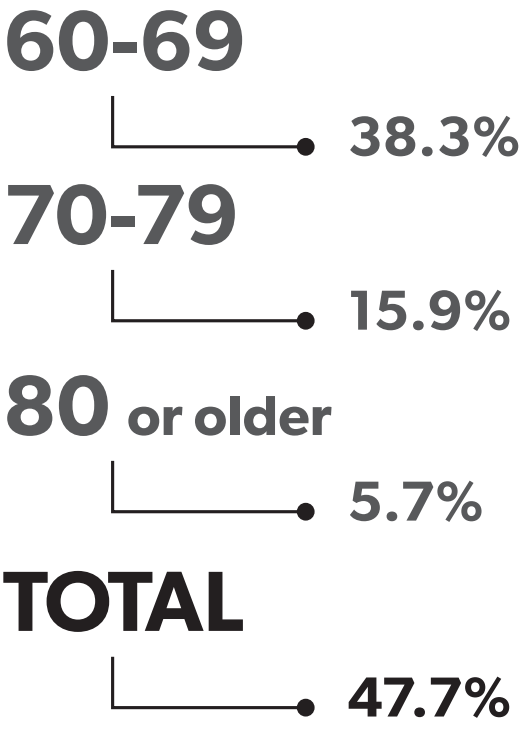
A national study on the mistreatment of older Canadians found that 2.6 per cent of Canadians aged 65 or older, representing 244,176 Canadians, reported having been a victim of financial abuse in the 12 months prior to when they were interviewed, making financial abuse the second most common form of elder abuse in Canada.[108] Social isolation, as well as cognitive decline and broader declines in health, can increase an individual's risk of financial exploitation, making them more dependent on a potentially exploitative individual, and reducing their ability to scrutinize or escape potentially exploitative situations.[109]

A significant amount of financial exploitation of older Canadians, as well as financial fraud, may be going unreported.[110] Shame or guilt at perceived cognitive decline may leave individuals less inclined to report financial fraud or exploitation, and feelings of loneliness may lead individuals to pursue or maintain relationships with potential exploiters as a way of maintaining social connection.[111]

There are also factors that may leave some older individuals in greater need of support from others when making financial decisions, or that may leave older individuals more susceptible to practices that do not rise to the level of financial exploitation or fraud, but nonetheless may be unfair or misleading. For example, seniors may be more susceptible to sophisticated marketing techniques, including the "increasing use of behavioural economics and cognitive neuroscience to sway customers," as well as the natural human tendency, illustrated by behavioural insights, to become overwhelmed by complex information or choices.[112] Reduced ability to discern risk or trustworthy persons may also leave older investors more likely to purchase high-risk investments that may not be suitable for them.[113]

With respect to marketing, the use of misleading titles by registered firms and their representatives implying expertise in working with senior clients, as well as the use of misleading or confusing titles more broadly, has long been an area of focus for the OSC and other regulators.[114] More broadly, data published by OBSI, which acts as an impartial and fair investigator of banking and investments related complaints across Canada, indicates that older Canadians may be disproportionately exposed to unfair practices in the investment industry. Nearly half of individuals who submitted complaints to OBSI in 2016 regarding unfair practices relating to investments were 60 years of age or older.[115]

OBSI complaints by older clients, 2016[116]



Common investment-related complaints include issues relating to investment suitability, suitability of margin or leverage, inaccurate or incomplete disclosure about a product or fees, disclosure and failure to follow a client's instructions (together representing over 70 per cent of investment-related OBSI cases opened in 2016).[117]

D. The challenge ahead

Older Canadians face complex financial decisions in retirement and, with a greater share of senior Canadians' incomes coming from private sources relative to a generation ago, these decisions come with higher stakes. Low interest rates and other factors have added further complexity to older Canadians' financial circumstances, encouraging greater borrowing while reducing the incentive to save. These trends may tend to heighten the potential impact of financial fraud or exploitation on the financial security of older Canadians.

It is natural to assume the best case scenario, but, with longer life spans and a more complex retirement ahead, it is important to plan for the unexpected. This is an area where investors expect regulators and registered firms and their representatives to help, as noted in the insights shared at the Seniors Roundtable.[118] Many registered firms and representatives, in turn, have suggested that they need more support from regulators to help their clients plan for and address future changes and risks: a 2017 report by the Canadian Foundation for the Advancement of Investor Rights (FAIR Canada) and the Canadian Centre for Elder Law found that many registered firms and their representatives feel ill-equipped to respond to potential cognitive decline or financial exploitation of older clients, reporting that their firms had "few clear systems to follow, few experts within [their] organization, [and] few clear procedures" for identifying and responding to these situations.[119] The report adds that many registered firms believe regulatory intervention in the form of guidance, legal safe harbours, and other tools may help both them and their representatives to better address the needs of their clients.[120]

III.

ENVIRONMENTAL SCAN

We recognize that we are not alone in our focus on older investors. Securities regulators and other government agencies around the world have increasingly turned their attention toward the challenges that older individuals often face in accessing financial products and advice that are suited to their needs, and the risks that are often associated with aging and financial decision-making, including financial exploitation and diminished mental capacity.

We are particularly interested in identifying potential opportunities to support older investors and address the potential risks they face regarding financial exploitation and diminished cognitive capacity, with a view toward capturing instructive examples that can inform our own work in supporting Ontario's senior investors. To that end, we have examined various regulators and governments that have identified policy interventions or introduced new rules or guidance for the financial services industries in their respective jurisdictions to improve the resources and tools available to registered firms and their representatives working with older clients.

This begins with a look at the research and discussions by the United Kingdom's Financial Conduct Authority (FCA) around its work to determine the necessary scope of potential policy interventions by examining the financial needs of consumers as they age and the potential barriers that could prevent those consumers from accessing products and advice that meet their needs. It then moves to an examination of new rules and resources put in place by various organizations within the United States and Australia to support registered firms and their representatives in servicing older clients appropriately, including guidance to better equip firm representatives to identify and respond to potential instances of financial exploitation or diminished mental capacity.

There are also a number of examples found both internationally and within Canada that illustrate interesting practices in investor protection, research, education and outreach as they relate to aging. We have examined these and other actions taken by organizations working in the financial services space given their potential applicability within an Ontario context, informing a number of the priorities that follow in this strategy.

A. United Kingdom

In February 2015, the FCA published its Occasional Paper No. 8, *Consumer Vulnerability*, which looked at ways financial service providers can better service "vulnerable consumers," a term used to describe those "who, due to their personal circumstances, [are] especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."[121]

In the paper, the FCA notes that vulnerability "can come in a range of guises, and can be temporary, sporadic or permanent in nature," with most people experiencing vulnerability at some point in their lives (though most people who experience such vulnerability would not identify themselves as "vulnerable").[122] While the onset, duration, and severity of vulnerability can vary, the FCA also noted that an individual's vulnerability can also be exacerbated by the policies and practices of firms, creating issues such as people taking on an onerous amount of debt, purchasing high-cost products (such as payday loans) or taking on more risk than appropriate for their circumstances.[123] Firms

responding to these and other issues, as the FCA notes, will need to do so in a manner that is flexible, tailored and perhaps based on risk factors; the FCA adds that the use of risk factors is "useful in that [risk factors] capture not only the varied and fluctuating nature of vulnerability, but they also cover the interaction between the individual and the service provider."[124]

The FCA followed up its research on consumer vulnerability with a focus on older consumers and an in-depth review of the key issues they face.[125] It noted that, while "it is not the role of the FCA to design the products required or define how they should be delivered," it does believe that it has "a role to play in helping to facilitate the debate about what older people need from financial services providers and the barriers that might get in the way of delivering them in a way that is accessible to those consumers."[126] The FCA approached this debate by publishing Discussion Paper No. 16/1, *Ageing population and financial services*,[127] which had a number of interested parties submit "think pieces" intended to incite discussion about how financial services work for older individuals. The pieces covered a number of key areas, including the financial capability of older individuals, access to financial services and the role that firms can play in addressing clients' needs as they age.

The FCA elaborated on this work with its September 2017 publication of Occasional Paper No. 31, *Ageing Population and Financial Services*, which looked at the public policy implications of an aging population, the impact on financial services and suggested actions for both the regulator and the financial services industry to better support older people.[128] In it, the FCA noted that older consumers are not necessarily vulnerable, but are "more likely than other groups to experience transient or permanent vulnerability" due to issues related to health, resilience, capability and/or life events, creating risks related to the needs of older consumers being unmet, resulting in exclusion, poor outcomes and potential financial harm.[129]

As noted in the paper, the issues precipitating these risks appear to have a range of interrelated root causes, including policies and controls that "are not designed around consumer needs and unintended consequences of retail product and service design."[130] The FCA recognized that solutions "do not lie within the remit of any one party," including the FCA and the firms it oversees,[131] though it identified certain areas where it believed that regulators and financial services firms can play a role in addressing key risks and priorities. The FCA organized its ideas into three broad categories: product and service design, consumer support and adaptive strategies.

Product and service design: Products and services often appear to be designed for an "average" consumer who may not exist in practice, or are designed to meet corporate needs rather than consumer ones. Very few products and services are designed to anticipate the needs of older consumers. As such, firms could:

- understand and anticipate the current (and future) needs and circumstances of older customers in their target markets;
- take older customers' needs into account when developing distribution channels, and customer support for older consumers, or other vulnerable groups; and

- involve older and vulnerable consumers in testing and product design at proof of concept stages.[132]

Customer support: While not all customer support processes need to be built around the needs of older consumers, firms should take steps to consider how the changing needs of such people can be met, including:

- helping older customers find the most appropriate products and services for their needs (including developing products intended to fill any gaps in the market);
- helping customers to recognize when they are having difficulties and encouraging them to ask for more help; and
- providing appropriate support as consumer needs and life circumstances change.[133]

Adaptive strategies: Meeting the needs of older consumers requires "continual strategic evolution, not one-off, short-term solutions or 'box-ticking' approaches."[134] This means that firms may wish to consider adapting or retaining access channels for groups who depend on them and continuously review strategies, business models, supporting policies and controls to ensure they remain appropriate for changing consumer behaviours and needs.[135]

B. United States

North American Securities Administrators Association

Model act

In 2014, the North American Securities Administrators Association (NASAA), an association of securities regulators in Canada, the U.S. and Mexico, formed a Committee on Senior Issues and Diminished Capacity to address the financial exploitation of older consumers, "the fastest-growing category of elder abuse in many [U.S.] states."[136] NASAA noted that U.S. state securities regulators were often well-positioned to "intercede on behalf of vulnerable seniors," but successful intervention requires policies and related tools that allow regulators to "break down barriers to the sharing of information about financial exploitation and inspire action by financial services professionals who are positioned to identify red flags."[137] To that end, the NASAA Committee on Senior Issues and Diminished Capacity drafted a model act to guide U.S. states toward adopting legislation or regulation that is designed to protect vulnerable adults from financial exploitation.

The model act was designed to provide financial service providers and state regulators with new tools to help detect and prevent financial exploitation of "vulnerable adults," defined as individuals aged 65 or older as well as those who qualify for protection under a state adult protective services statute.[138] It applies to U.S. broker-dealers and investment advisers, including certain "qualified individuals" (agents and representatives of broker-dealers and advisers, as well as those serving "in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser").

The model act brings together five core features that are intended to "clarify and more closely align the interests and responsibilities of registered firms and their representatives, regulators, and law enforcement" as a means to facilitate the reporting and prevention of financial exploitation of older consumers.[139] Those core features are government disclosures, third-party disclosures, delaying disbursements, immunity for disclosures and disbursements, and access to records:

- **Government disclosures:** Qualified individuals must report to their respective state securities regulators and state adult protective services agencies when they have a "reasonable belief" that financial exploitation of a vulnerable adult has been attempted or has occurred. The "reasonable belief" standard is intended to have both subjective and objective elements ("a qualified individual must have a subjective belief in the existence of the financial exploitation, and this belief must be objectively reasonable").[140]
- **Third-party disclosures:** Qualified individuals can notify a third party, designated by a client, regarding any suspected financial exploitation of

that client. Importantly, the model act directs that disclosure may not be made to the third party if the qualified individual suspects the third party of the financial exploitation.[141]

- **Delaying disbursements:** Qualified individuals can delay disbursing funds from a vulnerable adult's account for up to 15 business days if they suspect financial exploitation. The delay can be extended for an additional ten days at the request of either the state securities regulator or an adult protective services agency.[142]
- **Immunity for disclosures and disbursements:** Qualified individuals are given immunity from administrative or civil liability if they take actions permitted under the model act, including making disclosures to a government agency or designated third party, or delaying a disbursement of funds.[143]
- **Access to records:** Qualified individuals are required to ensure that law enforcement and state adult protective services agencies have access to the appropriate records needed to investigate cases of suspected or attempted financial exploitation. Under the model act, such records are not subject to state public records laws to allow such agencies to conduct investigations while maintaining the confidentiality of personal financial information.[144]

NASAA has noted that the provisions of the model act could be adopted by statute as part of existing securities laws or, potentially, through regulation. By the end of 2017, the Model Act had been adopted in whole or in part by 13 U.S. states.[145]

ServeOurSeniors

Concurrent with the development of the model act, NASAA also launched "ServeOurSeniors," a new initiative that included the development of a website to distribute relevant resources, a training program for regulators on issues related to diminished capacity, and an outreach program to help front-line financial workers detect the red flags of financial exploitation and where to report suspicions of fraud.

ServeOurSeniors.org emerged as the first component of the new initiative in late 2015, serving as a hub for NASAA to provide "senior-focused" resources to investors, caregivers, industry, and policy makers. Available resources include: investor education tools, brochures, checklists and "conversation starters;" caregiver resources; and resources to help train industry participants in identifying and reporting suspected financial exploitation.[146] The website includes an interactive map to help users locate contact information for their jurisdiction's securities regulator, adult protective services agency and other governmental bodies.

The following year, NASAA published a guide to help U.S. broker-dealers and investment advisers develop practices and procedures to detect and address instances of client diminished capacity and suspected cases of financial exploitation.[147] The guide was structured around five key concepts:

- **Identifying "vulnerable individuals":** Firms should train their frontline personnel (including call centre staff, branch office staff, and staff providing financial advice) to recognize signs of potential diminished capacity and financial exploitation,[148] as well as how to communicate with clients experiencing reduced cognition,[149] how to ask appropriate questions, when there are red flags in a manner that maintains the client's dignity and independence,[150] and how to escalate and report issues as appropriate.[151]
- **Reporting to government:** Firms should have a clear handle on the reporting obligations in their jurisdictions, including whether it is the individual's obligation or the firm's obligation to report financial exploitation, and they should have policies in place to protect clients by reporting suspected financial exploitation even when not legally obligated to do so.[152] Policies should outline what required information is necessary for a report, and there should be detailed internal procedures for reporting, including escalation protocols or processes built into existing written supervisory procedures.[153]
- **Reporting to third parties:** Firms should also develop procedures to encourage clients to use customized advance directives or designate

trusted contacts, ensuring that these procedures comply with privacy laws and that designations direct what information can be shared, what authority is conferred and under what conditions (which may include the authority to provide notification of suspected diminished capacity).[154]

- **Delaying disbursements:** Firms should establish procedures to guide the decision-making around a potential delay of disbursements from a client account, including an internal review process related to any disbursement delays.[155]
- **Regulatory cooperation:** Firms should develop strong working relationships with local adult protective services agencies and ensure that client records required by adult protective services and law enforcement agencies are provided upon request.[156]

In 2016, NASAA conducted a series of reviews to discover how registered firms across the U.S. were addressing issues related to older investors. Across 62 reviews of at least 39 unique firms, it was found that "virtually all [reviewed firms] had both internal processes to identify and internally report suspected diminished capacity or senior financial abuse, and trained their staff on these policies."[157] However, NASAA also noted that more than half of the firms reviewed lacked policies to define older customers; only 30 per cent had created policies and procedures to specifically address the needs of older clients; approximately 20 per cent had no supervisory procedures regarding any of the key issues related to older individuals that were examined; 19 per cent did not have a decision-maker responsible for reporting concerns to adult protective services agencies or authorities outside the firm; and fewer than half had developed a form for clients to designate an emergency or trusted contact person.[158]

SEC and FINRA

In 2013, staff from the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) conducted 44 examinations of broker-dealers that focused on how firms conduct business with older consumers who are preparing for and entering into retirement.[159] These reviews focused on the types of securities purchased by older clients, the suitability of recommended investments, training of firm representatives, marketing, communications, use of designations such as "senior specialist," account documentation, disclosures, customer complaints, and supervision.

Following the reviews, the SEC and FINRA issued a joint report in April 2015 that discussed the key observations and practices identified as a way for firms to "facilitate a thoughtful analysis with regard to their existing policies and procedures related to senior investors and senior-related topics and whether these policies and procedures need to be further developed or refined."[160] Of note, the SEC and FINRA observed that:

- The different types of securities being purchased by older clients provided insight into how these investors attempted to meet their financial goals and evolving needs; the securities purchased by older consumers that generated the most revenues for firms were mutual funds, deferred variable annuities, equities, fixed income investments, and unit investment trusts/exchange-traded funds.[161]
- More than 77 per cent of the examined firms provided training for their representatives on issues specific to older consumers, typically on an annual basis and addressing topics such as risk disclosure of products, emphasizing how investment needs change as clients age, and escalation steps in the event that a firm's representative notices signs of diminished capacity or financial exploitation.[162]
- Nearly 64 per cent of the examined firms allowed their representatives to use senior designations in their sales efforts to imply expertise or credentials in issues related to older clients. Collectively, the firms reviewed used 25 different senior designations, including qualifications from "an approved curriculum, continuing education requirement, and recognition by an organization that is accredited by another institution."[163] The SEC and FINRA noted that senior designations have varying requirements, some which are more

rigorous than others, and as a result some of these designations may be misleading to the investing public.[164]

- The examined firms' marketing and communications efforts for older consumers largely centred on themes around retirement planning, though some materials included messages related to long-term care insurance, wealth preservation, and wealth transfer. Firms promoted these themes through various channels such as brochures, print and electronic advertisements, newspaper columns, radio and television commercials, and seminars, with retirement seminars being a popular forum for soliciting potential clients.[165]
- When opening new client accounts, at least 30 per cent of the examined firms obtained client information beyond what is required by FINRA's rules, including "detailed expense information (including short- and medium-term expenses), retirement status, whether there was a durable power of attorney, mortgage-related information, insurance policy information, health care needs, sources of income (whether those sources are fixed or will be in the future), savings for retirement, and future prospects for employment."[166] However, 32 per cent of examined firms were relying on "aged account records" for their recommendations, with some account information being more than 36 months old.[167]
- Some firms may be recommending non-traditional investments to supplement the income streams of older consumers. The SEC and FINRA found that examined firms made more potentially unsuitable recommendations for non-traditional securities such as variable annuities, structured products, and real estate investment trusts (REITs) than for more traditional securities such as open-end mutual funds, equities, or fixed-income investments.[168]
- Most of the firms examined maintained written procedures related to supervision of firm representatives who deal with older clients, with most using the age of 70 when implementing age-based policies and procedures (though some had procedures in place for clients as young as 60). While general requirements, suitability requirements, product guidelines, and other supervisory procedures varied by firm and by customer age, the SEC and FINRA noted a trend in firms paying increased attention to the accounts of older clients and, in particular, attention to transactions in non-traditional securities through specific supervisory procedures for investments such as variable annuities, non-traded REITs, structured products, and other alternative products. These supervisory structures typically are supported by automated systems, which help firms identify and address issues related to senior investors.[169]

Alongside the release of the report, FINRA also launched its "Securities Helpline for Seniors," a toll-free number that older consumers could call to get assistance from FINRA or raise concerns about issues with their accounts or investments. In its first full year of operation, it received more than 4,200 calls from seniors and their families seeking help, and FINRA then facilitated the return of more than U.S. $1.3 million in voluntary reimbursements from firms to customers. As well, through the helpline, FINRA obtained information related to potentially criminal behaviour and, in the helpline's first year, referred more than 200 matters to state, federal, and foreign regulators and made more than 70 referrals to adult protective services in 15 states.[170]

FINRA's experience with its helpline highlighted issues relating to financial exploitation of older consumers, and in particular firms' abilities to effectively respond to suspected financial exploitation of older clients (and "other vulnerable adults") in a way that was consistent with FINRA's own rules.[171] At that time, FINRA's rules did not explicitly permit firms to contact a non-account holder or to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of an older person or other vulnerable adult. To address these issues, in October 2015 FINRA proposed a set of rules to provide firms with a way to respond to situations in which they have a reasonable basis to believe that financial exploitation had occurred,

is occurring, had been attempted or will be attempted.[172] The two components of the proposal included the ability for firms to place temporary holds on disbursements of funds or securities from the client's account and to make reasonable efforts to obtain the name of a "trusted contact person" that could serve as a resource for the firm in administering the client's account and in responding to possible financial exploitation.[173]

Following a comment period, FINRA published Regulatory Notice 17-11, *Financial Exploitation of Seniors* in March 2017, confirming the SEC's approval of amendments to FINRA's rules that permit firms to contact a client's designated trusted contact person and, when appropriate, place a temporary hold on the disbursement of funds or securities from a client's account. These new rules became effective in February 2018.

Trusted contact person

Amendments to FINRA's Rule 4512 require members to "make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account" or when updating account information for an existing non-institutional account.[174] The amendments do not prohibit firms from opening and maintaining an account if a customer fails or refuses to identify a trusted contact person, so long as the member "makes reasonable efforts" to obtain one, which FINRA notes would include asking a client to provide the name and contact information for a trusted contact person.[175]

As FINRA contemplated in its notice, a trusted contact person is intended to be "a resource for the member in administering the customer's account, protecting assets, and responding to possible financial exploitation."[176] FINRA noted that both clients and firms may both benefit from the trusted contact information, noting, for example, that a firm could inquire about a client's current contact information if the firm has been unable to contact them after multiple attempts.[177] A firm could also reach out to a trusted contact person if it suspects that a client "may be suffering from Alzheimer's disease, dementia, or other forms of diminished capacity," or to address possible financial exploitation of a client before placing a temporary hold on a disbursement.[178]

Temporary holds on disbursements of funds or securities

FINRA also introduced Rule 2165 to permit a firm that "reasonably believes" that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer. Rule 2165 defines a "specified adult" as "a natural person age 65 and older or a natural person age 18 and older who the [firm] reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."[179] In supplementary material for the rule, FINRA provided that a firm's "reasonable belief" that a person has a mental or physical impairment that renders him or her unable to protect his or her own interests may be based on the facts and circumstances observed in the firm's business relationship with the person.[180]

By FINRA's own account, Rule 2165 has a "broad definition"[181] of financial exploitation, which includes:

- the wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; and
- any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a specified adult, to:
- obtain control, through deception, intimidation, or undue influence, over the specified adult's money, assets, or property; or
- convert the specified adult's money, assets, or property.[182]

If a firm places a temporary hold on a disbursement, then the firm is required to immediately initiate an internal review of the facts and circumstances that led it to take such action. Firms are also required to provide notification of the hold and the reason for the hold to the client's trusted contact person and all parties authorized to transact business on

the account, including the client, no later than two business days after the date that the hold was initiated.[183] However, a firm is not required to provide notification to any person (including a trusted contact person) whom the firm reasonably believes has or will perpetuate the financial exploitation of the specified adult. Firms are also required to make records evidencing these notifications.[184]

Under the rule, temporary holds on disbursements expire no later than 15 business days after the date that the firm first placed the hold, "unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction."[185] Additionally, provided that the firm's internal review of the facts and circumstances supports the reasonable belief that led to the temporary hold being put in place, the rule permits the firm to extend the hold for an additional ten business days (unless the hold is otherwise terminated or extended by the same parties previously listed).[186]

The rule requires that firms that anticipate using a temporary hold also establish and maintain written supervisory procedures reasonably designed to achieve compliance with the rule, including "procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults."[187] These procedures are required to identify the title of each person authorized to place, terminate, or extend a temporary hold on behalf of the firm and serve in a supervisory, compliance, or legal capacity for the firm. The rule also requires a firm that anticipates placing a temporary hold under the rule to develop and document training policies or programs designed to ensure that firm representatives and other people involved are able to comply with the requirements of the rule.[188]

As FINRA notes, the rule does not create any obligation for firms to place a temporary hold on the disbursement of funds or securities. To that end, FINRA's rule is permissive rather than mandatory, allowing firms to exercise their own discretion in their policies and procedures related to older consumers.[189]

Both the amendments to Rule 4512 and the new Rule 2165 are consistent with a number of provisions in NASAA's model act, but as NASAA noted in its 2018 commentary on the model act, rules adopted by FINRA (or any other self-regulatory organization) have fundamental differences from state legislation.[190] As per NASAA:

"The protections afforded by the FINRA rules are substantively different from those afforded by the Model Act and related legislation. For example, FINRA does not require mandatory reporting of suspected financial exploitation to state regulators or state [adult protective services] agencies, and does not incentivize reporting by offering immunity for disclosing information to government and third-parties. Further, while FINRA requires retention of records, it does not require the sharing of records with state [adult protective services] and law enforcement agencies, which can prove an essential tool for agencies tasked with preventing exploitation."[191]

C. Australia

Australian Securities and Investments Commission

In April 2010, the Australian federal government introduced *The Future of Financial Advice*, a package of reforms to laws governing the financial planning sector in the country, intended to "improve the quality of advice, strengthen investor protection and underpin trust and confidence in the financial planning industry" and, ultimately, encourage more Australians to seek financial advice.[192] Among these reforms was the proposal of a statutory fiduciary duty for financial advisors, which would require them to explicitly place their clients' interests before their own.

This duty was to include a "reasonable steps" qualification for advisors and their representatives to discharge the duty, the details of which were developed after extensive consultation with the country's financial services industry.[193] During that consultation period, the Australian Securities and Investments Commission (ASIC) conducted "shadow shopping research" into financial advice about retirement, using real-world examples to examine the quality of advice being provided to Australians to help them plan and prepare for retirement at or around the time they are retiring,

aiming to better understand what constitutes good- and poor-quality advice.[194] The report on this study highlighted that 39 per cent of advice examples were poor and did not meet the appropriate advice requirements set out in Australia's *Corporations Act*,[195] 58 per cent were adequate and only 3 per cent were good,[196] with evidence that conflicts of interest, such as those created by links to product issuers, had a detrimental effect on the quality of advice being delivered.[197]

Following the consultation period, in 2012 the Australian government amended the *Corporations Act* to outline the "reasonable steps" that advisors must take to demonstrate that they have acted in the interests of their clients, which together formed a "safe harbour" for advisors' compliance with their duty to put clients' interests ahead of their own. To satisfy these steps, advisors must:

- identify the objectives, financial situation, and needs of the client that were disclosed by the client through instructions;
- identify the subject matter of the advice sought by the client (whether explicitly or implicitly) and the objectives, financial situation, and needs of the client that would reasonably be considered relevant to the advice sought on that subject matter;
- if it is reasonably apparent that information relating to the client's relevant circumstances is incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information;
- assess whether the advice provider has the expertise required to provide the client with advice on the subject matter sought and, if not, decline to provide the advice;
- if it would be reasonable to consider recommending a financial product:
- conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered relevant to advice on that subject matter; and
- assess the information gathered in the investigation;
- base all judgments in advising the client on the client's relevant circumstances; and
- take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.[198]

ASIC has issued guidance on the ways in which advisors can comply with each step of the safe harbour, and in doing so has outlined a number of practices that advisors can adopt to accurately respond to the evolving needs of a client. For example, ASIC notes that clients will not always know or fully understand what their objectives, financial situation or needs are, may provide instructions that are unclear or seem inconsistent with their circumstances, or ask for advice in response to a life event (such as divorce, loss of income, or receiving an inheritance) rather than on a specific product. In these situations, advisors may need to ask additional exploratory questions and exercise professional judgement in determining what the client's objectives, financial situation, and needs.[199]

Australian Law Reform Commission

In June 2017, the Australian Law Reform Commission (ALRC) tabled a collection of recommendations to reform laws and legal frameworks to better protect older individuals from misuse or abuse and safeguard their autonomy. The recommendations, summarized in ALRC's *Elder Abuse – A National Legal Response* report, provide a range of strategies that several of Australia's government agencies and regulators may consider in their efforts to address the financial exploitation of older Australians, including legal reforms, policy changes, and educational initiatives.[200]

While the report made no recommendations toward securities regulation specifically, it addressed the banking sector in its observation that "banks are often in a good position to detect financial elder abuse and protect their at-risk customers."[201] The

ALRC recognized industry guidance on how banks might respond to the financial exploitation of older clients, but noted that the guidance was "voluntary and unenforceable."[202] To that end, the ALRC recommended that Australia's *Code of Banking Practice* be amended to require banks to "take reasonable steps to prevent the financial abuse of vulnerable customers,"[203] such as training staff to detect and appropriately respond to abuse, using software and other means to identify suspicious transactions, and reporting abuse to the relevant authorities when appropriate.[204]

D. International Organization of Securities Commissions

In March 2018, the International Organization of Securities Commissions (IOSCO) issued its *Report on Senior Investor Vulnerability*, which aimed to identify the current and emerging risks that older investors face, highlight current sound practices to manage these risks, and describe the key initiatives undertaken by IOSCO members to meet the challenges of an aging population.[205] The report, to which the OSC's Investor Office contributed, was based largely on a quantitative and qualitative survey of the members of IOSCO's Committee on Retail Investors, as well as a second survey of members of IOSCO's Committee on Regulation of Market Intermediaries and the Affiliate Members Consultative Committee.

Nearly all of the IOSCO members surveyed believed that older individuals are at greater risk than other investors of losing money to fraud or of being taken advantage of by others and identified the most significant risks to older investors as unsuitable investments, financial fraud committed by a non-family member, and diminished cognitive capacity that affects financial decision making. The report also highlighted risks related to complex products, deficient financial literacy, and social isolation.[206]

While 74 per cent of respondents to the survey said they have programs to protect older individuals, this figure rests on the widely held belief that older investors are adequately served by existing investor protection programs and therefore do not require specific protection measures. Thirty-nine per cent of survey respondents reported that they had no specific strategy or focus aimed at protecting older investors other than those covering all investors.[207]

Using practical examples provided by various responding jurisdictions, IOSCO set out a series of "sound practices" for both regulators, registered firms, and firm representatives to implement with the aim to achieve better outcomes for older investors. For regulators, these were to:

- deliver educational programs and resources targeting older investors;
- foster the development of expertise on older investors' issues within existing regulatory, educational, and advisory programs;
- conduct research projects to better understand the risks and issues facing older investors and the incidence and mechanics of investment fraud in their jurisdictions; and
- develop guidelines and training programs for individuals reviewing transactions conducted with older investors.[208]

The practices outlined for financial services providers were to offer support to older investors experiencing a life event during the product life cycle and provide training and support for employees[209]

E. Other foreign jurisdictions

Hong Kong

In April 2016, the Investor Education Centre (IEC), a subsidiary of Hong Kong's Securities and Futures Commission, introduced *The Chin Family*, an education platform providing information, resources and programs that address common financial concerns and priorities for people at various stages of life, with each life stage represented by a family member of an animated group of characters. According to the IEC, "Each character of *The Chin Family* has his or her own unique personality and plays a different role to communicate financial topics tailored to specific groups within the community."[210]

The Chin Family provides, among other things, information and resources around retirement

planning and maintaining quality of life while living in retirement through characters that are planning ahead for retirement ("Mr. Chin"), budgeting for daily expenses and avoiding financial frauds while living in retirement ("Grandpa Chin"), and demonstrating awareness of issues around health and health care costs associated with age ("Grandma Chin").[211] The IEC's delivery of these resources through the family avatars reflects a number of behaviourally-informed approaches to public education. On top of the social element of *The Chin Family*, which reflects the cultural importance of family and familial obligations in Hong Kong, the use of animated characters to deliver financial information creates an experience that is "fun, lively and practical in its real-life implications."[212]

The IEC's use of *The Chin Family* also demonstrates ways in which financial educational material can leverage elements of accessibility and design to promote engagement with consumers. Prior to introducing *The Chin Family*, the IEC had branded its education resources under its own name or that of the Hong Kong Securities and Futures Commission. The IEC found that this "sounded very regulatory" to consumers, creating limitations on the appeal and effectiveness of resources for their intended audiences.[213]

New Zealand

In 2009, the New Zealand Bankers' Association developed a set of voluntary guidelines to improve access to banking services for older and disabled clients.[214] The guidelines establish that banks should provide training for all staff interacting with customers to include training to recognize signs of potential financial exploitation and have in place internal procedures to manage such situations while remaining sensitive to customers' situations and wishes.[215]

The guidelines also make recommendations for improving communication with older clients, including giving better access to information and services through measures such as producing publications in larger print with clear fonts and colours, delivering information about banking services in plain language, and avoiding placing too much information on a page.[216]

F. Canada

New Brunswick's Financial and Consumer Services Commission

In 2017, the New Brunswick government's Council on Aging presented *We are all in this together: An Aging Strategy for New Brunswick*, a strategy that identifies several actions to enable older individuals in the province to have the support, financial means, and protections to live independently, gives recommendations to make the province more age-friendly and takes steps to establish New Brunswick as a leader in aging research and social innovation.[217] Following this, New Brunswick's Financial and Consumer Services Commission (FCNB) launched consultations to identify the ways in which it could address the issue of financial exploitation of older individuals and "other vulnerable people" within the industries it regulates (including securities, insurance, pensions, credit unions, trust and loan companies, and co-operatives) and support the Council on Aging's strategy. The consultation paper, *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick*, sought public input on four key themes, which were to:

- identify opportunities for legislative change that would provide increased safeguards against financial abuse of seniors;
- address the challenges in reporting and investigating financial abuse of seniors;
- improve best practices for industry participants, in particular those FCNB regulates, to guide them when they spot signs their clients are being financially abused; and
- build a more collaborative approach between government departments and agencies to address the issues surrounding financial abuse of older individuals.[218]

The paper contextualizes the issue of financial exploitation and the reasons older individuals considered at risk, noting that older investors are often the target of investment frauds and scams due to the likelihood that they have built up assets (such as retirement savings and real property) over a period of many years. They can also become

concerned with outliving their savings or leaving outstanding debt for family members, which can precipitate an increased willingness to "listen [to] and consider these 'too good to be true' scams."[219]

Despite the FCNB's familiarity with these risks, it also recognized the challenges it had encountered in identifying and investigating cases of financial exploitation and fraud given that the perpetrators of such exploitation are often trusted family members and friends of the victim. As such, the consultation paper posited that older individuals may resist help out of a fear of retaliation, loss of support, loss of independence, embarrassment, or a perceived lack of other options for care and assistance.[220]

Québec's Autorité des marchés financiers

In June 2017, the Québec government launched a five-year action plan to address the mistreatment of older individuals, which aimed to promote awareness and understanding of the issue and coordinate organizational efforts to address it. The action plan contains 52 measures to fight mistreatment, with a focus on preventing abuse, promoting respect and care for older adults, fostering early detection and appropriate interventions, facilitating reporting of abuse (particularly in cases of financial exploitation), and increasing knowledge exchange.[221] As part of this plan, Québec's Autorité des marchés financiers (AMF) hosted community and industry focus groups to discuss issues related to clients that may be vulnerable to mistreatment; the discussions from these focus groups will inform guidelines that the AMF will publish for registered firms and their representatives on good practices when engaging with potentially vulnerable clients.

It is also worth noting that in early 2017, the Québec government adopted *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations* as a means of combating abuse. Under the act, the province's health and social service institutions are required to adopt and implement policies to report and intervene in cases where an older individual or "person in a vulnerable situation" is experiencing "maltreatment," which the act defines as "a single or repeated act, or a lack of appropriate action, that occurs in a relationship where there is an expectation of trust, and that intentionally or unintentionally causes harm or distress to a person."[222] In February 2018, the AMF entered into a provincial framework agreement with a number of other ministries and governmental organizations regarding the maltreatment of seniors. As provided by the act, the framework agreement establishes a process to intervene and act appropriately in cases of maltreatment.

Financial Consumer Agency of Canada

As part of a proposal to strengthen and modernize Canada's financial consumer protection framework for banks to respond to the diverse needs of Canadians, in April 2014 the Government of Canada appointed the first Financial Literacy Leader at the Financial Consumer Agency of Canada (FCAC), whose role was to provide guidance and expertise to implement a national financial literacy strategy through mobilizing and collaborating with stakeholders across the country.[223] Later that year, and with the guidance of members of National Steering Committee on Financial Literacy that were appointed by the Financial Literacy Leader, the FCAC published a strategy to enhance the financial literacy of older Canadians, which represented an early milestone in the process toward developing a national financial literacy strategy.[224]

Strengthening Seniors' Financial Literacy was developed following a public consultation of public, private and non-profit organizations in Canada, which raised several key points that informed the goals, objectives and activities of FCAC's strategy.

- **Older Canadians are diverse:** The needs for financial education and support vary widely among older Canadians and depend on factors such as age, income level, education, health, and personal and family circumstances. A "one size fits all" approach will not work; rather, initiatives should be tailored to the specific needs of subgroups that make up the demographic that is older Canadians.
- **Research is important:** Developing effective programs, communications, core messaging, and marketing strategies that will lead to improved

financial outcomes for older Canadians requires more research to better understand the audiences involved. In particular, research on factors that impact people's behaviour is key to developing initiatives and programs that will be more effective in supporting all Canadians, including older ones, to take actions and decisions that will help them achieve their financial goals.

- **Emphasize early planning and decision-making:** The financial well-being of Canadians in their later years depends largely on decisions and savings behaviour undertaken much earlier in life.
- **Documents, processes, and financial education materials should be simplified:** Some Canadians find many of the current sources of financial information and education difficult to understand, in part due to the increasing complexity of financial issues. There is a need for greater emphasis on clear, user-friendly forms and documents such as contracts and disclosure materials, which should be reviewed to ensure they are easily understood and meet the needs of older individuals.
- **Financial advice should be tailored and objective:** Access to objective financial planning and advice tailored to individual circumstances has become increasingly important as financial decisions have become more complex and the choice of available financial products has grown considerably.
- **Collaboration and sharing should be encouraged:** Good resources already exist but there is a need for them to be coordinated and shared among agencies in order to maximize their use. By sharing resources, more attention can be directed to gaps and high-priority initiatives.
- **Financial literacy is not a complete solution:** Knowledge and skills alone are not sufficient to achieve the desired outcomes; consumer protection also has an important role to play.[225]

The consultation process also found broad consensus on the objectives that FCAC proposed to bolster financial literacy among older Canadians moving forward.[226] Those objectives were grouped into four main goals:

- **Engage more Canadians in preparing financially for their future years:** The strategy aims to help Canadians develop a greater interest in and understanding of long-term saving. Objectives under this goal include governments and stakeholders promoting financial goal setting, saving for the future, and debt management through public awareness campaigns, and organizations engaged in financial literacy helping employers promote financial education and planning for retirement to support their employees' financial security.[227]
- **Help older Canadians plan and manage their financial affairs:** The strategy plans to encourage government and other organizations to promote research to increase the understanding of the diverse needs of older Canadians, use clear and user-friendly information and forms to explain financial topics, implement solutions to address the needs of older Canadians experiencing some loss of mental capacity and their caregivers, and strengthen digital literacy to support financial decision-making and access to online financial services.[228]
- **Improve understanding of and access to public benefits for older individuals:** The strategy suggests focus on supporting older Canadians in making appropriate financial decisions through communication and educational materials, including integrating financial education into government benefit programs and raising awareness of benefit programs to older Canadians and their support networks.[229]
- **Increase tools to combat financial abuse of seniors:** The strategy here is to enhance understanding and access to tools to help older Canadians identify, report, and protect themselves against financial exploitation, through collaboration among governments and stakeholders.[230]

FCAC also set out criteria to evaluate each of its strategy's goals using indicators of progress over the short, medium and long term.[231] The Canadian Financial Capability Survey, a survey fielded by Statistics Canada every five years to "shed light on

Canadians' knowledge, abilities, and behaviours concerning financial affairs,"[232] was identified as a key measurement tool for long-term impact, with other data sources (such as the results of other surveys, usage of financial literacy resources and qualitative evaluations from partner organizations) being used to evaluate goals and successes in the intervening years.[233]

In subsequent material related to its national strategy for financial literacy, FCAC noted that "there is no easy or quick fix for improving financial literacy," given that it is a significant and complex issue. Removing barriers, changing habits, and fostering a culture of financial well-being could require a collaborative effort over many years.[234] There are a number of obstacles to success, including the fact that Canadians are "dealing with increasingly complex lives and may find it challenging to access the right supports to help them improve their finances."[235] The FCAC noted that individuals require the right incentives and tools to take charge of their financial situations, but those situations are diverse and varied across different people; what works for some Canadians may not work for others.[236]

Self-regulatory organizations

Both IIROC and the Mutual Fund Dealers Association of Canada (MFDA) have taken steps to raise awareness and provide guidance on matters related to aging and the prevention of financial exploitation. In 2016, IIROC issued its *Guidance on compliance and supervisory issues when dealing with senior clients* notice, providing guidance to its members on how best to deal with the specific challenges that can arise when dealing with clients who are retired or about to retire. This noticed outlined several key areas that dealers should consider when dealing with older clients, in particular:

- powers of attorney-related issues;
- effective communication;
- policies and procedures;
- product due diligence;
- "know-your-client," suitability and supervisory obligations and practices;
- use of titles;
- complaint handling process; and
- training on issues common to older clients, such as potential diminished capacity.[237]

IIROC set out regulatory guidance on many of these and other related issues and established strategies for firms and their representatives to respond to potential financial exploitation and diminished-capacity situations among their clients, affirming that dealers should implement, maintain, and carry out policies and procedures that are designed to detect and address such situations. In particular, IIROC recommended that these policies and procedures:

- encourage clients to provide the name and contact information of an emergency or "trusted contact person" to assist the dealer when issues arise; and
- enable the dealer to place a temporary hold on the client's account in instances where financial exploitation or diminished capacity is suspected.[238]

IIROC also recommended that dealers establish internal processes to escalate difficult issues involving older clients, such as requiring representatives to contact the appropriate supervisor, compliance officer, or legal counsel to obtain guidance on how to resolve difficult questions involving financial exploitation, powers of attorney, and diminished-capacity issues.[239]

The MFDA has taken several steps to incorporate issues related to older investors into its operations. It has held two Seniors Summits, one in 2013 and one in 2015, which have brought together various specialists and subject matter experts to share practical advice with MFDA members on dealing with the issues and challenges faced by firms and their representatives in servicing older clients. Topics of discussion included an overview of FINRA's activities related to older investors, medico-legal issues in servicing older clients, and effective compliance programs.[240]

The MFDA published amendments to strengthen and clarify its existing rule against its members having any form of control or authority over the financial affairs of a client, such as a power of attorney from a client, or an appointment to act as a trustee or executor of a client or client's estate.[241] It has also emphasized enforcement cases involving older individuals and vulnerable persons, placing a priority on such cases during the case-screening process. In the MFDA's most recent fiscal year, 30 per cent of proceedings commenced involved older or vulnerable persons.[242]

As part of its focus on the protection of older investors, in 2015 the MFDA also conducted a targeted examination sweep of deferred sales charge funds (DSCs) trading practices among its members, specifically examining the suitability of sales charges as they relate to clients' ages and investing time horizons. Following the sweep, the MFDA issued guidance to its members that included a series of good practices and recommendations regarding DSC trades, noting that members should have "adequate procedures to supervise and assess the suitability of DSC trades considering both client time horizon and age and procedures to disclose sales charges both at the time of purchase and redemption."[243] Among the recommendations were:

- policies and procedures to assess the reasonableness of a client's time horizon in comparison to the client's age at account opening or when updating "know your client" information;
- policies and procedures to specifically consider client age when assessing the suitability of DSC purchases;
- time horizon categories on "know your client" forms that allow for an accurate assessment of the suitability of DSC transactions;
- policies and procedures to consider the suitability of DSC purchases in registered retirement income fund accounts; and
- written policies and procedures to disclose fee and transaction charges to clients.[244]

The MFDA also maintains a "For Seniors" section in its investor education material available online, connecting readers to resources created for older individuals as well as links to investor education resources from the MFDA, its regulatory partners, and other organizations.[245]

Securities industry associations

In 2014, IIAC published *Canada's Investment Industry: Protecting Senior Investors – Compliance, Supervisory and other Practices When Serving Seniors*, a report that described a number of challenges that firms and their representatives face in serving their older clients, including the difficulty some professionals can have in adequately identifying which clients can be considered senior clients (given the diversity of circumstances among older clients varies widely, ranging from the highly sophisticated and financially independent to clients with limited investment knowledge and minimal financial resources), responding effectively to physical and cognitive impairments, providing appropriate recommendations or advice, and the engagement of family members in a client's financial affairs.[246]

IIAC identified a series of practices and processes already put in place by various firms to address these and other challenges, noting that many of them did not direct their initiatives at older investors specifically, but focused on retirement and retirees as a common theme. Some firms indicated they considered a full range of issues, such as: how to communicate effectively with older investors; how to train and educate firm employees on issues specific to older individuals; how to establish an internal process for escalating issues and taking next steps when issues or questions are identified; how to encourage investors of all ages to prepare for the future; how to advertise and market to older investors; obtaining information at account opening; how to ensure the suitability of investments; and how to conduct supervision, surveillance and compliance reviews focused on issues related to older investors. [247]

During that year, the Investment Funds Institute of Canada (IFIC) created a multi-stakeholder task force to identify and help market participants address issues relating to vulnerable investors, especially those experiencing cognitive decline. IFIC's task force has researched and compiled existing best practices for firms and their representatives when working with older clients, and has developed resources to help dealers better identify and manage cognitive impairment in clients. These resources include checklists aimed at helping firm representatives prepare for issues that may arise in their work with aging investors – one on cognitive decline and the other on financial exploitation.[248]

Ontario's Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives

In April 2015, Ontario's Minister of Finance appointed an independent expert committee to provide advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation. In its initial consultation document, the expert committee recognized that "no general legal framework exist[ed] [in Ontario] to regulate the activities of individuals who offer financial planning, advice and services, and the absence of such a framework raised questions about proficiency, quality standards and potential conflicts of interest."[249]

In November 2016, the expert committee issued its final report to the Ontario government. The report set the context for the committee's recommendations by describing the evolution of financial services away from the provision of transactions and toward the provision of more holistic advisory services, noting that current regulation has not fully adapted to this shift and explaining why Ontario's regulatory framework remains fragmented and largely focused on the sale of financial products.[250] The committee noted that a key issue that has emerged in the province's current regulatory landscape is consumer confusion among misleading titles and credentials used by firms and their representatives. According to the expert committee:

"In Ontario today, consumers … are likely to encounter individuals with titles and credentials that may not clearly reflect an individual's specific qualifications, expertise, and the nature of the services provided. During our two rounds of consultation, one theme was consistently raised by interested parties: the multitude of titles and credentials currently used in Ontario's financial services industry lead to confusion and jeopardize consumer protection."[251]

Citing the OSC, IIROC and MFDA's joint "mystery shopping" research into advisory practices and the investor experience in Ontario,[252] the committee found that consumers were often left to navigate the "alphabet soup of credentials" on their own. As titles and credentials are used to give an impression of expertise and instill consumer trust, the committee expressed concern over instances where titles and credentials were not backed up by real expertise and could result in trust that is misplaced, as well as lead well-qualified and credentialed individuals to compete with unqualified (or less qualified) individuals for business.[253]

To address these issues, the expert committee recommended that financial services regulators in Ontario work together to develop a circumscribed list of approved titles that are descriptive of regulated activities, and that individuals engaged in financial planning and providing financial advice should only be permitted to use approved titles.[254] The list of approved titles should accurately reflect the credentials that underlie them, with particular attention given to the title of "financial planner," which the committee recommended be reserved for individuals that have "sufficient education, training, integrity, and experience that a reasonable person would expect necessary to provide a competent financial plan for a consumer."[255]

The expert committee also raised concern over the current framework for consumer redress for financial losses, noting that a consumer with a "legitimate complaint against a provider of Financial Product Sales, Financial Planning or Financial Advice" had a complex series of venues to navigate depending on the financial product in question, including:

- OBSI;
- the OmbudService for Life and Health Insurance (OLHI);
- the General Insurance OmbudService (GIO);
- IIROC's arbitration program;
- regulatory orders or settlement agreements (compensation, disgorgement, etc.); and
- civil remedies (via a court process).[256]

Due to the cost and complexities associated with civil remedies, the committee established that the most practical option for consumers was to seek redress from OBSI, OLHI or GIO. However, the committee noted that "these ombud services fall short of delivering the kind of redress to which consumers should have access," citing in particular OBSI's lack of binding decision-making authority as a major barrier to it effectively fulfilling its role as an ombudsman in the province's financial services sector. The expert committee concluded that this inability to make binding decisions, coupled with the fragmented regime for redress overall, necessitated a consumer-friendly process for recovery of financial losses from financial service providers by consumers as a consequence of negligent planning, advice and sales.[257]

Elder Abuse Ontario

Elder Abuse Ontario, a provincial non-profit organization focused on supporting the implementation of the *Ontario Strategy to Combat Elder Abuse*. In partnership with the Assaulted Women's Helpline, Elder Abuse Ontario maintains the "Seniors Safety Line," a confidential, toll-free helpline that provides callers with information about agencies in Ontario that assist in cases of financial exploitation. Through the line, Elder Abuse Ontario also provides supportive counseling for older individuals who are being abused or at risk of abuse, and connects family members and service providers to information about community services.

The organization has also created a series of educational resources to build capacity among front-line service workers who engage with older individuals and adopt a common approach toward identifying and responding to various forms of elder abuse. These resources include video examples of common client interactions, focusing on recognizing both emotional and financial abuse and coaching users through interactive scenarios in which they can learn to respond to typical abuse scenarios.[258]

IV.

THE WAY FORWARD

The time has come to change the conversation around older investors. This strategy aims to do that, with the goal of fostering a stronger and more secure financial future for all older Ontarians. We are focused on addressing the changing financial environment faced by older investors in a more comprehensive way, by providing practical guidance, resources and tools for registered firms and their representatives, older investors and their families and friends, as well as regulators. Our strategy recognizes that there is no "one size fits all" solution to the challenges and opportunities that investors may face as they age; as illustrated by the research described in section II of this report, older individuals' circumstances are becoming more diverse as time passes.

We have aimed to develop a strategy that is inclusive, social, and responsive. These three guiding principles will shape our policy-making, operations, research, education and outreach initiatives with respect to older Ontarians. We also believe that they can be useful for registered firms and their representatives who help older Ontarians meet their financial goals. We explain each of these principles in depth below.

- **Inclusive:** Being inclusive means taking into account, among other things, differences in mobility, vision, hearing, and literacy, including financial literacy. It also means accounting for diversity: for example, more Ontarians aged 65 and older are visible minorities than ever before.[259] An inclusive approach means combating ageism and making clear that the contributions of older Ontarians are important to our economy and society, and that seniors' goals and priorities are important to our financial services sector. An inclusive approach helps Ontarians maintain an independent lifestyle that allows them to make choices and engage with others on their own terms.
- **Social:** Financial and other important decisions are rarely made in isolation. People are social: they consider the effects of their actions on others and seek others' advice before making a decision. For example, a parent may delay retirement to help adult children buy a home or pay off student debt. Investors of all ages rely on registered firms and their representatives, as well as trusted friends and family members, as sources of information and advice before making financial decisions.[260] Family and friends can play important roles as caregivers later in life, and a representative's relationship with a client may evolve as the client ages. Representatives' relationships with their clients come with significant responsibility and accountability, which they must keep in mind when serving their clients as they age. These social connections and responsibilities point to new pathways for designing policy and delivering relevant information to older Ontarians.
- **Responsive:** Being responsive means delivering timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, in a way that reflects and responds to changes in investors' personal circumstances. It also

"We think that it's important for both firms and advisors to have the tools to be able to recognize elder abuse and have a safe harbour as a way [to act when] something is going on, to hold the funds for a period of time and work through the issues." Maureen Jensen, OSC Chair and CEO, at OSC Dialogue 2017

means responding to demographic and other changes to the population of older Ontarians, as well as economic and other trends that shape the environment in which older Ontarians make financial decisions. As we have outlined, changes in the composition of older individuals' income sources and balance sheets, shaped by broader trends such as low interest rates, can have profound effects on these individuals' financial decisions. Social trends, such as the increasing percentage of older individuals with smartphones and internet access, also have significant implications in developing new ways of delivering relevant information and advice to older Ontarians.[261]

The discussion below describes some of the new initiatives the OSC is pursuing in relation to older individuals and our plans to continue building on existing initiatives.

A. Policy

In developing our policy focus with respect to older Ontarians, we benefitted significantly from the input received from a number of sources, including from SEAC, as well as the insights shared at the Seniors Roundtable. We also gathered extensive feedback and input from retail investors and other stakeholders and community groups through our OSC in the Community program and other outreach and engagement initiatives. Further, in 2017, we conducted 30 compliance reviews of registered firms, focusing on how they conduct business with senior investors and the challenges and business practices related to their delivery of services to these clients.[262] Finally, we conducted extensive research and consulted with our regulatory counterparts both here in Canada and abroad.

SEAC members and other stakeholders have expressed concern regarding older investors' susceptibility to financial exploitation, fraud, and cognitive impairment. Older Ontarians represent a large percentage of the investing population, and there is apprehension around the relationship between aging, the capacity to make financial decisions, and the potential for financial exploitation, particularly as some older individuals increase their reliance on caregivers, family, and friends. Increased reliance on others can, in some situations, expose an older individual to undue influence from someone who may otherwise be presumed to be acting in the best interest of the older person; the complicated nature of these relationships can make it difficult for registered firms and their representatives to definitively identify situations in which a client may be subject to financial exploitation or experiencing cognitive impairment.

We also recognize that registered firms and their representatives may not feel adequately equipped to address issues that might arise as their clients age, and may find that existing legal obligations (such as their obligations to execute client instructions) or privacy laws could constrain them from taking action in instances where they suspect that financial exploitation or cognitive decline may be affecting their client's judgment. For example, while a power of attorney can be a useful precautionary tool for addressing possible issues that may arise as a client

ages, it does not address situations where a firm's representative has doubts about the intentions of the individual exercising that power of attorney. Firm representatives are not expected to be experts in the detection of financial exploitation or fraud. However, they are well-positioned to be able to spot the red flags and help their client protect against financial harm.

Under this strategy, we will be looking at opportunities to provide a framework to enable registered firms and their representatives to respond to situations where they suspect that financial exploitation or cognitive impairment may be affecting their client's judgment. We have also identified further opportunities for policy responses to other issues that may contribute to challenges that many older investors may face in the capital markets. This includes addressing confusing and misleading business titles, designations, and marketing practices, as well as strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors. We have also identified a number of opportunities to work with other regulators, government, and other organizations toward a common goal of designing policies and programs that serve the interests of older individuals.

A framework for addressing financial exploitation and cognitive impairment

We believe that any framework to address matters of financial exploitation and cognitive impairment must be flexible and allow registered firms and their representatives to exercise judgment based on the particular situation while keeping appropriate investor protection measures in place.

In contemplation of such a framework, we have reviewed both NASAA's model act and FINRA's Rule 2165, as discussed in section III, and consulted with FINRA staff on FINRA's new rule regarding temporary holds on disbursements and the amendments that require FINRA members to make reasonable efforts to obtain the name of a trusted contact person for non-institutional clients. While we believe there are elements of both these rules that we can leverage, we also recognize that there are a number of differences in the Canadian landscape that may pose challenges and require further exploration.

Based on this review and that of other regulatory frameworks, consultation with SEAC, and ongoing discussions and collaboration with our colleagues at the FCNB and other stakeholders, we believe that the key principles to a regulatory framework to empower registered firms and their representatives to address situations of suspected financial exploitation or cognitive impairment of older individuals should include:

- **Temporary hold on disbursements of funds or securities:** A mechanism that permits firms to place a temporary hold on disbursements from a client's account when there is a reasonable belief that financial exploitation has occurred, is occurring or will be attempted, or if a client's judgement may be impaired. While the temporary hold would not prevent the sale of securities in the account, it would prevent the disbursement of the proceeds of the sale. We envision that this will include four key parts:
  - a definition of the individuals who would be covered and a definition for "financial exploitation" and "cognitive impairment;"
  - the level of authorization required for, and the scope of, the temporary holds, including length of time and options for extensions;
  - the supervisory obligations of the firm; and
  - the recordkeeping obligations of the firm.

  The question of whether a firm is to report the temporary hold or the circumstances of their client to a law enforcement agency or the Ontario Public Guardian and Trustee remains an area for continued discussion in light of the absence of relevant guidance with respect to potentially applicable exceptions to privacy obligations under the *Personal Information Protection and Electronic Documents Act* (*PIPEDA*).[263]
- **Safe harbours:** Firms will require a certain degree of latitude when placing temporary holds on disbursements or making disclosures to a trusted contact person or a third party organization

to act responsively in service to their clients. We are considering providing those firms that place a hold on a disbursement or disclose personal information to a trusted contact or third party organization without consent with a safe harbour that will allow them to act with discretion and without fear of moving offside of existing regulatory rules that may constrain their ability to act to protect their clients.

- **Trusted contact persons:** A requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information of a trusted contact person for both new and existing non-institutional clients. This could be considered an "emergency contact" that a registered firm or its representatives may reach out to should they have concerns about a client's behaviour or transactions in a client's account. It will be important to outline the trusted contact person's role, qualifications (if any), whether a trusted contact person should be notified of their role and responsibilities, and the frequency with which a trusted contact person designation (or lack thereof) should be discussed with clients. It is not our intention that a trusted contact person replaces or assumes the role of a client-designated power of attorney.
- **Guidance on suggested practices for engaging with older clients:** We will publish a staff notice setting forth suggested practices for registered firms and their representatives to follow when engaging with older clients. This guidance will discuss issues that may emerge or become more relevant as an investor ages, and help firm representatives better communicate with clients and support them in their decision-making as they age. This will cover areas such as collecting sufficient information about a client, establishing emergency contacts, supervising a client's account, and ensuring the suitability of products, as well as communication practices such as discussing sensitive issues with clients and delivering information that is accessible and appropriate.

We will continue to consider the appropriate mechanisms to implement the proposals outlined above.

We note that, depending on a firm's size, it may be appropriate for it to consider establishing a centralized response unit that can escalate potential situations of financial exploitation and provide direction for its representatives to respond to common questions related to older clients. Such a unit could also manage the design and implementation of training programs to help representatives appropriately respond to issues that can arise in relationships with older clients.

The roles of registered firms and their representatives are changing, and we will provide them with tools and resources to respond to the needs of their clients. Clients expect that firm representatives will put their client's interests first, rather than focusing on selling them particular investment products. They also expect a firm representative to help them plan for the future and achieve their financial goals. Firm representatives may be able to add significant value for their clients by taking the perspective of a financial "coach." A holistic understanding of investors as they age should help firm representatives fulfill this role. We want to support this transition, not only through a regulatory framework as contemplated above, but also, as described in greater depth below, through education and outreach targeted at both older investors and the registered firms and representatives with whom they work.

Addressing confusing and misleading titles, designations and marketing practices

Many stakeholders have raised concerns with registered firms and their representatives' use of misleading titles, designations and marketing practices. For example, in a 2017 statement, CARP's (formerly the Canadian Association of Retired Persons) Chief Operating Officer and Vice-President of Advocacy, Wanda Morris, stated that "too many investors have placed their trust in individuals with credible sounding titles, such as Vice-President, Seniors Specialist, or Wealth Manager, without

realizing that such titles are essentially meaningless; they do not promise a specific level of education or experience, or a commitment to a standard of ethics."[264]

Limited regulation of titles and designations over time has led to the spread of a multitude of confusing and potentially misleading titles. The use of potentially misleading or confusing titles by firm representatives, including titles that indicate expertise in issues related to older individuals, such as senior specialist or retirement planning specialist has become another area of focus for the OSC and other regulators.[265] We acknowledge that the issue of misleading or confusing titles and designations is an issue that affects all investors, however we are especially concerned about the impact on older investors as they may be more vulnerable to business titles that imply specialty skills.

OSC Staff Notice 31-715, *Mystery Shopping for Investment Advice: Insights into Advisory Practices and the Investor Experience in Ontario*, a joint research project by the OSC, IIROC and the MFDA that involved mystery shopping firms in Ontario across four platforms, found that shoppers encountered 48 different business titles in the 88 shops reviewed.[266] The report comments that the issue is further complicated by the use of certain qualifying adjectives in business titles as we noted above with terms such as "senior specialist" or "vice president."[267] Registered firms and their representatives will often use these titles as part of their marketing strategy to attract certain clients, leading those clients to believe that a particular firm or representative has additional qualifications or expertise over others without such titles. Firms that permit the use of business titles are expected to have policies and procedures in place regarding the use of those titles and should be supervising their use to ensure that the title is not misleading or confusing and is supported with the appropriate qualifications or certifications. We also encourage investors to go beyond the title on a firm representative's business card and ask questions about what qualifications or certifications they have that support their title.

In Consultation Paper 33-404, *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives*, the CSA is working to improve the alignment of interests between advisors and investors through regulatory reform to improve the advisor/client relationship. In particular, the CSA sought comments on a proposal to standardize the titles used by client-facing representatives in an effort to minimize confusion for all groups of investors, including older investors.[268] The CSA recognizes that "significantly more care and diligence is required for at-risk or vulnerable clients, such as inexperienced investors, seniors, [and] discretionary clients."[269] We believe that a renewed focus on the issue of titles and designations for all client-facing business titles will provide clarity around the use of titles and strengthen public confidence in registered firms and their representatives.[270]

We note that the need for standardized titles is also supported by the Ontario Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives. As well, in the U.S., SEC Chairman Jay Clayton recently emphasized the importance of addressing misleading titles used by registered firms and their representatives when advising investors, stating that the SEC "[has] to get to the substance of what the labels mean."[271]

Strengthening OBSI

Strengthening OBSI and providing a robust oversight framework is another area of focus for the OSC and our colleagues in the CSA. We believe that strengthening OBSI's ability to secure redress for investors is important for investor protection in Canada and vital to the integrity of the country's capital markets, and we are especially concerned about the impact on older investors of not being able to secure redress. As we previously discussed, nearly half of the individuals who submitted complaints to OBSI in 2016 regarding unfair practices relating to investments were 60 years of age or older.[272] Older investors who suffer financial losses generally have less time or opportunities to rebuild their wealth, and an increasing number of older Canadians are relying on their investments to support their income needs in retirement.

As a first step toward strengthening OBSI, in December 2017 the CSA, IIROC, and MFDA

jointly issued CSA Staff Notice 31-351, *Complying with requirements regarding the Ombudsman for Banking Services and Investments*, which established that CSA members view a registered firm's refusal to compensate a client consistent with OBSI recommendations, or repeatedly settling with clients for lower amounts than recommended by OBSI, as possible risk-based indications of problems with the registered firm's complaint-handling practices, and set out potential regulatory responses that could be employed to address these issues. The CSA is examining options to strengthen OBSI's ability to secure redress for investors, and as that work continues we will explore how the dispute resolution process can allow the issues of older investors to be addressed more appropriately.

Breaking down silos

Stakeholders have identified several significant trends and issues affecting Ontario seniors, as well as possible policy responses. Many of the recommendations made in the Seniors Roundtable – including its recommendations that we address confusing and misleading titles and designations and that registered firm's representatives receive training and education so that they are better able to meet seniors' needs and are better placed to spot and act on signs of diminished capacity or financial exploitation[273] – are reflected in this strategy. Among its findings, the Seniors Roundtable highlighted the importance of breaking down silos between the various regulators and organizations with mandates that affect the interests of seniors, so that it becomes possible to "develop comprehensive solutions that prevent seniors from 'falling through the cracks' that exist between mandates of the organizations that are designed to serve them."[274] We recognize that many significant issues that affect the financial lives of seniors fall outside of our jurisdiction or engage the mandates of multiple regulators and other organizations. We wish to work with other regulators and agencies and reach across jurisdictional boundaries to achieve our common goal of designing policies and programs that serve the interests of older individuals. Below, we have identified a number of policy areas where such cooperation could produce significant results.

"Know your client" obligations

The "know your client" (KYC) obligations, along with the obligations to "know your product" and of suitability, are among the most fundamental obligations owed to clients by registered firms and their representatives, and are cornerstones of the investor protection regime in Canada.[275] We expect registrants to comply not only with the letter of the securities law, but also with the spirit of the requirements.[276] Section 13.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), among other things, requires registrants (including dealer members of IIROC and the MFDA) to take reasonable steps to establish the identity of a client and ensure that they have sufficient information to meet their suitability obligation. There are also supplemental KYC requirements that exist in the member rules of self-regulatory organizations,[277] and the companion policy to NI 31-103 provides further clarification on what is expected of registrants in order to comply with KYC obligations, including "[taking] reasonable steps to obtain and periodically update information about their clients."[278]

We must recognize the significant role played by two self-regulatory organizations, IIROC and the MFDA, in developing and elaborating upon regulatory frameworks that are key to investor protection, including the KYC obligations imposed on dealers and advisers. Any changes to these obligations intended to enhance protections afforded to senior investors would need to be developed in coordination with these self-regulatory organizations. We note, however, that KYC obligations as they currently exist are open-ended and flexible, and already provide a critical foundation for understanding and serving the interests of investors at any age. Registered firms and their representatives are obligated to consider their clients' ages and life stages as part of the client-adviser relationship; in other words, "knowing your client" means knowing your client as they age, ensuring that products and advice remain suitable for clients as their financial needs, objectives, risk tolerances, and life circumstances change. It also means that, if a client's behaviour suddenly

changes (for example, if a client requests changes to their investment strategy that do not seem to be supported by changes in their circumstances, or if they begin requesting disbursements of unusually large sums of money), a registered firm or its representatives should take steps to understand the reasons for this change in behaviour.

In Staff Notice 31-336, the CSA reminded registered firms and their representatives of the requirement to obtain current KYC information about a client's investment needs and objectives whenever a suitability determination is required. However, the CSA also noted that they expect registrants to be proactive in keeping KYC information current. The KYC process is intended to be flexible and provides the critical foundation for understanding and serving the interests of a client at any age. Without adequate and timely KYC information, registered firms and their representatives cannot meet their suitability obligation to clients.

Further work is being conducted on the KYC obligation as part of the CSA's policy project to enhance the obligations that registered firms and their representatives have toward their clients. In light of the flexible nature of KYC process, registered firms and their representatives should consider whether it is prudent to continue the common practice of using "one-size-fits-all" KYC forms for all of their clients, or whether it would be appropriate to amend their practices to collect information specific to clients that have reached particular milestones. For example, when an investor reaches age 71, their tax-deferred retirement savings must begin to flow into their taxable income; it may be appropriate to collect different KYC information from clients who have reached or are close to reaching this milestone.

Powers of attorney

We recognize that registered firms and their representatives often rely on powers of attorney as tools to help address changes in circumstances that occur as their clients age,[279] but rules relating to powers of attorney are designed by provincial governments rather than provincial securities regulators. Research has suggested that there is significant potential for powers of attorney to be abused, and that financial exploitation is often committed by a person holding a power of attorney. A 2017 report by the Law Commission of Ontario (LCO) highlighted several characteristics of the current power of attorney system that may require improvement, including the fact that "there are no proactive monitoring mechanisms" in respect of powers of attorney, such that "often, by the time abuse comes to light, it has been ongoing for some time," and, "where the abuse is financial, it is very difficult to recover any funds: the damage is done."[280] The LCO also notes that, under the current regime, "it may be difficult to determine whether a [power of attorney] exists, whether it is valid, and whether it should be in operation," a factor that poses significant challenges for registered firms and their representatives.[281] We stand ready to engage with key stakeholders to help develop frameworks for addressing these challenges.

Privacy laws and disclosures of client information

We will also need to consider the implications of federal privacy laws on any form of disclosure of a client's personal information made by a registered firm or one of its representatives, be it to a trusted contact person or a third-party organization such as the Public Guardian and Trustee. Currently, *PIPEDA* prohibits the disclosure of an individual's personal information without their consent, subject to certain exceptions.[282] In 2015, Parliament added new exceptions to this general rule to allow for reporting of suspected fraud and financial exploitation. The relevant amended language permits disclosure by an "organization" to "another organization" to detect, suppress or prevent fraud, as well as disclosure by that organization to "a government institution, a part of a government institution or the individual's next of kin" in cases of suspected financial exploitation, subject in each case to certain additional requirements.[283] Unfortunately, neither *PIPEDA* nor its regulations define the terms "government institution," "next of kin" or "authorized representative."[284] In 2017, the Office of the Privacy Commissioner of Canada issued interpretative guidance regarding the new exception relating to fraud, but this guidance

did not include information regarding the new exception relating to financial exploitation.[285] As such, registered firms and their representatives have reason to question whether the current exceptions are sufficient to provide comfort that making a disclosure of personal information about a client without the client's consent, either to a law enforcement agency or the Public Guardian and Trustee, would not be offside of privacy legislation. We would be willing to take part in conversations about providing additional guidance regarding the application of these exceptions.

We note that, unlike the nationally coordinated adult protective services agencies that exist in the U.S., which can respond to issues of financial exploitation and cognitive impairment readily and which play a significant role in ensuring the effectiveness of FINRA Rule 2165, Canada has a patchwork of provincial public guardians with varying mandates and resources to respond when there are concerns raised by registered firms or their representatives regarding their clients. The recent report by FAIR Canada and the Canadian Centre for Elder Law notes that "stakeholders consistently, and without exception, identified the lack of an adult protective agency as the key factor handicapping Canada's efforts to protect vulnerable investors."[286] The LCO has noted that, while Ontario's Public Guardian and Trustee "performs a range of important functions in the legal capacity and decision-making system," cases of suspected exploitation must meet a high legal threshold before the Public Guardian and Trustee can become involved and, as a result, frontline workers dealing with senior clients may have "no meaningful way" to address concerns about abuse that do not meet [this] threshold."[287] We look forward to engaging in discussions with registered firms and government entities regarding ways in which we can cooperate to address these concerns.

Probate fees and jointly-owned accounts

Through our continued engagement with stakeholders, we have also heard a number of concerns around registered firms' and their representatives' practice of advising consumers, as part of an estate-planning process, to transfer some or all of their assets into joint accounts with family members to minimize or avoid probate fees. We recognize that the nature of this advice may be well-intentioned, but note that joint ownership arrangements require clients to forfeit exclusive control over their accounts, which can, in turn, increase the risk of experiencing financial exploitation or fraud committed by family members or caregivers provided with access to jointly-held assets. Stakeholders have indicated that the current structure of probate fees could be examined as a way of addressing this issue. While the current probate fee structure is a cross-jurisdictional issue that cannot be managed by the OSC alone, we are prepared to share our knowledge and experience with other stakeholders who have more direct influence on this issue.

B. Operations

It is important that we respond to the needs of older Ontarians in our own work and explore opportunities to enhance our existing processes and operations to reflect the learnings and best practices discussed in this strategy.

OSC staff currently interacts with older Ontarians through a number of operational channels, most directly through the Investor Office's outreach programs and resources (including OSC in the Community, teletownhalls and through platforms like GetSmarterAboutMoney.ca and Re: Investing) and the Inquiries and Contact Centre, which allows people to reach out to OSC staff members with questions about investing and working with a registered firm, as well as report their complaints about companies, investment products, or possible investment frauds or scams.

Enforcement staff also works with older investors, interviewing and gathering evidence from investors who have been the victims of investment fraud. As well, older clients of various registered firms and their representatives may be interviewed by OSC staff when completing a compliance review. The OSC conducts compliance reviews of regulated advisers, exempt market dealers, scholarship plan dealers, and investment fund managers to monitor compliance with Ontario securities law.

We recognize that operational changes must be done with sensitivity toward older Ontarians and implemented in concert with the ways they are already being serviced by other agencies in the province. For example, we contemplated establishing a dedicated hotline for older Ontarians, reflecting the practices put in place in the U.S. by the FINRA. However, in consultation with SEAC and other stakeholder groups, consensus emerged around the potential for consumer confusion created by having multiple, competing services in the marketplace. We have determined that enhancing our existing services, rather than implementing additional ones, would be more effective in responding to the needs of older individuals wishing to contact the OSC.

Through the learnings, best practices, and considerations that have emerged throughout the development of this strategy, we will continually improve our own processes through various enhancements to our operations, including:

- Training and education: We will provide training and education for staff members who may be required to interact with older individuals, such as when receiving inquiries and complaints, during enforcement investigations, or as part of conducting compliance reviews. This will help our staff build their capacity for effectively communicating with older individuals, recognizing potential warning signs of issues related to financial exploitation and diminished capacity, and escalating potential issues to the appropriate agencies.
- Dedicated staff for older investor inquiries: We will enhance our Inquiries and Contact Centre's ability to identify older individuals and respond to their needs in an effective and appropriate manner. In addition to exploring the previously discussed referral system with Elder Abuse Ontario's Senior Safety Line, we will also examine methods of prompting older individuals to self-identify as a "senior" early in the process, so we can immediately direct them to members of our Inquiries and Contact Centre staff who are trained to understand and address the unique needs that older individuals may have. These dedicated staff members will be an important source of insight for other areas of the OSC and will help execute strategies for ensuring that we work with older Ontarians in a way that reflects best practices and responds effectively to their questions and concerns. Allowing callers to identify themselves as a senior will also aid enforcement staff in triaging cases and allocating resources appropriately.
- Applying a new lens to our work: We will take steps to encourage all branches of the OSC to approach their respective projects and initiatives with consideration to the implications that their work will have for older investors. For example, we will amend the covering memoranda for materials provided to OSC commissioners to promote consideration of the impacts that various proposals may have on different demographics of investors, including older investors. In addition, we will ensure that engagement with fintech companies through our LaunchPad team encourages and facilitates conversations about how digital financial services and products have contemplated the needs and risks related to older clients.
- Resources and materials for staff: We will support our staff in working effectively with older investors and understanding the unique needs and issues they face by developing new resources, tools and other materials that can assist staff in effectively communicating with older individuals, as well as in considering the implications that various projects may hold for older investors generally. These materials may include discussion guides, checklists, and other tools to facilitate best practices when engaging older individuals. Additionally, we expect that our partnerships with community organizations focused on older Ontarians will be helpful to our operational staff in responding to investor inquiries and working with older investors more generally. To ensure that all staff can take advantage of these opportunities, we will establish a central directory of these organizations that can be accessed by our staff.

C. Research

Research broadens and deepens our understanding of investor behaviour. It also allows us to understand and respond to emerging trends in the markets and the ways investors are reacting to them. Two recent Investor Office studies published in 2017 – our behavioural insights report, which looked at the impact cognitive biases can have on financial decision-making and associated behaviours, and our *Investing As We Age* study, which examined the financial knowledge, attitudes and behaviours that Ontarians aged 45 and older have toward retirement planning – have helped shape our understanding of older investors and have influenced the development of this strategy. Continued research will be vital to ensuring our policy-making, education and outreach efforts remain responsive to the circumstances and needs of older Ontarians.

Our existing research has highlighted the importance of planning for the future, but behavioural insights illuminate the reality that investors often behave in ways that are detrimental to their long-term financial well-being, in many cases, despite their best intentions. As previously discussed, investors can often be overconfident in their financial decision-making and may ignore information that runs counter to their preconceptions. This can be exacerbated with age: older investors may be more likely to focus on positive information and filter out negative information. The Investor Office is working with the Behavioural Insights Team – one of the world's leading organizations in the area of public sector applications of behavioural insights – in order to better understand the specific behavioural barriers that pre-retired Ontarians face when thinking about, devising and following through on a retirement plan; we will publish the results of this research by mid-2018. Our objective is to provide stakeholders with a set of behaviourally-informed design principles that they should keep in mind when designing programs, products, and services to respond to the needs of older Ontarians.

Over the longer term, research will allow us to fine-tune our policy-making, education and outreach activities to respond to the needs of older Ontarians. Interviews, focus groups, and other qualitative research techniques, as well as quantitative testing, will provide insight into the likely effects of proposed new policy interventions on older Ontarians, and will examine the effectiveness and resonance of new educational resources with older Ontarians and other target audiences. This type of testing is part of evidence-based policy and program development, and we look forward to building on our research infrastructure and partnerships to enhance our capacity for this type of activity.

A better understanding of the possible effects of emerging trends on older Canadians, such as the growth of the digital advice channel and other fintech innovations, will be important for all stakeholders. Canadians' increasing comfort with technology offers both opportunities and risks that research can help us better understand. Technology can help users overcome mobility and other barriers by allowing them to manage their finances without having to go to a bank branch, and "big data" collected and analyzed by new fintech tools can help users understand their spending and investing habits and plan for the future.

But, to the extent that this growth comes at the expense of more traditional channels for delivering financial services, it may negatively affect relationships and ways of doing business that many older investors may feel comfortable with and want to continue. Fintech tools may also encounter challenges in monitoring and addressing the effects that cognitive changes may have on the way we understand and make financial decisions, particularly when these tools are designed for "do-it-yourself" investors (who prefer to make investment and other financial decisions on their own without help from a registered firm). These trends and their possible implications for older investors are important issues for the financial sector and other stakeholders to examine.

Engagement with external organizations will remain key to identifying research priorities. For example, the LaunchPad team helps innovative fintech companies work within regulated markets

to serve the interests of investors of all ages; in turn, building relationships with fintech companies helps us enhance and build on our understanding of the opportunities new technologies are creating in the financial sector. We look forward to engaging with fintech firms to find ways to make fintech accessible and responsive to the needs of older Ontarians. In addition, SEAC continues to help us monitor emerging trends relating to older investors and provides an important perspective on our research direction.

D. Education and outreach

Financial education and investor outreach form a significant part of our existing investor-focused activities, and under this strategy we plan to develop even more tools, resources, and other materials to help older Ontarians, as well as their networks of family and friends, plan for the future. These materials will raise awareness of the needs that older individuals have later in life – in both best- and worst-case scenarios – and offer guidance on making plans to address these needs.

In communicating this message, we will emphasize that financial planning is not an abstract exercise that deals solely with dollars and cents or risk and return. Rather, it is about life priorities, such as home, health, work, leisure, and family, and there is a need to develop a step-by-step process for achieving these priorities.

We will talk about red flags not only for financial fraud, but also financial exploitation and the natural challenges associated with aging. We will start a conversation about tools that can help address these changes and risks, such as trusted contacts and powers of attorney, and we will also direct older Ontarians and their families, caregivers, and friends to external organizations that can provide guidance on issues relevant to them.

We plan to deliver these messages through a variety of media, including written and online materials as well as live presentations. Social media will be another vital channel for broadcasting key messages relating to retirement planning, signs of financial exploitation, and other relevant issues. Through the delivery formats and channels we will explore, we will recognize that, as discussed above, financial planning and decisions do not occur in isolation; they take into account that friends, family, and registered firms often are part of the conversation surrounding these decisions.

Providing education to registered firms and the representatives who work with older investors will also make up an important part of our education and outreach plan. As previously noted, we will issue guidance for registered firms and their representatives on engaging with older clients appropriately, and we intend to build on that further through the provision of resources and training materials to help them communicate effectively and recognize many of the common warning signs that may indicate a client may be experiencing impaired judgement with regard to financial decision-making or is the subject of undue influence from a third party.

Our guidance will include best practices that firms can undertake in forming and delivering communications messages for older audiences, and it's important we lead by example by employing these practices in our own materials. Our suite of tools and resources will strive to be inclusive, accessible and useful for older Ontarians and reflect best practices developed by the Government of Canada[288] and other leading practitioners, nationally and abroad. The ways in which we communicate will also strive to be inclusive and accessible across multiple delivery vehicles, recognizing that some individuals may prefer receiving written information or communicating electronically, while others prefer engaging in a live conversation.

Our planned education and outreach activities include:

- **White label materials and other resources for firms:** We will provide firms with access to a series of white label resources, such as forms, discussion guides and educational materials, that they can quickly brand and deploy to their representatives and clients as they see fit, allowing them to mitigate the burden of developing their own materials independently. These white label resources will reflect our own learnings and

best practices when it comes to communicating with older audiences, helping firms align their communications with the examples we set.

- Resource hub on GetSmarterAboutMoney.ca: We will build on our existing online resources to create a "resource hub" that aggregates resources in a central online location, organized and curated for older Ontarians and their friends, family, and caregivers, as well as for industry organizations and regulators. Each of these groups will be able to easily access resources relevant to them. This initiative will provide an opportunity for the OSC to leverage its partnerships with other agencies and organizations that have developed tools and materials aimed at improving outcomes for older investors – these partners will be encouraged to make their own resources available through the hub, reducing the end-user burden of having to find and seek out information from a variety of different sources available at different websites.
- Discussion guides: We will help older investors shape their conversations with registered firms and their representatives by developing a discussion guide outlining key questions to ask, as well as guidance for interpreting how a firm representative responds to these questions. We hope these guides will help older Ontarians feel more prepared when they talk to a firm representative and more confident understanding and acting on the information and choices they are given.
- Resources for families, friends and caregivers: We will develop materials aimed at helping families, friends, and caregivers of older Ontarians engage in a conversation about aging and planning for the future, spotting signs of financial exploitation and understanding the roles and responsibilities of a trusted contact in an investment relationship. These resources will also point to organizations focused on older Ontarians that can provide additional help and guidance. We will look to include videos and other forms of multimedia content as additional ways in which we deliver information and provide alternative methods for providing resources to those who benefit from visual or audio cues.
- Education and outreach strategy for new Canadians: We will implement an education and outreach strategy for new Canadians that includes a focus on older investors, recognizing the diverse and varied knowledge levels, language proficiency, and confidence as new consumers in the Canadian financial marketplace.

Partnerships with organizations focused on the needs of older individuals will be important as we develop these resources. In addition, we will leverage these partnerships to help us publicize and distribute these resources, building on our existing relationships with organizations across the province with an interest in addressing the issues of older individuals in order to distribute information and resources to older Ontarians and their families, friends and caregivers. For example, we will explore opportunities to build a referral system between our Inquiries and Contact Centre and Elder Abuse Ontario's Seniors Safety Line, to help respond to calls made to the Seniors Safety Line related to financial exploitation or fraud, gather the appropriate information and bridge callers to the OSC directly. We will also work with Ontario's Public Guardian and Trustee to identify possible opportunities for collaboration and joint efforts in reporting and responding to issues related to financial exploitation and diminished capacity.

As previously discussed, investor education and outreach have formed a significant part of our activities to date. We will expand many of our existing programs and resources to reflect the research, best practices, and learnings around the intersection of age and money in order to better respond to the needs of older investors through:

- Community outreach: Over the past several years, OSC staff members from the Investor Office and Enforcement branch have connected with hundreds of groups, including many seniors organizations, through the OSC in the Community program, hosting live presentations on how investors can protect their money from financial frauds, recognize common red flags of fraud and work with a firm representative. Recently, the Investor Office expanded its community outreach through

its teletownhall program, which allows OSC staff to connect with thousands of Ontario investors at once in a live townhall carried out by phone. We will continue to use these programs to connect with older Ontarians on issues relevant to them, including protecting themselves against financial exploitation and fraud, and look to expand the channels for delivery through digital tools such as webinars and live-streamed sessions in which viewers can ask questions and receive answers from OSC staff in real-time over the internet.

- **Online education and outreach:** The OSC's award-winning GetSmarterAboutMoney.ca website publishes materials and resources to help investors make better decisions about their money.[289] The Investor Office also engages directly with investors through social media, its *Investor News* newsletter and *Re: Investing*, a digital contact centre that allows OSC staff to respond directly to questions from individuals on investing, financial planning and fraud. Through these channels, we will publish new content relevant to older Ontarians and leverage digital and social platforms to communicate as appropriate.

Across all of our education and outreach efforts, both those currently operating and those planned under this strategy, it is important that we leverage the appropriate communications opportunities to continue promoting a broader awareness of the OSC as an organization that investors can contact for questions and concerns related to Ontario's capital markets and financial service providers. We will continue to direct investors to resources (including GetSmarterAboutMoney.ca and the OSC's Inquiries and Contact Centre) designed to address their concerns and answer their questions and will continually improve our responsiveness to the needs of older investors through enhancements to our own operations.

V.

CONCLUSION

The financial lives of older Canadians are more complex relative to previous generations. As a regulator, we believe that we have a role to play in ensuring that the needs of older Ontarians are appropriately met by the province's securities industry. Our vision is a stronger and more secure financial future for all Ontario seniors, and we believe that we will achieve this through an inclusive, social and responsive strategy.

We recognize that seniors are not a homogenous group, and we have taken this into account when developing appropriate policy responses and education and outreach initiatives. We also know that financial decisions are rarely made in isolation, and have taken this into account in designing policy and programs that help seniors meaningfully participate in conversations about aging and retirement planning.

We strive to be responsive through the delivery of timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, which means that we must pay close attention to emerging trends and changes in circumstances affecting the financial lives of older individuals.

We know that we are not alone in our work to better service the needs of older Ontarians, and as such, we look forward to continuing the conversation with our partners and stakeholders, as well as other regulators and government agencies, the financial sector, community organizations and Ontarians themselves as we further develop and implement the initiatives described in this strategy.

As we continue to work with our partners and conduct research in this space, we recognize that new issues, and new initiatives to address them, may emerge. Responding appropriately to the full scope of issues affecting older investors will require us to remain vigilant and flexible in our approach. We will provide an update on our progress in implementing this strategy in one year, and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation.

APPENDIX A: Seniors Expert Advisory Committee member biographies

We recognize the importance of consulting seniors' experts who can provide expert opinions and input to support our ongoing efforts to better understand the unique needs of older investors. The SEAC advises OSC staff on securities-related policy and operational developments that impact older investors and provides input on the OSC's related education and outreach activities. In developing this strategy, we drew heavily on the expertise and insights provided by the members of the SEAC, and we are grateful for their contributions.

Current members

Ellen Bessner

Ellen Bessner is a litigator at Babin Bessner Spry LLP with over 25 years of experience working with investment and insurance industry participants. She is also the author of the best-selling book *Advisor at Risk: A Roadmap to Protecting Your Business*.

Jan Dymond

Jan Dymond is the former Chair of the Vulnerable Investors Task Force at the Investment Funds Institute of Canada (IFIC) and former Vice President, Public Affairs at IFIC, possessing over 35 years of communication and government-related experience.

Arthur Fish

Arthur Fish is a lawyer at Borden Ladner Gervais LLP with over 25 years of experience working with elderly clients in both the public and private sectors. He previously worked with the Mental Competency Clinic at the Baycrest Centre for Geriatric Care, served as Chair of the Ontario Mental Health Foundation, and was a member of the Consent and Capacity Board.

Alan Goldhar

Alan Goldhar has spent almost 20 years as the Chief Investment Officer for Ontario's Office of the Public Guardian and Trustee, managing $1.5 billion in investments for more than 13,000 clients, most of whom are seniors. In 2001, he was awarded with the honour of Fellow of the Financial Planning Standards Council. Alan is also a former member of the OSC's Investor Advisory Panel.

Dr. Amanda Grenier

Dr. Amanda Grenier is a Professor at McMaster University's Department of Health, Aging and Society and Director of the Gilbrea Centre for Studies in Aging. She has collaborated with seniors' councils and service organizations dedicated to improving the lives of older people, including the Hamilton Age-Friendly City Project, as well as the Notre-Dame-de-Grâce Senior Citizen's Council and Black Council on Aging in Montréal.

Marta C. Hajek

Marta C. Hajek is the Director of Operations with Elder Abuse Ontario (EAO), an organization mandated to oversee the implementation of the Ontario Strategy to Combat Elder Abuse. Prior to joining EAO, Marta coordinated the rollout of the 211 Information and Referral Service in Ontario and served as the Executive Director of the Ontario Gerontology Association.

Patricia Kloepfer

Patricia Kloepfer is a Chartered Professional Accountant with over 25 years of experience in financial services and insurance, who provides independent consulting service to members of the financial services industry. In her former role as Vice-President of Compliance and Chief Compliance Officer for Investors Group's mutual funds and securities dealers, she developed expertise in the challenges facing seniors and vulnerable clients, and potential strategies that firms may implement to better meet the needs of such clients.

Wanda Morris

Wanda Morris is the Chief Operating Officer and Vice-President of Advocacy for CARP. She oversees CARP's advocacy priorities, which include retirement income security and investor protection. Wanda has been a Chartered Professional Accountant for three decades, including seven years with PricewaterhouseCoopers in Vancouver and Melbourne, Australia.

Lindsay Rogan

Lindsay Rogan represents the Portfolio Management Association of Canada (PMAC), where she serves on the PMAC Practices and Standards Committee. Lindsay also serves as the Managing Director and Chief Compliance Officer of Rogan Investment Management Limited, where she works with senior clients and their families, often dealing with very complicated family trust, estate and tax issues.

Bonnie Rose

As Chief Executive Officer and Registrar for the Retirement Homes Regulatory Authority, Bonnie Rose leads the organization in administering the Retirement Homes Act for the protection, safety and wellbeing of approximately 55,000 seniors living in over 700 Ontario retirement homes.

Greg Shaw

Greg Shaw is the Director of International and Corporate Relations for the International Federation on Ageing. He has previously held senior management positions within the Australian Commonwealth Department of Health and Ageing, where he was responsible for the regulatory regime associated with quality of care and certification programs in both residential and community care services.

Dr. Samir Sinha

Dr. Samir Sinha is the Director of Geriatrics of the Sinai Health System and University Health Network Hospitals in Toronto. He has consulted and advised governments and health care organizations around the world and is the Architect of the Government of Ontario's Seniors Strategy.

Laura Tamblyn Watts

Laura Tamblyn Watts is a lawyer who focuses on elder law issues. She is the National Director of Law, Policy and Research at CARP. She is also a senior fellow at the Canadian Centre for Elder Law and a past long-time national director. Laura is the past Chair of the Canadian Bar Association's National Elder Law section. She is also a board and founding member of the NICE network, a co-facilitator of the World Study Group on Elder Law, a member of the Ombudsman for Banking Services and Investments Board of Directors and former board member of FAIR Canada.

Past members

Patricia Fleischmann

Patricia Fleischmann is a retired veteran of the Toronto Police Service who spent the last 16 years of her career as the Vulnerable Persons' Coordinator. She is the co-chair of the National Initiative for the Care of the Elderly's Law and Aging Theme Team. Patricia has served as an elder abuse educator for police and non-law enforcement audiences across Canada and internationally. She is also a founding member of Law Enforcement Agencies Protecting Seniors.

Neil Gross

Neil Gross is the former Executive Director of the Canadian Foundation for Advancement of Investor Rights (FAIR Canada). He has been a lawyer for over 30 years, during which time he has represented investors across Canada in hundreds of disputes involving every major investment product category.

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1.1.3 CSA Staff Notice 23-322 Trading Fee Rebate Pilot Study

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 23-322
Trading Fee Rebate Pilot Study

March 16, 2018

I. Introduction

On March 14, 2018, the United States Securities and Exchange Commission (**SEC**) published proposed rules that would establish a Transaction Fee Pilot to study the impacts of transaction fees and rebates on order routing behaviour, execution quality and market quality (the **Proposed Transaction Fee Pilot**).[1]

The Canadian Securities Administrators (the **CSA**, or **we**) have been considering a similar study for a number of years. With the publication of the Proposed Transaction Fee Pilot, this CSA Staff Notice serves as an update on our plans in this regard.

II. Background

On May 15, 2014, the CSA published a Notice and Request for Comment (the **2014 Notice**) that proposed amendments to National Instrument 23-101 *Trading Rules* in relation to the Order Protection Rule (**OPR**).[2]

In the context of our OPR review, we heard concerns about both the level of trading fees in Canada, as well as the predominant trading fee model employed by marketplaces at the time. This fee model (known as the "maker-taker" model) charges a fee for the execution of an order that removes liquidity from an order book, and pays a rebate to the provider of liquidity for the same transaction.

The 2014 Notice described the issues associated with rebate payments and communicated our view that the payment of rebates was a contributing factor to the creation of conflicts of interest as well as the segmentation of orders. The 2014 Notice further highlighted our intention to implement a pilot study that would examine the impact of prohibiting the payment of rebates by marketplaces.

However, CSA staff also identified certain risks associated with a pilot study, and many commenters to the 2014 Notice expressed similar concerns. These risks arise due to the interconnected nature of North American markets and relate to securities that are interlisted with the United States. Inclusion of these securities in a pilot study could negatively impact Canadian liquidity in these securities unless a similar study was undertaken in the United States. Liquidity providers who would not receive a rebate on certain marketplaces in Canada could reduce their trading activity or leave the market entirely.

The amendments proposed in the 2014 Notice were finalized on April 7, 2016,[3] and in finalizing the amendments we noted our continued support for the operation of a pilot study. However, given the concerns with respect to interlisted securities, we indicated that we would not be moving forward with a pilot study at that time. We further indicated our intention to liaise with our U.S. regulatory colleagues and that we would consider a co-operative initiative where possible.

III. Next Steps

We have been engaged in dialogue with our U.S. colleagues on this issue and will continue to do so in the context of the publication of the Proposed Transaction Fee Pilot. As such, we will continue our discussions with SEC staff about coordinating the potential pilot studies, where appropriate. Any proposal to introduce a pilot study for Canadian marketplaces will be published in a separate notice for comment. However, in the interim, we welcome any input or comments on a potential Canadian pilot study.

1 Published at: https://www.sec.gov/rules/proposed/2018/34-82873.pdf

2 Published at: (2014) 37 OSCB 4873.

3 Published at (2016) 39 OSCB 3237. Effective April 10, 2017, the trading fee cap for securities listed on a Canadian exchange, but not listed on a U.S. exchange was reduced.

IV. Questions

Questions and comments may be referred to:

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1.1.4 The Investment Funds Practitioner – March 2018 – Issue #20

OSC

THE INVESTMENT FUNDS PRACTITIONER

From the Investment Funds and Structured Products Branch, Ontario Securities Commission

WHAT IS THE INVESTMENT FUNDS PRACTITIONER?

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds and Structured Products Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

REQUEST FOR FEEDBACK

This is the 20th edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under *Investment Funds & Structured Products* on the *Industry* tab. We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to *investmentfunds@osc.gov.on.ca*.

ANNOUNCEMENTS

Registered Firms and Cryptocurrencies

Canadian Securities Administrators (CSA) Staff Notice 46-307 *Cryptocurrency Offerings* (CSA Staff Notice 46-307) was published on August 24, 2017 and included guidance on cryptocurrency offerings, including the sale of securities of cryptocurrency investment funds.

For registered firms that plan to establish, manage, advise and/or trade in securities of investment funds with holdings of bitcoin and/or other cryptocurrencies, cryptocurrency assets and coins and token offerings, such firms are required to report changes in their business activities by completing and filing Form 33-109F5 *Change of Registration Information* (Form F5) and updating information previously reported in Form 33-109F6 *Firm Registration* to include cryptocurrency products and/or services.

Staff will review the information provided in the Form F5 and analyze the proposed product or services. The OSC may impose terms and conditions on the firm's registration to ensure adequate investor protection. For example, terms and conditions have been imposed on firms that have proposed to establish, manage or advise cryptocurrency investment funds to ensure the firm's compliance with securities law requirements such as custody requirements.

In addition, firms that establish, manage or advise in securities of a cryptocurrency investment fund in the exempt market are reminded of the custodial requirements under part 14.5.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), which become effective June 4, 2018.

For more information on the Form F5 requirement, please contact the OSC's inquiries line by calling 1-877-785-1555 or 416-593-8314 or e-mailing inquiries@osc.gov.on.ca.

Businesses that wish to learn more about their obligations under securities laws with respect to cryptocurrency investment funds may refer to the guidance in CSA Staff Notice 46-307 and/or contact the OSC LaunchPad team for direct support at osclaunchpad@osc.gov.on.ca.

REPORTS

Transition to the Harmonized Report of Exempt Distribution

The new harmonized report of exempt distribution that came into force on June 30, 2016 in all CSA jurisdictions (the New Report) prescribed additional disclosure requirements for investment fund issuers. The annual filing deadline for investment fund issuers also changed from financial year-end to calendar year-end.

We remind all annual filers reporting distributions that occurred on or after January 1, 2017, that they are required to use the New Report and file their New Report for 2017 distributions pursuant to the prescribed transitional periods with the introduction of the New Report for investment fund issuers.

As a reminder, the Schedule 1 (Confidential Purchaser Information) to the New Report must be filed using the prescribed Excel template in an acceptable format to the securities regulatory authority. A link to the Schedule 1 can be found in Item 7 of the New Report on the OSC's electronic filing portal.

For further guidance and information on the New Report and transitional provisions, please refer to Annex 4 (Table 2: Transition Period for Investment Fund Issuers that Report Annually) of CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution* (http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20160407_45-308_revised-guide-exempt-distribution.htm).

APPLICATIONS

Reorganizations of Corporate Class Mutual Funds

Staff have received inquiries regarding reorganizations of a multi-class mutual fund corporation into multiple mutual fund trusts. Our understanding is that fund managers are evaluating these reorganizations because of the elimination of the ability to switch tax-free between investment funds held in the same mutual fund corporation. While some reorganizations may meet all the criteria for pre-approval in section 5.6(1) of National Instrument 81-102 *Investment Funds* (NI 81-102), fund managers that determine that they require regulatory approval for their reorganizations under s.5.5(1)(b) of NI 81-102 are encouraged to file applications for such approval in a timely manner to avoid potential delays in implementing their reorganizations.

STRUCTURED PRODUCTS

New SEDAR Document Types for Prospectus Supplements

We remind filers that SEDAR has been updated to add new document types to facilitate the filing of the various types of prospectus supplements to a base shelf prospectus, along with the related filing fee.

Separate document types have been added for the following prospectus supplements:

- Prospectus (non-pricing) supplement
    - to be used in connection with the filing of a prospectus supplement using shelf procedures as set out in National Instrument 44-102 *Shelf Distributions* (NI 44-102)
- Non-offering prospectus product supplement
    - to be used in connection with, for example, initiating the offering of specified derivatives or asset-backed securities or an at-the-market distribution
- Pricing supplement (other than specified derivative)
    - to be used in connection with the filing of a pricing supplement using shelf procedures as set out in NI 44-102
- Pricing supplement (specified derivative)
    - to be used in connection with the offering of specified derivatives or asset-backed securities
- Novel (per NI 44-102) pricing supplement
    - to be used in connection with the filing of a pricing supplement for a specified derivative or asset-backed security that requires pre-clearance under section 4.1 of NI 44-102

New document types for amendments to each of the above prospectus supplements, except for novel pricing supplements, have also been added. Please use the applicable amendment document type for amended and restated filings, as well as any re-filings.

PROCESS MATTERS

Standards for Prospectuses and Exemptive Relief Applications

In the course of our review of prospectuses and applications for exemptive relief, staff have noticed repeat occurrences of filings that contain material deficiencies. Staff are concerned that materially deficient filings have the potential to negatively impact our ability to process filings, which in turn, could result in unnecessary backlogs and delays. This can be particularly problematic in circumstances where filings involve time-sensitive transactions or regulatory deadlines (e.g., prospectus lapse date).

We remind filers and their counsel that staff cannot provide legal or other advice. Accordingly, staff should not be expected to conduct legal analysis on the filer's behalf. In addition, our review and comment process should not be relied upon to identify and correct material deficiencies in a filing.

To ensure prompt and fair consideration of all filings, we ask that filers and their counsel take due care in the preparation and review of all materials prior to filing. In circumstances where staff have identified a materially deficient filing, staff will not proceed with the review and will instead ask the filer to submit an amended filing or to withdraw the filing, and in the case of a materially deficient preliminary prospectus filing, staff may ask the filer to file an amended and restated preliminary prospectus. In such cases, the review and comment process will restart from the date of the amended filing. We remind filers that the OSC's service standard and timelines for reviews (see http://www.osc.gov.on.ca/en/About_service-standards_index.htm) apply when a complete filing is made. Generally, staff's review of an amended filing will not be abridged as staff do not consider an amended filing to be a compelling reason for requesting an abridgement.

A deficient prospectus filing will not only delay staff's review of the prospectus, it may also indicate that the investment fund manager does not have adequate systems in place for operating the funds it manages in compliance with securities legislation in accordance with applicable requirements of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Prospectus Filings

Some examples of common material deficiencies in prospectus filings include:

- failure to comply with applicable form requirements, including outdated disclosure, and
- significant inconsistencies within or between disclosure documents, for example, mismatched fee or risk rating disclosure either within or between a prospectus, Fund Facts or ETF Facts.

We remind you that, pursuant to subsection 61(2)(a)(i) of the *Securities Act* (Ontario) (the Act), the Director shall not issue a receipt for a prospectus where it appears that the document does not comply in any substantial respect with the requirements of the Act or the regulations.

Exemptive Relief Applications

Some examples of common material deficiencies in exemptive relief applications include:

- failure to identify the relevant or correct provisions from which an exemption is sought,
- failure to provide an explanation of what specific facts trigger the application of the provision from which an exemption is sought,
- failure to provide an explanation of why exemptive relief is necessary,
- failure to provide submissions that support a recommendation in favour of the exemption sought, and
- failure to identify applicable prior decisions or to appropriately distinguish from applicable prior decisions.

Please refer to the article, "*Materials to be Filed with Exemptive Relief Applications*" in the September 2016 edition of the *Investment Funds Practitioner* newsletter for a discussion of the materials to be filed with exemptive relief applications.

Reviews of Prospectus Amendments

Staff have observed an increase in prospectus amendments that fundamentally change the name, nature, type of securities offered and features of an existing fund. For example, in certain cases involving conventional mutual funds, these types of amendments require amending a substantial portion of the disclosure required under Part B of Form 81-101F1 *Contents of a Simplified Prospectus*.

In connection with these types of amendments, filers should consider filing an amended and restated prospectus. Where a substantial portion of the disclosure is being amended, staff may ask filers to file an amended and restated prospectus.

As the review of such an amendment or amended and restated prospectus requires more time for staff to complete than a standard amendment, we will follow the same service standard and timeline that is applicable to reviews of preliminary prospectuses in these cases (see http://www.osc.gov.on.ca/en/About_service-standards_index.htm).

Compliance with Conditions of Exemptive Relief Decisions

Filers who have obtained exemptive relief relevant to investment funds they manage or advise, are reminded that they are required to comply with the terms and conditions of such decisions in order to rely on the relief granted. Exemptive relief may have been granted on conditions that require, for example, certain reporting, record-keeping, certification and investment restrictions that supported the policy rationale for granting the relief.

Filers cannot rely on exemptive relief if they do not comply with the conditions of such relief. Accordingly, filers are encouraged to regularly review their exemptive relief decisions to ensure that any obligations arising from the conditions of exemptive relief decisions are built into their compliance systems.

Reminder of Mandatory Electronic Delivery of Documents

Filers are reminded that OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (Rule 11-501) came into force on February 19, 2014 and requires all market participants to electronically file a number of documents that were previously filed in paper format with the OSC through the OSC's electronic filing portal page. Staff are still receiving some regulatory documents in paper format (for example, s. 2.11(c) notices under National Instrument 81-106 *Investment Fund Continuous Disclosure* and s. 3.10(4) notices under National Instrument 81-107 *Independent Review Committee for Investment Funds*), and we remind filers that such documents are required to be filed pursuant to Rule 11-501 through the OSC portal.

For more information, please refer to Rule 11-501 and the OSC's electronic filing portal page.

PUBLIC INQUIRIES

Update on Rehypothecation of Collateral for OTC Derivatives

In the April 2015 *Investment Funds Practitioner*, staff published guidance in which we stated our view that rehypothecation of collateral deposited by an investment fund with a counterparty in respect of a specified derivatives transaction is generally not permitted under of NI 81-102, including the basis for this view.[1] This remains the only public guidance staff have provided on this issue.

Since that time, we have continued to receive inquiries about this issue and have in some cases been asked to offer our views with regards to very specific scenarios that may or not be directly referenced in the derivatives custodial provisions in section 6.8 of NI 81-102. This has led to further questions concerning staff's position on application of the custody provisions in that section.

In this context, we confirm that staff's position regarding rehypothecation of collateral posted for specified derivatives transactions under section 6.8 of NI 81-102 remains unchanged from the guidance published in the April 2015 *Investment Funds Practitioner*. We remind fund managers to be mindful of staff's position when negotiating any supporting documentation for OTC derivatives transactions, such as an ISDA or other agreements, to ensure that those agreements make it clear that any collateral deposited by the investment fund is not to be used for any purpose other than the purpose for which it was originally pledged to the counterparty – that is, the completion of the particular specified derivatives transaction.

We would add that, to the extent a fund manager or counterparty believes that there may be a scenario in which such a restriction is unnecessary or inappropriate, the best avenue for exploring that view would be the exemptive relief process, through which staff would have the ability to consider a response to specific fact patterns and representations.

[1] See the article titled "*Rehypothecation of Collateral for OTC Derivatives"* in the April 2015 edition of *The Investment Funds Practitioner.*

CONTACT INFORMATION

Issuers and their counsel are encouraged to direct their inquiries to the appropriate branch manager.

- **Conventional Mutual Funds**

  John Mountain, Director (Interim Contact)
  jmountain@osc.gov.on.ca
  (416) 593-3660

- **Structured Products and Investment Funds Other Than Conventional Mutual Funds**

  Darren McKall, Manager
  dmckall@osc.gov.on.ca
  (416) 593-8118

- **Pooled Funds, Branch Oversight and Intelligence**

  Raymond Chan, Manager
  rchan@osc.gov.on.ca
  (416) 593-8128

1.2 Notices of Hearing

1.2.1 Brian Michael Sutton – ss. 8, 21.7

FILE NO.: 2017-37

IN THE MATTER OF
BRIAN MICHAEL SUTTON

NOTICE OF HEARING
Sections 8 and 21.7 of the

Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Application for Hearing and Review

HEARING DATE AND TIME: April 5, 2018 at 2:00 p.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this proceeding is to consider the Amended Application dated March 5, 2018 made by the party named above to review decisions of the Investment Industry Regulatory Organization of Canada dated July 5, 2017 and January 31, 2018.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's Practice Guideline.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 15th day of March, 2018.

"Daisy G. Aranha"
Per: Grace Knakowski
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.2.2 Investment Industry Regulatory Organization of Canada – ss. 8, 21.7

FILE NO.: 2018-10

IN THE MATTER OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

NOTICE OF HEARING
Sections 8 and 21.7 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Application for Hearing and Review

HEARING DATE AND TIME: April 5, 2018 at 2:00 p.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this proceeding is to consider the Application dated March 7, 2018 made by the party named above to review the decision of the Investment Industry Regulatory Organization of Canada dated January 31, 2018.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's Practice Guideline.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 15th day of March, 2018.

"Daisy G. Aranha"
Per: Grace Knakowski
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.5 Notices from the Office of the Secretary

1.5.1 Brian Michael Sutton

FOR IMMEDIATE RELEASE
March 15, 2018

BRIAN MICHAEL SUTTON,
File No. 2017-37

TORONTO – The Office of the Secretary issued a Notice of Hearing to consider the Amended Application dated March 5, 2018 made by the party named above to review decisions of the Investment Industry Regulatory Organization of Canada dated July 5, 2017 and January 31, 2018.

The hearing will be held on April 5, 2018 at 2:00 p.m. on the 17th floor of the Commission's office located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated March 15, 2018 and the Amended Application dated March 5, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Investment Industry Regulatory Organization of Canada

FOR IMMEDIATE RELEASE
March 15, 2018

INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA,
File No. 2018-10

TORONTO – The Office of the Secretary issued a Notice of Hearing to consider the Application dated March 7, 2018 made by the party named above to review the decision of the Investment Industry Regulatory Organization of Canada dated January 31, 2018.

The hearing will be held on April 5, 2018 at 2:00 p.m. on the 17th floor of the Commission's office located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated March 15, 2018 and the Application dated March 7, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Aurora Cannabis Inc. et al.

FOR IMMEDIATE RELEASE
March 16, 2018

AURORA CANNABIS INC. and
CANNIMED THERAPEUTICS INC. and
THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF
CANNIMED THERAPEUTICS INC.,
File Nos. 2017-71, 2017-73, 2017-74

TORONTO – The Financial and Consumer Affairs Authority of Saskatchewan and the Ontario Securities Commission issued their Reasons for Decision following the hearing held in the above noted matter.

A copy of the Reasons for Decision dated March 15, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 Volkmar Guido Hable

FOR IMMEDIATE RELEASE
March 19, 2018

VOLKMAR GUIDO HABLE,
File No. 2018-2

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated March 16, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.5 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
March 19, 2018

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

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

A copy of the Order dated March 16, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.6 Macquarie Capital Markets Canada Ltd., formerly known as Yorkton Securities Inc.

FOR IMMEDIATE RELEASE
March 20, 2018

MACQUARIE CAPITAL MARKETS CANADA LTD.,
FORMERLY KNOWN AS
YORKTON SECURITIES INC.,
File No. 2018-4

TORONTO – The Commission issued its Reasons and Decision and an Order following a written hearing held in the above named matter.

A copy of the Reasons and Decision and the Order dated March 19, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.7 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
March 20, 2018

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

TORONTO – The Commission issued its Reasons for Decision on a Motion to Adjourn in the above named matter.

A copy of the Reasons for Decision on a Motion to Adjourn dated March 19, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Timbercreek Financial Corp. and National Bank Financial Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into an equity distribution agreement to make "at the market" (ATM) distributions of common shares over the facilities of the TSX or other Canadian marketplace – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreements on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus. Decision and application also held in confidence by decision makers until the earlier of the entering into of an equity distribution agreement, waiver of confidentiality or 90 days from the date of the decision.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71, 147.

December 12, 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
TIMBERCREEK FINANCIAL CORP.
(THE ISSUER)

AND

NATIONAL BANK FINANCIAL INC.
(the Agent and, together with the Issuer, the Filers)

DECISION

Background

The securities regulatory authority in the Jurisdiction (the **Decision Maker**) has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for the following relief (the **Exemption Sought**):

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf

prospectus), and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Issuer, the Agent or any other registered investment dealer acting on behalf of the Agent as a selling agent (each a **Selling Agent**) in connection with any "at-the-market distribution" (as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**)) of common shares (**Common Shares**) of the Issuer pursuant to an equity distribution agreement (the **Equity Distribution Agreement**) to be entered into by the Issuer and the Agent (an **ATM Distribution**); and

(b) that the requirements to include the statements specified in items 2 and 3 of section 5.5 of NI 44-102 in a base shelf prospectus, and the requirements to include in a prospectus supplement each of the following:

(i) a forward-looking issuer certificate in the form specified in section 2.1 of Appendix A to NI 44-102;

(ii) a forward-looking underwriter certificate in the form specified in section 2.2 of Appendix A to NI 44-102; and

(iii) a statement respecting purchasers' statutory rights of withdrawal and remedies for rescission or damages in substantially the form prescribed by Item 20 of Form 44-101F1 *Short Form Prospectus*,

(collectively, the **Prospectus Form Requirements**) do not apply to a prospectus of the Issuer (including the applicable prospectus supplement(s)) to be filed in respect of an ATM Distribution provided that the alternative form of certificate and disclosure regarding a purchaser's statutory rights described below are included in the prospectus supplement.

The Decision Maker has also received a request from the Filers for a decision that the Application and this decision (together, the **Confidential Material**) be kept confidential and not be made public until the earliest of: (i) the date on which the Filers enter into the Equity Distribution Agreement; (ii) the date the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision (the **Confidentiality Relief**).

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

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

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

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, or NI 44-102 have the same meaning if used in this decision unless otherwise defined herein.

Representations

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

The Issuer

1. The Issuer is a corporation amalgamated under the *Business Corporations Act* (Ontario). The Issuer is a mortgage investment corporation with its head office located in Toronto, Ontario.

2. The Issuer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.

3. The Common Shares are listed on the Toronto Stock Exchange (the **TSX**).

The Agent

4. The Agent is registered as an investment dealer under the securities legislation of each of the provinces and territories of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX, with its head office in Montréal, Québec. The Agent is not in default of securities legislation in any jurisdiction of Canada.

Proposed ATM Distribution

5. Subject to mutual agreement on terms and conditions, the Filers propose to enter into the Equity Distribution Agreement for the purpose of ATM Distributions involving the periodic sale of Common Shares by the Issuer through the Agent, as agent, under the shelf prospectus procedures prescribed by Part 9 of NI 44-102.

6. Prior to making any ATM Distributions, the Issuer will have filed in each of the provinces and territories of Canada: (i) a shelf prospectus providing for the distribution from time to time of Common Shares and such other securities as the Issuer deems appropriate (the **Shelf Prospectus**); and (ii) a prospectus supplement describing the terms of the ATM Distributions, including the terms of the Equity Distribution Agreement, and otherwise supplementing the disclosure in the Shelf Prospectus (the **Prospectus Supplement**, and together with the Shelf Prospectus as supplemented or amended and including any documents incorporated by reference therein (which shall include any Designated News Release as defined below), the **Prospectus**).

7. Upon entering into the Equity Distribution Agreement, the Issuer will immediately:

   (a) issue and file a news release pursuant to section 3.2 of NI 44-102 announcing the Equity Distribution Agreement, indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and disclosing where and how copies may be obtained . The news release will serve as the news release contemplated by section 3.2 of NI 44-102 for an expected distribution of equity securities under an unallocated shelf; and

   (b) file the Equity Distribution Agreement on SEDAR.

8. The Equity Distribution Agreement will limit the number of Common Shares that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Common Shares calculated in accordance with section 9.2 of NI 44-102.

9. The Issuer will conduct ATM Distributions through the Agent, as agent, directly, or through a Selling Agent through the facilities of the TSX or other "marketplace" (as defined in National Instrument 21-101 *Marketplace Operation*) in Canada (**Marketplace**).

10. The Agent will act as the sole underwriter on behalf of the Issuer in connection with each ATM Distribution, and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales. The Agent will sign an underwriter's certificate in the Prospectus Supplement.

11. The Agent will effect each ATM Distribution on a Marketplace, either itself or through a Selling Agent. If sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent. A purchaser's rights and remedies under Canadian securities legislation against the Agent, as agent of an ATM Distribution through the TSX or any other Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.

12. The aggregate number of Common Shares sold on any trading day pursuant to an ATM Distribution will not exceed 25% of the aggregate trading volume of the Common Shares traded on Marketplaces in Canada on that day.

13. The Equity Distribution Agreement will provide that, at the time of each sale of Common Shares pursuant to an ATM Distribution, the Issuer will represent to the Agent that the Prospectus contains full, true and plain disclosure of all material facts relating to the Issuer and Common Shares being distributed. The Issuer would, therefore, be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Common Shares.

14. After the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" (as such term is defined in the Legislation), the Issuer will identify such news release as a "designated news release" for purposes of the Prospectus. This designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a **Designated News Release**). The Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Shelf Prospectus. A Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" (as such term is defined in the Legislation).

15. If, after the Issuer delivers a sell notice to the Agent directing the Agent to sell Common Shares on the Issuer's behalf pursuant to the Equity Distribution Agreement (a **Sell Notice**), the sale of Common Shares specified in the Sell Notice, taking into consideration prior sales under all previous ATM Distributions, would constitute a material fact or material

change, the Issuer will suspend sales under the Equity Distribution Agreement until either: (i) in the case of a material change, it has filed a material change report or amended the Prospectus, or, in the case of a material fact, it has filed a Designated News Release; or (ii) circumstances have changed such that the sales would no longer constitute a material fact or material change.

16. In determining whether the sale of the number of Common Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account relevant factors, including, without limitation: (i) the parameters of the Sell Notice, including the number of Common Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution; (ii) the percentage of the outstanding Common Shares that the number of Common Shares proposed to be sold pursuant to the Sell Notice represents; (iii) sales under earlier Sell Notices; (iv) trading volume and volatility of the Common Shares; (v) recent developments in the business, affairs or capital of the Issuer; and (vi) prevailing market conditions generally.

17. In addition, the Agent will monitor closely the market's reaction to trades made pursuant to the ATM Distribution in order to evaluate the likely market impact of future trades. The Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices. If the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Common Shares, the Agent will recommend against effecting the trade at that time. It is in the interest of both the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution.

Disclosure of Common Shares Sold in ATM Distribution

18. Within seven calendar days after the end of each calendar month during which the Issuer conducts an ATM Distribution, the Issuer will disclose in a report filed on SEDAR the number and average selling price of the Common Shares distributed through a Canadian Marketplace under the ATM Distribution, and the commission and gross and net proceeds for such sales; furthermore, the Issuer will disclose the number and average price of Common Shares sold pursuant to an ATM Distribution under the Prospectus, as well as gross proceeds, commissions and net proceeds, in its annual and interim financial statements and management discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

19. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

20. Delivery of a prospectus is not practicable in the circumstances of an ATM Distribution, as neither the Agent nor a Selling Agent effecting the trade will know the identity of the purchasers.

21. The Prospectus (together with all documents incorporated by reference therein) will be filed and readily available to all purchasers electronically via SEDAR. As stated in paragraph 7 above, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained.

22. The liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement, because purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission, without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right and Right of Action for Non-Delivery

23. Pursuant to the Legislation, an agreement to purchase a security in respect of a distribution to which the prospectus requirement applies is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the **Withdrawal Right**).

24. Pursuant to the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirements, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Prospectus Delivery Requirements (the **Right of Action for Non-Delivery**).

25. Neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution, because of the impracticability of delivering the Prospectus to a purchaser of Common Shares thereunder.

Prospectus Form Requirements

26. To reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following issuer certificate in substitution for the certificate prescribed by the Prospectus Form Requirements:

> "The short form prospectus together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces and territories of Canada."

27. To reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following underwriter certificate in substitution for the certificate prescribed by the Prospectus Form Requirements:

> "To the best of our knowledge, information and belief, the short form prospectus together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces and territories of Canada."

28. A different statement of purchasers' rights than that required by the Legislation is necessary in order to allow the Prospectus to accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed, in substitution for the language prescribed by the Prospectus Form Requirements:

> "Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Common Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Common Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price, or damages for non-delivery of the prospectus, because the prospectus, prospectus supplements relating to Common Shares purchased by such purchaser and any amendment relating to Common Shares purchased by such purchaser will not be delivered as permitted under a decision dated ●, 2017 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.
>
> Securities legislation in certain of the provinces and territories of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Common Shares under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery and the decision referred to above.
>
> Purchasers should refer to any applicable provisions of securities legislation and the decision referred to above for the particulars of these rights or consult with a legal adviser."

29. The Prospectus Supplement will disclose that, in respect of ATM Distributions under the Prospectus Supplement, the statement in paragraph 28 above supersedes and replaces the statement of purchasers' rights contained in the Shelf Prospectus.

30. The statements required by items 2 and 3 of section 5.5 of NI 44-102 to be included in the Shelf Prospectus will be qualified by adding the following: ", except in cases where an exemption from such delivery requirements has been obtained".

Decision

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

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

(a) the Issuer complies with the disclosure requirements set out in paragraphs 18, 26, 27, 28, 29 and 30; and

(b) the Issuer and the Agent respectively comply with the representations made in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

This decision will terminate 25 months after the issuance of the receipt for the Shelf Prospectus.

The further decision of the Decision Maker is that the Confidentiality Relief is granted.

As to the Exemption Sought from the Prospectus Delivery Requirement and the Confidentiality Relief:

"Mark J. Sandler"
Commissioner
Ontario Securities Commission

"Peter Currie"
Commissioner
Ontario Securities Commission

As to the Exemption Sought from the Prospectus Delivery Requirement, the Prospectus Form Requirements and the Confidentiality Relief:

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

DATED at Toronto, this 12th day of December, 2017.

2.1.2 Redwood Asset Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of mutual funds — change of manager is not detrimental to unitholders or the public interest – change of manager to be approved by the funds' unitholders at a special meeting of unitholders.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a), 5.5(3), 5.7.

March 12, 2018

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
REDWOOD ASSET MANAGEMENT INC.
(Redwood)

AND

NINEPOINT PARTNERS LP
(the Purchaser, and together with Redwood, the Filers)

AND

UIT ALTERNATIVE HEALTH FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed change of manager of the Fund from Redwood to the Purchaser (the **Change of Manager**) under section 5.5(1)(a) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Approval 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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada.

Interpretation

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

Representations

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

The Manager

1. Redwood is a corporation incorporated under the laws of the Province of Ontario with its head office in Toronto, Ontario.

2. Redwood is the manager, portfolio manager, promoter and trustee of the Fund. Redwood is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, as a portfolio manager in Ontario, and as an exempt market dealer in Alberta, British Columbia, Ontario and Quebec.

3. Redwood is not in default of any requirements under applicable securities legislation.

The Fund

4. The Fund is an open-ended mutual fund trust created pursuant to a master declaration of trust under the laws of Ontario dated September 16, 2016, as amended on March 13, 2017 and June 28, 2017 (the **Declaration of Trust**).

5. The units of the Fund are currently offered for sale in each Jurisdiction under a simplified prospectus, annual information form and fund facts dated September 25, 2017, as amended from time to time, prepared in accordance with the requirements of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*(**NI 81-101**).

6. The Fund is a reporting issuer under the applicable securities legislation of each Jurisdiction and is not in default of any requirements under applicable securities legislation.

The Purchaser

7. The Purchaser is a limited partnership under the laws of the Province of Ontario with its head office in Toronto, Ontario.

8. The Purchaser is registered as an investment fund manager in Ontario, Quebec and Newfoundland & Labrador, as a portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland & Labrador, and as an exempt market dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland & Labrador and Quebec.

9. The Purchaser operates a family of mutual funds (the **Ninepoint Funds**) that are currently offered for sale in each of the Jurisdictions under simplified prospectuses, annual information forms and fund facts dated April 25, 2017 and January 26, 2018, as amended from time to time prepared in accordance with the requirements of NI 81-101.

10. The Purchaser is not in default of any requirements under applicable securities legislation.

The Proposed Transaction

11. The Purchaser has entered into a definitive asset purchase agreement (the **Purchase Agreement**) pursuant to which the Purchaser has agreed to purchase from Redwood the right to manage the Fund as provided in the material contracts, in consideration for a payment of an amount equal to the total cost to complete the transaction (the **Proposed Transaction**).

12. The Proposed Transaction is scheduled to close on April 16, 2018 (the **Closing**). This Proposed Transaction will result in a change of manager and trustee of the Fund.

13. The Proposed Transaction is subject to the receipt of all necessary regulatory and unitholder approvals and the satisfaction or waiver of all other conditions to the Proposed Transaction.

14. The Filers are seeking approval of the securities regulatory authorities of the Proposed Transaction in a single application characterized for a change of manager under section 5.5(1)(a) of NI 81-102.

15. In accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, a press release announcing the Proposed Transaction was issued on January 29, 2018 and subsequently filed on SEDAR. In addition, a material change report was filed on February 1, 2018 and details of the Proposed Transaction were included in amendments to the simplified prospectus, annual information form and fund facts for the Fund dated February 2, 2018.

16. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), Redwood presented the Proposed Transaction to the independent review committee (**IRC**) for a recommendation on February 8, 2018. The IRC reviewed the potential conflict of interest matters related to the Proposed Transaction, including the change in management fees and provided its positive recommendation for the Proposed Transaction, after determining that the Proposed Transaction, if implemented, would achieve a fair and reasonable result for the Fund.

17. The approval of unitholders of the Fund is required under section 5.1(1)(b) of NI 81-102. A special meeting of the unitholders of the Fund (the **Meeting**) will be held on or about March 19, 2018 for the purposes of seeking approval from unitholders of the Fund for the matters relating to the Proposed Transaction. Unitholders will be asked to vote on the proposed Change of Manager, the change of trustee from Redwood to the Purchaser (the **Change of Trustee**), and the change in management fees charged to the Fund (the **Fee Change**).

18. The notice of Meeting and management information circular in respect of the Meeting (the **Meeting Materials**) describing the Proposed Transaction, the Change of Manager, the Change of Trustee and the Fee Change were mailed to unitholders of the Fund on or about February 15, 2018 and copies thereof were filed on SEDAR. The Meeting Materials contain sufficient information regarding the business, management and operations of the Purchaser, including details of its officers and directors, and all information necessary to allow unitholders to make an informed decision about the Proposed Transaction, the Change of Manager, the Change of Trustee and the Fee Change. The Change of Manager, the Change of Trustee and the Fee Change will not proceed unless unitholders of the Fund approve the changes at the Meeting.

Impact of Change of Manager on the Fund

19. Upon Closing, the Purchaser will become the investment fund manager, portfolio manager and trustee of the Fund.

20. CIBC Mellon Trust Company will remain as custodian of the Fund.

21. Faircourt Asset Management Inc. will remain as sub-adviser of the Fund.

22. RBC Investor Services Trust will be appointed the transfer agent of the Fund.

23. KPMG LLP will be appointed as auditor of the Fund. Pursuant to paragraph 5.3.1 of NI 81-102, the IRC has approved the change of auditor and the notice to unitholders of the change of auditor will be included in the Meeting Materials and provided at least 60 days before the effective date of the change.

24. The current members of the IRC of the Fund will cease to act as members pursuant to Section 3.10(1)(b) of NI 81-107 and it is anticipated that the Purchaser will replace the current members of the IRC of the Fund with the current members of the IRC of the Ninepoint Funds upon Closing. Currently, the IRC of the Ninepoint Funds consists of Lawrence A. Ward, W. William Woods and Eamonn McConnell.

25. The Purchaser will assume and amend the Declaration of Trust that governs the Fund (the New Declaration of Trust) to reflect the Purchaser as the new trustee and to make certain other changes. Notice of the change and the major differences between the Declaration of Trust and the New Declaration of Trust will be described in the Meeting Materials.

26. The Purchaser intends to manage and administer the Fund in a similar manner as Redwood. There is no current intention to change the investment objectives of the Fund.

27. The Fund will not bear any of the costs and expenses associated with the Proposed Transaction.

28. The individuals that will be principally responsible for the investment fund management of the Fund upon Closing have the requisite integrity and experience, as required under Section 5.7(1)(a)(v) of NI 81-102.

29. Other than as required to reflect the Proposed Transaction, the Purchaser does not currently contemplate any changes to the material contracts of the Fund.

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 Approval Sought is granted.

“Darren McKall”
Manager
Investment Funds and Structured Products
Ontario Securities Commission

2.1.3 Chesterfield Resources plc

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 45-102, s.3.1Resale of Securities – An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents – The issuer meets all of the conditions of section 2.14 of National Instrument 45-102 Resale of Securities except that residents of Canada own or will own more than 10% of the securities of the class and represent or will represent more than 10% of the total number of security holders worldwide; the issuer's securities are listed on an exchange outside of Canada; there is no market for the issuer's securities in Canada; the issuer's head office is outside Canada and none of its directors or management reside in Canada; except for its Canadian shareholders, the issuer has a minimal connection to Canada.

Applicable Legislative Provisions

National Instrument 45-102 Resale of Securities, s. 3.1.

January 19, 2018

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

AND

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

AND

IN THE MATTER OF
CHESTERFIELD RESOURCES PLC
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus requirement for the first trade of the Canadian Securities (as defined below) held by the Canadian Security Holders (as defined below) (the Exemption Sought).

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

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

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

Interpretation

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

Representations

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

1. the Filer was incorporated and registered in England and Wales;

2. the Filer's principal office is located in Bedford, England;

3. none of the Filer's officers, directors or insiders are resident in Canada;

4. the assets of the Filer consist entirely of cash, denominated in British Pounds Sterling and held in the Filer's bank account in the United Kingdom;

5. the Filer is not a reporting issuer in any jurisdiction of Canada;

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

7. the authorized share capital of the Filer consists of (i) voting ordinary shares with a nominal value of 0.1 pence each (Ordinary Shares) and (ii) non-voting deferred shares with a nominal value of 4.9 pence each (Deferred Shares), of which 28,600,000 Ordinary Shares and 2,000,000 Deferred Shares are issued and outstanding;

8. the Filer has issued (i) 5,200,000 Series A Warrants (Series A Warrants), with each Series A Warrant entitling the holder to acquire one Ordinary Share at a price of 5 pence per Ordinary Share until the fifth anniversary of the listing date on the London Stock Exchange (LSE), (ii) 13,000,000 Series B Warrants (Series B Warrants), with each Series B Warrant entitling the holder to acquire one Ordinary Share at a price of 10 pence per Ordinary Share until the third anniversary of the listing date on the LSE, and (iii) 494,300 Broker Warrants (Broker Warrants), with each Broker Warrant entitling the holder to acquire one Ordinary Share at a price of 5 pence per Ordinary Share until the second anniversary of the listing date on the LSE;

9. the Filer filed a prospectus (the Prospectus) with the Financial Conduct Authority (FCA) in the United Kingdom on August 22, 2017 for the initial public offering (IPO) and listing of its entire issued ordinary share capital on the main market of the LSE;

10. as disclosed in the Prospectus, the Filer is a special purpose acquisition company formed for the purpose of acquiring a company, business or asset that has operations in the mining sector that it will then look to develop and expand, with the intention of focusing primarily on opportunities in the exchange traded non-ferrous metals mining segment within the European geographic region (the Acquisition);

11. the Filer anticipates that following the Acquisition the location of its principal office will remain in England and the majority of its current directors will remain on the board of directors;

12. Shard Capital Partners LLP was the principal underwriter engaged for purposes of the IPO; interested Canadian investors were directed to open accounts with Haywood Securities Inc.;

13. the Filer's Ordinary Shares commenced trading August 29, 2017 on the LSE;

14. none of the Filer’s securities are listed or posted for trading on an exchange or market located in Canada; the Filer has no present intention of listing its securities on any Canadian stock exchange or of becoming a reporting issuer in Canada;

15. the following securities of the Filer are held by a total of 13 Canadian security holders resident in British Columbia or Ontario (the Canadian Security Holders):

    (a) 10,492,000 Ordinary Shares (Canadian Ordinary Shares), representing 37% of the total issued and outstanding Ordinary Shares of the Filer;

    (b) 750,000 Deferred Shares (Canadian Deferred Shares), representing 38% of the total issued and outstanding Deferred Shares of the Filer;

    (c) 1,500,000 Series A Warrants (Canadian Series A Warrants), representing 29% of the total issued and outstanding Series A Warrants;

    (d) 4,871,000 Series B Warrants (Canadian Series B Warrants), representing 38% of the total issued and outstanding Series B Warrants; and

    (e) 243,550 Broker Warrants (Canadian Broker Warrants), representing 38% of the total issued and outstanding Broker Warrants;

16. the Canadian Series A Warrants, the Canadian Series B Warrants and the Canadian Broker Warrants (together, the Canadian Warrants) are each exercisable into one Ordinary Share of the Filer (Canadian Underlying Securities);

17. the Filer distributed the Canadian Ordinary Shares, the Canadian Deferred Shares and the Canadian Warrants to the Canadian Security Holders either prior to the IPO using the private issuer prospectus exemption in section 2.4 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) or concurrent with the IPO using the accredited investor prospectus exemption in section 2.3 of NI 45-106;

18. the Filer is subject to the reporting and continuous disclosure obligations of the Market Abuse Regulation of the European Union, the Listing Rules and the Disclosure Guidance and Transparency Rules of the FCA and the LSE rules and regulations; the Filer's continuous disclosure filing documents are posted on its website and can be viewed on the LSE's website and the National Storage Mechanism of the FCA; the Filer will provide the Canadian Security Holders the same information that the Filer is required to provide to its security holders under LSE rules and regulations;

19. the first trade in each of the Canadian Ordinary Shares, the Canadian Deferred Shares, the Canadian Warrants or the Canadian Underlying Securities (together, the Canadian Securities) held by the Canadian Security Holders would be deemed a distribution pursuant to National Instrument 45-102 *Resale of Securities* (NI 45-102) unless, among other things, the Filer has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the first trade; since the Filer is not a reporting issuer in any jurisdiction of Canada and has no intention of becoming one, the Canadian Securities are subject to an indefinite hold period;

20. the Canadian Security Holders cannot rely on the exemption provided in section 2.14(1) of NI 45-102, because the Canadian Security Holders own, directly or indirectly, more than 10% of the issued and outstanding securities of the Filer and represent more than 10% of the Filer's total security holders;

21. there is no market for the Filer's securities in Canada and none is expected to develop; any resale of the Canadian Securities by the Canadian Security Holders is expected to be made through the facilities of the LSE, an exchange or market outside Canada or to a person or company outside Canada; and

22. absent an exemption, the Canadian Securities held by Canadian Security Holders are subject to resale restrictions that may never expire.

Decision

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

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

(a) the Filer is not a reporting issuer in any jurisdiction of Canada at the date of the trade; and

(b) the first trade of the Canadian Securities is

(i) executed through the facilities of the LSE or on another exchange or a market outside of Canada, or

(ii) to a person or company outside of Canada.

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

2.1.4 Sun Life Global Investments (Canada) Inc. and Excel Investment Counsel Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions. Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for three representatives to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition for a limited period of time.

March 20, 2018

IN THE MATTER OF

THE SECURITIES LEGISLATION OF ONTARIO
(the Principal Jurisdiction)

AND

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

AND

IN THE MATTER OF
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
(Sun Life)

AND

EXCEL INVESTMENT COUNSEL INC.
(EIC, and together with Sun Life, the Filers)

DECISION

Background

The regulator in the Principal Jurisdiction (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Principal Jurisdiction (the **Legislation**) for relief from the restriction in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), pursuant to section 15.1 of NI 31-103, to permit Sadiq Adatia, Chhadeep Aul, and Kathrin Forrest (collectively, the **Representatives**) to each be registered as an advising representative of both Filers (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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filers in each jurisdiction of Canada outside of Ontario.

Interpretation

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

Representations

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

1. Sun Life is a corporation incorporated under the federal laws of Canada with its head office in Toronto, Ontario. Sun Life is a wholly-owned indirect subsidiary of Sun Life Financial Inc., a public company incorporated under the *Insurance Companies Act* (Canada) and listed on the Toronto Stock Exchange, the New York Stock Exchange and the Philippines Stock Exchange.

2. Sun Life is registered as an investment fund manager, commodity trading manager, mutual fund dealer and portfolio manager in Ontario; an investment fund manager and mutual fund dealer in Quebec and Newfoundland and Labrador; and a mutual fund dealer in each of Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon.

3. Sun Life is the investment fund manager and portfolio manager of prospectus-qualified mutual funds that are sold primarily to retail investors in Canada (the **Sun Life Funds**).

4. EIC is registered as a portfolio manager and exempt market dealer in Ontario; and an exempt market dealer in Quebec. The head office of EIC is located in Mississauga, Ontario.

5. EIC's main line of business is providing portfolio management services to the following investment funds: Excel China Fund, Excel Chindia Fund, Excel Emerging Markets Balanced Fund (formerly, Excel EM Blue Chip Balanced Fund), Excel Emerging Markets Fund, Excel High Income Fund, Excel India Balanced Fund, Excel India Fund, Excel New India Leaders Fund, Excel Money Market Fund, Excel Global Growth Asset Allocation ETF and Excel Global Balanced Asset Allocation ETF (collectively, the **Excel Funds**).

6. The Filers are not in default of any requirements under applicable securities, commodity futures or derivatives legislation.

7. On January 2, 2018, Sun Life acquired all of the outstanding shares of EIC (the **Acquisition**). As a result of the Acquisition, EIC became a subsidiary of Sun Life.

8. Within a foreseeable period of time following the Acquisition, it is anticipated that Sun Life will take steps to integrate the business, operations and management of the Excel Funds with that of the Sun Life Funds. It is anticipated that EIC will either be wound up or amalgamated with Sun Life.

9. The assets of the Excel Funds represent a small fraction (approximately 4%) of the overall assets of Sun Life.

10. In the period prior to the wind up or amalgamation of EIC, EIC will remain the portfolio manager of the Excel Funds.

11. In the period prior to the wind up or amalgamation of EIC, the Filers propose to register the Representatives, who are currently registered as advising representatives of Sun Life, as advising representatives of both Filers, as needed, to provide discretionary portfolio management services to the Excel Funds as well as the Sun Life Funds.

12. There are valid business reasons for the Representatives to be registered with both Filers, namely:

    a) to continue the seamless servicing of clients of each of the Filers through two business lines that will eventually be merged;

    b) to give EIC access to a larger talent pool of advising representatives during the interim period as Sun Life integrates EIC into its business; and

    c) to give clients of the Filers, in particular investors in the Sun Life Funds and the Excel Funds, the benefit of the portfolio management services from the Representatives, as the case may be.

13. The Representatives will be subject to supervision by, and the compliance requirements of, both Filers.

14. Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representatives (the **Dual Registration**) and deal appropriately with any such conflicts.

15. The Filers do not expect that the Dual Registration will create significant additional work for the Representatives and are confident that the Representatives will have sufficient time to adequately serve both firms. The Chief Compliance Officer and Ultimate Designated Person of each Filer will ensure that each Representative has sufficient time and resources to adequately serve the respective Filer and its clients.

16. The Filers do not anticipate that any of the Representatives will have any direct interaction with the Filers' clients other than the Sun Life Funds and the Excel Funds. To the extent that any Representative has any direct interaction with a client, the relationship of the Filers and the fact that the Representative is dually registered with both Filers will be fully disclosed in writing to the client.

17. As a result of the Acquisition, the Filers are affiliates and accordingly, the Dual Registration of the Representatives will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned, and as the role of the Representatives will be to support the business activities and interests of the Filers in connection with the Sun Life Funds and the Excel Funds, the potential for conflicts of interest is remote.

18. Further, the Sun Life Funds that the Representatives advise have different investment strategies than, and are not expected to compete for the same investments with, any Excel Funds that the Representatives will advise should the Exemption Sought be granted. This will further mitigate the risk of conflicts of interest arising from the Dual Registration.

19. In the absence of the Exemption Sought, the Filers would be prohibited from permitting any Representative to act as an advising representative of both Filers, even though the Filers are affiliates and each Filer has appropriate controls and compliance procedures in place to deal with the advising activities of the Representatives.

Decision

The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision. The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted on the following conditions:

a) each Representative is subject to supervision by, and the compliance requirements of, both Filers;

b) the Chief Compliance Officer and Ultimate Designated Person of each Filer

ensures that each Representative has sufficient time and resources to adequately serve the respective Filer and its clients;

c) each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the Dual Registration of the Representatives, and deal appropriately with any such conflicts; and

d) the relationship between the Filers and the fact that a Representative is dually registered with both of them is fully disclosed in writing to clients of each of them that deal with such Representative.

The Exemption Sought shall cease to be effective when the business of EIC is wound up or amalgamated with that of Sun Life.

"Elizabeth King"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 Skyharbour Resources Ltd. – s. 1(11)(b)

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF
SKYHARBOUR RESOURCES LTD.

ORDER
(Clause 1(11)(b))

UPON the application of Skyharbour Resources Ltd. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law;

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

AND UPON the Applicant's representing to the Commission as follows:

1. The Applicant was created under the laws of the Province of British Columbia (**BC**) as a result of an amalgamation of three companies, Carousel Resources Inc., Eagle River Mines Ltd. and Evergreen Energy Corporation, effective March 27, 1981, under the name, "Eagle River Mines Ltd.". The Applicant changed its name from Eagle River Mines Ltd. to Twin Eagle Resources Inc. effective January 28, 1985. The Applicant changed its name from Twin Eagle Resources Inc. to Cordal Resources Ltd. effective May 14, 1993. The Applicant changed its name from Cordal Resources Ltd. to Skyharbour Developments Ltd. effective November 4, 1999. The Applicant changed its name from Skyharbour Developments Ltd. to Skyharbour Resources Ltd. effective October 25, 2002.

2. The Applicant's head office is located at Suite 1610–777 Dunsmuir Street, P.O. Box 10427, Vancouver, BC, V7Y 1K4.

3. The Applicant's Registered Office is located at Suite 1710–1177 West Hastings Street, Vancouver, BC, V6E 2L3.

4. As of the date hereof, the Applicant's authorized share capital consists of an unlimited number of common shares (the **Common Shares**), of which 54,570,176 Common Shares are issued and outstanding.

5. The Applicant's Common Shares are listed and posted for trading on the TSX Venture Exchange (the **TSXV**) under the trading symbol: SYH, on the Frankfurt Stock Exchange under the symbol: SC1P and on the OTCQB under the symbol: SYHBF. The Common Shares are not traded on any other stock exchange or trading or quotation system.

6. The Applicant is currently a reporting issuer in Alberta and BC. The Applicant has been a reporting issuer under the *Securities Act* (BC) (the **BC Act**) since February 3, 1983. The Applicant was deemed to be a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) on November 26, 1999 when the Alberta Stock Exchange and the Vancouver Stock Exchange merged.

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

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

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

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

11. The materials filed by the Applicant under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**), with July 8, 1997, being the date of the first electronic filing on SEDAR by the Applicant.

12. The Applicant is not in default of any of the rules, regulations or policies of the TSXV, the Frankfurt Stock Exchange or the OTCQB.

13. Pursuant to the policies of the TSXV, the Applicant is required to make an application to become a reporting issuer in Ontario upon determining that the Applicant has a significant connection to Ontario.

14. Pursuant to the policies of the TSXV, the Applicant has undertaken an assessment of its shareholder base to determine whether or not the Applicant has a "significant connection to Ontario" as defined in the policies of the TSXV. The Applicant obtained a geographical analysis report from Broadridge Investor Communications Corporation (**Broadridge**) that was based on security holder addresses of record identified in data files provided to Broadridge by financial intermediaries. The report indicated that there were 676 security holders in the Province of Ontario, representing 10,678,522 shares, being 33.65% (approximately) of the securities reported.

15. Neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

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

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

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

16. Neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

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

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

17. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

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

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

18. The applicant will remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 *Fees* by no later than two business days from the date of this Order.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

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

DATED this 12th day of March, 2018.

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

2.2.2 OC Special Opportunities Fund, LP

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – issuer deemed to no longer be a reporting issuer under applicable securities legislation – issuer has 51 or more securityholders worldwide, but fewer than 15 securityholders in Canada.

Applicable Legislative Provisions

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

MARCH 6, 2018

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

AND

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

AND

IN THE MATTER OF
OC SPECIAL OPPORTUNITIES FUND, LP
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a limited partnership formed under the laws of the Cayman Islands by its general partner, Orange Capital Ventures GP, LLC (the **General Partner**), a Delaware limited liability company. The Filer is governed by a First Amended and Restated Limited Partnership Agreement dated November 28, 2017 (the **LPA**).

2. The Filer's registered agent is Walkers Corporate Limited, whose address is Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands.

3. The authorized capital of the Filer consists of an unlimited number of Class A limited partnership units (or fractions thereof) (**Class A LP Units**) and an unlimited number of Class B limited partnership units (or fractions thereof) (**Class B LP Units**, and together with the Class A LP Units, the **Units**), which represent limited partnership interests in the Filer. As at the date hereof, there are approximately 563,478 Class A LP Units outstanding, of which approximately 101,140 are held by securityholders resident in Canada (the **Canadian Securityholders**), and approximately 5,456,693 Class B LP Units outstanding, none of which are held by Canadian Securityholders. Canadian Securityholders therefore hold approximately 1.68% of the total number of Units.

4. There are 68 beneficial securityholders worldwide for the Class A LP Units and one beneficial securityholder worldwide for the Class B LP Units. There are ten beneficial securityholders of Class A LP Units resident in Canada, one of which is resident in British Columbia, two of which are resident in Quebec, and the remaining seven of which are resident in Ontario. There are no beneficial securityholders of Class B LP Units resident in Canada.

5. Four of the ten beneficial Canadian Securityholders are members of management and/or directors of the board of Gaming Nation Inc. (the **Rollover Shareholders**), the issued and outstanding securities of which were acquired pursuant to the Arrangement (as defined below).

6. The Filer has issued debt under convertible debentures (the **Convertible Debentures**) to all holders of Class A LP Units. The Convertible Debentures are convertible into Class A LP Units upon the occurrence of certain events pursuant to the provisions of the Convertible Debentures. For greater certainty, all Convertible Debentures issued and outstanding are held by holders of Class A LP Units.

7. The Filer has not distributed any securities in any of the provinces or territories of Canada other than the Units and Convertible Debentures, which were issued pursuant to available prospectus exemptions under National Instrument 45-106 *Prospectus Exemptions* or the *Securities Act* (Ontario) (**Prospectus Exemptions**). For the avoidance of doubt, all of the Canadian Securityholders were issued securities of the Filer pursuant to available Prospectus Exemptions. Every holder of Units and Convertible Debentures worldwide is a limited partner of the Filer (**Limited Partner**) and each Limited Partner is either an accredited investor under Canadian or US securities law or is a director/management of Gaming Nation Inc. (**Gaming Nation**) who acquired the securities under section 2.11 of National Instrument 45-106 *Prospectus Exemptions*.

8. On August 17, 2017, shareholders (the **Shareholders**) of Gaming Nation approved by special resolution a plan of arrangement pursuant to section 182 of the OBCA (the **Arrangement**). Approximately 100% of the votes cast by all Shareholders, and approximately 100% of the votes cast by Shareholders other than the Shareholders whose votes were required to be excluded for the purposes of "minority approval" under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*, were voted in favour of the special resolution approving the Arrangement.

9. On August 22, 2017 a final court order of the Superior Court of Justice (Ontario) (Commercial List) was granted approving the Arrangement (Court File No: CV-17-578849-00CL).

10. Pursuant to articles of arrangement dated November 28, 2017, the Arrangement became effective as of 12:01 a.m. on such date (the **Effective Time**) which, among other things, resulted in the following:

    (a) the Filer acquired all of the issued and outstanding shares of Gaming Nation (the **Shares**) not already owned directly or indirectly by it for consideration equivalent to CAD 0.95 per Share (the **Consideration**), and as a result, Gaming Nation became a wholly-owned subsidiary of the Filer;

    (b) each option to acquire a Share (each a **Gaming Option**) outstanding immediately prior to the Effective Time was deemed to be assigned and transferred to

Gaming Nation in exchange for a cash payment equal to the amount by which the Consideration exceeds the exercise price of such Gaming Option, less applicable withholdings, following which such Gaming Options were cancelled;

(c) each purchase warrant to acquire a Share (each a **Gaming Warrant**) outstanding immediately prior to the Effective Time was deemed to be assigned and transferred to the Filer in exchange for a cash payment equal to the amount by which the Consideration exceeds the exercise price of such Gaming Warrant, less applicable withholdings, following which such Gaming Warrants were cancelled; and

(d) in exchange (the **Rollover Exchange**) for the Filer acquiring 2,157,500 of the Shares (the **Rollover Shares**) held by Rollover Shareholders (being directors and/or members of management of Gaming Nation), the Filer issued to each Rollover Shareholder a combination of Class A LP Units and Convertible Debenture debt equivalent to the Consideration per Rollover Share.

11. As a result of the Rollover Exchange, the Filer was deemed under the applicable securities laws to be a reporting issuer in the Provinces of Ontario, Alberta and British Columbia (where Gaming Nation was a reporting issuer for at least 12 months prior to the date that the Arrangement was completed) and the Filer will continue to be a reporting issuer unless the Filer obtains the Order Sought.

12. The Filer does not meet the requirements in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (**NP 11-206**) to obtain the Order Sought as its outstanding securities are beneficially owned, directly or indirectly, by 51 or more securityholders worldwide. The Filer does not meet the requirements in section 20(1) or section 20(3) of NP 11-206, as the Filer is not listed on any U.S. exchange or on any other major foreign exchange and does not meet the 2%/2% test in subsection 20(1)(b) of NP 11-206.

13. The Shares were voluntarily delisted from the TSX Venture Exchange effective as at close of trading on November 29, 2017.

14. No securities of the Filer 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.

15. The Filer has never conducted (and has never been required to conduct) a prospectus qualified offering in Canada and the Filer has not established or maintained a listing for any of its securities on any stock exchange or marketplace.

16. The Filer has no intention of distributing its securities in Canada at any time in the future other than pursuant to available Prospectus Exemptions.

17. The Filer is not in default of securities legislation in any jurisdiction.

18. But for the Rollover Exchange effected upon completion of the Arrangement with the Rollover Shareholders, who are all directors and/or members of management of Gaming Nation, the Filer would not be a reporting issuer in any jurisdiction in Canada.

19. The Filer will not be a reporting issuer in any jurisdiction in Canada immediately following the granting of the Order Sought.

20. The rights and obligations of the Limited Partners in respect of the Filer and the securities of the Filer are governed by the LPA.

21. The Filer is not required by the LPA or the Convertible Debentures to maintain its reporting issuer status or the equivalent in any jurisdiction in Canada or elsewhere.

22. The LPA contains provisions regarding the reporting of information concerning the Filer to the Limited Partners. The information that the Filer is required to disclose to the Limited Partners includes the Filer's unaudited interim financial statements and audited annual financial statements. The LPA provides that such financial information is confidential. Unless the Order Sought is granted, the Filer will be required to publicly file such confidential financial information within the timeframe specified under applicable Canadian securities laws following the Filer's financial year-end (currently December 31).

23. No Limited Partner may mortgage, pledge, charge, hypothecate, transfer, sell, offer a participation in, assign or otherwise dispose of, whether voluntary or otherwise transfer all or any part of its Units except (i) with the prior written consent of the General Partner, which consent can be withheld in the General Partner's sole discretion; (ii) by operation of law, or (iii) in the event of the death, permanent disability (which shall be determined by the General Partner in its discretion), bankruptcy, insolvency or dissolution of a Limited Partner, in which case the executor, administrator, trustee, committee or other legal representative of such Limited Partner shall succeed to the rights and obligations of such

Limited Partner and may be admitted, in the sole discretion of the General Partner, into the partnership as a Limited Partner in the place and stead of such Limited Partner.

24. The Filer filed a news release on January 31, 2018 disclosing that it had made an application to cease to be a reporting issuer.

Order

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

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

"Peter W. Currie"
Commissioner
Ontario Securities Commission

"Mark J. Sandler"
Commissioner
Ontario Securities Commission

2.2.3 Volkmar Guido Hable – ss. 127(1), 127(10)

FILE NO.: 2018-2

IN THE MATTER OF
VOLKMAR GUIDO HABLE

Janet Leiper, Commissioner and Chair of the Panel

March 16, 2018

ORDER
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission held a hearing in writing, to consider a request by Staff of the Commission ("**Staff**") for an order imposing sanctions against Volkmar Guido Hable ("**Hable**") pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

ON READING the findings of the British Columbia Securities Commission (the "**BCSC**") dated June 26, 2017 and the decision of the BCSC dated November 7, 2017 in the matter of Re Hable and on reading the materials filed by Staff, Hable not having filed any materials, although properly served;

IT IS ORDERED THAT:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Hable cease permanently;

2. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Hable cease permanently;

3. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Hable permanently;

4. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Hable resign any positions that he holds as a director or officer of any issuer or registrant;

5. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Hable be prohibited from becoming or acting as a director or officer of any issuer or registrant;

6. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Hable be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

"Janet Leiper"

2.2.4 Benedict Cheng et al.

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

Philip Anisman, Commissioner and Chair of the Panel
Deborah Leckman, Commissioner
Robert P. Hutchison, Commissioner

March 16, 2018

ORDER

WHEREAS on March 15, 2018, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider a motion by Benedict Cheng (**Cheng**) for an adjournment of the hearing on the merits;

ON READING the motion records filed by Cheng, Frank Soave (**Soave**) and Staff of the Commission (**Staff**), and on hearing the submissions of the representatives for Cheng, Soave, Eric Tremblay (**Tremblay**) and Staff;

IT IS ORDERED, with reasons to follow, that:

1. the hearing scheduled to begin on April 16, 2018 is adjourned;

2. the hearing dates previously scheduled for April 18, 19, 20, 23, 24, 25, 26, 27 and 30, and May 2, 3 and 4, 2018 are vacated;

3. the hearing on the merits shall be heard on September 4, 6, 7, 10, 11, 13, 14, 18, 20, 21, 24, 25 and 28, and October 4, 5, 9, 10, 11 and 12, 2018, commencing each day at 10:00 a.m. or another time ordered by the hearing panel;

4. Cheng's motion for disclosure shall be heard on April 16, 2018 at 10:00 a.m.;

5. Soave and Tremblay shall provide their hearing briefs to every other party by April 30, 2018;

6. Cheng shall provide his hearing brief to every other party by May 15, 2018;

7. the final interlocutory attendance is scheduled for June 18, 2018 at 10:00 a.m.

"Philip Anisman"

"Deborah Leckman"

"Robert P. Hutchison"

2.2.5 Acasta Enterprises Inc. – s. 9.1 of MI 61-101 Protection of Minority Security Holders in Special Transactions and s. 6.1 of NI Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 and section 9.1 of MI 61-101 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 and Part 3 of MI 61-101 – issuer proposes to sell one of its business units in exchange for the return of a specified number of its shares and other consideration – the purchaser is a related party of the issuer – the issuer is able to satisfy, and is relying on, the financial hardship exemption from the formal valuation and minority approval requirements of MI 61-101 – issuer has received executed, written consents from disinterested shareholders in respect of the share repurchase holding a majority of the outstanding shares – each consenting party received all material information in respect of the proposed transaction, confirmed that it is familiar with the terms of the proposed transaction and had the opportunity to obtain independent legal advice – the special committee received an opinion from an independent investment bank that is independent of all interested parties in respect of the proposed transaction, that the consideration to be received by the issuer in connection with the proposed transaction is fair, from a financial point of view to the issuer – selling shareholders are not receiving cash in exchange for their subject shares – terms of the proposed transaction were not agreed to in order to give preferential treatment to the selling shareholders, either collectively or individually, or to provide a method for the issuer to purchase the subject shares – purpose of the share repurchase is to facilitate the sale of the business unit in order to generate sufficient immediate cash proceeds to satisfy the demand of a lender under a secured credit facility and improve the issuer's financial position – the issuer's board and special committee have unanimously determined that the proposed transaction is in the best interests of the issuer and its shareholders, the terms of the proposed transaction are reasonable and the proposed transaction will improve the financial position of the issuer and benefit the shareholders to whom the bid was not extended – share repurchase is exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104 and Part 3 of MI 61-101, subject to conditions.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 3 and s. 9.1.

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

AND

IN THE MATTER OF
ACASTA ENTERPRISES INC.

ORDER
(Section 9.1 of Multilateral Instrument 61-101 and
Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Acasta Enterprises Inc. (the "**Filer**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") and section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") exempting the Filer from the requirements applicable to issuer bids in Part 2 of NI 62-104 and Part 3 of MI 61-101 (the "**Issuer Bid Requirements**") in connection with the proposed sale of all of the issued and outstanding shares in the capital of each of Stellwagen Group Limited, Stellwagen Capital LLC, Aviation Finance Corporation LLC and Infrastructure Finance & Trade Limited (collectively, "**Stellwagen**") to an affiliate of Douglas Brennan, the Chief Executive Officer of the entities comprising Stellwagen (the "**Purchaser**", and such sale, the "**Proposed Transaction**").

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

AND UPON the Filer having represented to the Commission that:

1. The Filer is a corporation existing under the laws of the Province of Ontario. The head office of the Filer is located at 150 Bloor Street West, Suite 310, Toronto, Ontario M5S 2X9.

2. The Filer is a reporting issuer in all of the provinces and territories of Canada and is not in default of securities legislation in any such jurisdiction.

3. The authorized capital of the Filer consists of an unlimited number of Class A restricted voting shares (the "**Class A Shares**") and Class B shares (the "**Class B Shares**"). As at March 18, 2018, no Class A Shares and 95,715,298 Class

B Shares were issued and outstanding. The Filer also has 20,884,062 warrants to purchase Class B Shares (the "**Warrants**") outstanding. The Class B Shares and Warrants trade on the Toronto Stock Exchange (the "**TSX**") under the symbols AEF and AEF.WT, respectively. The Class A Shares are not listed on any marketplace.

4. The Filer was a special purpose acquisition corporation incorporated for the purpose of effecting a qualifying acquisition. On January 3, 2017, the Filer announced the closing of its qualifying acquisition under Part X of the TSX Company Manual (the "**Qualifying Acquisition**") of 100% of three businesses, alongside the Filer's launch as a long-term investment and private equity management firm.

5. Pursuant to its Qualifying Acquisition, the Filer acquired Stellwagen, a commercial aviation finance advisory and asset management business, and two private label consumer staples businesses, Apollo Health and Beauty Care Partnership and Apollo Laboratories Inc. (collectively, "**Apollo**") and JemPak Corporation ("**JemPak**").

6. The Filer acquired Stellwagen for a total purchase price of $324,829,923, which was satisfied by (a) $96,545,743 in cash, (b) the issuance of 22,828,418 Class B Shares at $10.00 per Class B Share, and (c) an earn-out entitlement (the "**Earn-out**").

7. 21,280,160 Class B Shares (or 22.4% of the issued and outstanding Class B Shares, calculated on a non-diluted basis) of the 22,828,418 Class B Shares issued as part of the Filer's acquisition of Stellwagen were issued to Martello Finance Company Limited ("**Martello**"), a company existing under the laws of Cyprus. None of the Martello Class B Shares have a Canadian address on the books of the Filer. All of the share capital of Martello is held in trust for Mr. Brennan.

8. On May 14, 2017, the Filer entered into a secured two-year credit facility agreement (the "**SP Credit Facility**") with a syndicate (the "**Lenders**") consisting of SP Acasta Funding, LP (the "**Majority Lender**"), and affiliates of each of Mr. Brennan and Richard and Charles Wachsberg (together, the "**Wachsbergs**"), each of whom is a "related party" of the Filer (as such term is defined in MI 61-101), and U.S. Bank National Association, as administrative agent. The SP Credit Facility allows for the borrowing of up to U.S.$150 million, is guaranteed by Stellwagen Acquisition Corp. ("**Stellwagen Acquisition**") and Stellwagen Group Limited (together, the "**Guarantors**"), and is secured by a first ranking charge over all personal property of the Filer as well as a pledge of all equity interests owned by the Filer and each of the Guarantors.

9. On December 5, 2017, Stellwagen entered into a revolving credit and security agreement with Morgan Stanley Asset Funding Inc. (the "**MS Credit Agreement**"). The intended use of proceeds of the MS Credit Agreement required consent of a majority of the Lenders. Accordingly, the Filer reached out to the Majority Lender to negotiate terms under which the Majority Lender would provide consent.

10. During the course of discussions with the Majority Lender on the terms of the consent, the Filer's expectations for the 2018 results of operations of its businesses declined. In addition, management of Stellwagen communicated that it was going to require additional working capital liquidity support during the first quarter of 2018. In early January 2018, management alerted the board of directors of the Filer (the "**Board**") that, based on projected performance, the Filer was at risk of failing to comply with its covenants under the SP Credit Facility as of March 31, 2018, and, more specifically, that the Filer was at risk of breaching the covenant under the SP Credit Facility that required the Filer to maintain a debt to EBITDA multiple of under 5.25.

11. While the discussions were ongoing with the Majority Lender, the Filer was simultaneously in discussions with Martello and Almada Inc. ("**Almada**"), a company controlled by Alon Ossip and Martin Goldfarb, in respect of a potential aircraft operating lease fund (the "**Lease Fund**"). It was expected that this lease fund would generate fee revenue for Stellwagen and provide funding for its developing fund business.

12. A special committee of independent directors (the "**Special Committee**") consisting of Jay Swartz (Chair), Geoff Beattie, Robert Schwartz and Michael Young (until his resignation as a director of the Filer), was formed to explore and consider the formation of the Lease Fund, including but not limited to the structuring, financing and formation of the Lease Fund, as well as considering alternatives to the Lease Fund.

13. The Filer, Martello and Almada were unable to reach agreement on acceptable business terms for the Lease Fund and discussions ceased in mid-January 2018.

14. On January 19, 2018, Martello sent a letter to the Board demanding changes to the composition of the Board. Martello also issued a press release and filed an updated early warning report on January 22, 2018 disclosing that it had delivered this letter.

15. Mr. Beattie led the discussions on behalf of the Special Committee and with its input and oversight, with (a) Mr. Brennan, Mr. Ossip and the Wachsbergs regarding the future direction of the Filer, and (b) the Majority Lender regarding the terms on which it would be willing to provide the consent required pursuant to the SP Credit Facility.

16. The Majority Lender has observer status with respect to meetings of the Board and was aware of the deterioration of the Filer's business, that projections indicated that the Filer's expected 2018 financial performance was going to be weaker than expected and that Martello had demanded changes to the composition of the Board.

17. On February 6, 2018, the Filer entered into an amending agreement (the "**Amending Agreement**") with the Lenders, effective as of January 31, 2018, setting out the terms on which the consent required pursuant to the SP Credit Facility in connection with the entering into of the MS Credit Agreement. Pursuant to the Amending Agreement, in exchange for its agreement to provide the required consent, the Filer made an immediate U.S.$5 million repayment of amounts outstanding under the SP Credit Facility and agreed to a further repayment of U.S.$25 million of amounts outstanding under the SP Credit Facility (the "**Principal Payment**") by March 1, 2018.

18. Also on February 6, 2018, and in order to fund the Principal Payment, the Filer entered into a non-binding term sheet (the "**Term Sheet**") with Martello with respect to the Proposed Transaction, and the Special Committee and Martello continued their negotiations on a definitive agreement with respect to the Proposed Transaction.

19. Also on February 6, 2018, the Board agreed to formally amend and expand the mandate for the Special Committee, to be comprised of Messrs. Beattie, Schwartz and Swartz, with Mr. Beattie as chair to oversee the Proposed Transaction and if desirable pursue other strategic alternatives to maximize value for the Filer's shareholders or to address the Filer's liquidity and capital resources, including, without limitation, any potential negotiated transaction or transactions involving the Filer, such as a sale of one or more of the Filer's operating subsidiaries, or a financing transaction.

20. On March 1, 2018, the Filer entered into an extension agreement with the Lenders (the "**First Extension Agreement**") to extend the deadline for payment of the Principal Payment until March 7, 2018.

21. On March 7, 2018 the Filer entered into a second extension agreement with the Lenders (the "**Second Extension Agreement**") to extend the deadline for payment of the Principal Payment to March 21, 2018, which deadline may be automatically extended to March 31, 2018 in accordance with the terms of the Second Extension Agreement.

22. On March 19, 2018, the Filer and Stellwagen Acquisition entered into a definitive share purchase agreement with the Purchaser with respect to the Proposed Transaction (the "**Definitive Agreement**"). Stellwagen Acquisition is a wholly-owned subsidiary of the Filer and the registered holder of Stellwagen.

23. Pursuant to the Proposed Transaction, Stellwagen Acquisition will receive, as consideration for Stellwagen (collectively, the "**Consideration**"):

    (a) cash consideration in the amount of U.S.$35 million;

    (b) the return of 26,000,000 Class B Shares to the Filer for cancellation (collectively, the "**Subject Shares**");

    (c) downside protection of up to U.S.$5 million to the Filer if the proceeds realized from the monetization of the profit participating notes of Stelloan Investment Company I DAC (the "**PPNs**") held by the Filer, which have a book value of U.S.$47.5 million, are lower than a specified amount; and

    (d) termination of the Earn-out.

24. The Subject Shares are beneficially owned or controlled, directly or indirectly, in the amounts set out next to their names by the following persons (collectively, the "**Purchasing Group**"). Each member of the Purchasing Group is a direct or indirect shareholder of the Purchaser.

Name	***Number of Subject Shares***
Douglas Brennan	19,211,829
Belinda Stronach	1,000,000
Element Investment Corp.	3,037,500
Eugene O'Reilly	469,169
Stephen Coyle	140,751

Name	*Number of Subject Shares*
Catherine Power	140,751
Alon Ossip	1,000,000
Martin Goldfarb	1,000,000

25. None of the Subject Shares are Class B Shares held by the Filer's founders (the "Founders") that are subject to restrictions from transfer pursuant to the terms of the forfeiture and transfer restrictions agreement and undertaking dated as of July 30, 2015 among the Founders, the Filer, BMO Nesbitt Burns Inc., TD Securities Inc. and Canaccord Genuity Corp., and the TSX. Certain of the Subject Shares are subject to contractual restrictions on transfer pursuant to lock-up and/or escrow agreements entered into by certain members of the Purchasing Group in connection with the Qualifying Acquisition, which restrictions the Filer has agreed to waive in order to facilitate the Proposed Transaction.

26. The repurchase of the Subject Shares (the "**Share Repurchase**") is an integral part of the Proposed Transaction. No member of the Purchasing Group is receiving any cash in exchange for their respective Subject Shares, which are being returned to the Filer for cancellation.

27. As a result of the fact that no Shareholders other than the members of the Purchasing Group are parties to the Proposed Transaction, it is impossible for the Filer to offer to acquire Class B Shares from all holders of Class B Shares (collectively, the "**Shareholders**") on the same terms and conditions as those contemplated by the Proposed Transaction.

28. The terms of the Proposed Transaction were not agreed to in order to give preferential treatment to the Purchasing Group, either collectively or individually, or to provide a method for the Filer to purchase the Subject Shares, but rather to facilitate the sale of Stellwagen in order to generate sufficient immediate cash proceeds to satisfy the Principal Payment and to improve the Filer's financial position.

29. The Special Committee engaged Blair Franklin Capital Partners Inc. ("**Blair Franklin**"), an independent investment bank that is independent of all "interested parties" (as defined in MI 61-101) in the Proposed Transaction, to provide its opinion as to the fairness, from a financial point of view, to the Filer of the Consideration to be received by the Filer pursuant to the Proposed Transaction. On March 18, 2018, Blair Franklin delivered an opinion (the "**Fairness Opinion**") to the Special Committee that the Consideration to be received by the Filer in connection with the Proposed Transaction is fair, from a financial point of view, to the Filer.

30. Each of the Board and the Special Committee have unanimously determined, acting in good faith, that:

    (a) the Proposed Transaction is in the best interests of the Filer and its Shareholders;

    (b) the terms of the Proposed Transaction are reasonable; and

    (c) the Proposed Transaction will improve the financial position of the Filer and will benefit the Shareholders to whom the issuer bid is not extended.

31. Management of the Filer, the Board and the Special Committee are of the view that the Proposed Transaction is the only transaction available to the Filer that is reasonably capable of generating sufficient proceeds to make the Principal Payment within the timeframe demanded by the Majority Lender. Absent the completion of the Proposed Transaction and the cash proceeds therefrom, the Filer will default under the Amending Agreement by failing to make the Principal Payment. The Filer would potentially also breach its debt to EBITDA covenant of 5.25 under the SP Credit Facility during 2018, which would cause a cross-default under the Filer's other debt arrangements and could put the Filer at risk for an insolvency filing.

32. The cash proceeds from the Proposed Transaction will enable the Filer to make the Principal Payment, thereby remedying the Filer's immediate financial problems, and will improve the Filer's debt to EBITDA ratio and enable the Filer to remain onside the debt to EBITDA covenant under the SP Credit Facility.

33. The Purchaser is a "related party" of the Filer (as such term is defined in MI 61-101) and the Proposed Transaction is a "related party transaction" under paragraph (a) of that definition in MI 61-101.

34. Paragraphs 5.5(g) and 5.7(1)(e) of MI 61-101 (together, the "**Financial Hardship Exemption**") exempts related party transactions from the formal valuation and minority approval requirements, respectively, contained therein, if the issuer

is in financial hardship. The Filer is able to satisfy the Financial Hardship Exemption and is relying on the Financial Hardship Exemption in respect of the Proposed Transaction.

35. The Share Repurchase forming part of the Proposed Transaction constitutes an indirect "issuer bid" for the purposes of NI 62-104 and MI 61-101, to which the Issuer Bid Requirements would apply. The Share Repurchase cannot be made in reliance upon the exemptions from the Issuer Bid Requirements set out in Part 4 of NI 62-104 and section 3.4 of MI 61-101.

36. The Filer has received executed, written consents from Shareholders (collectively, the "**Consenting Parties**" and each, a "**Consenting Party**") holding a majority of the outstanding Class B Shares, other than the Class B Shares held by (a) interested parties; (b) related parties of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more entities that are neither interested parties nor issuer insiders of the Filer; or (c) a joint actor with a person or company referred to in (a) or (b) above, in respect of the Share Repurchase (such excluded persons, the "Excluded Persons").

37. Each Consenting Party has (a) received all material information in respect of the Proposed Transaction, including the Fairness Opinion and the share purchase agreement, (b) confirmed that it is familiar with the terms of the Proposed Transaction, and (c) had the opportunity to obtain independent legal advice.

38. No Consenting Party (including those Consenting Parties that are not related parties of the Filer) has received, or will receive, any collateral benefit in respect of the Share Repurchase or in connection with agreeing to provide its written consent.

39. Each Consenting Party was provided with a copy of:

    (a) the press release issued by the Filer on February 6, 2018 announcing the entering into of the Term Sheet and Amending Agreement, and the related material change report filed on February 16, 2018;

    (b) the press release issued by the Filer on March 1, 2018 announcing the First Extension Agreement; and

    (c) the press release issued by the Filer on March 8, 2018 providing an update on the Proposed Transaction.

40. Each Consenting Party will be provided with a copy of (collectively, the "**Subsequently Filed Documents**"):

    (a) the press release issued by the Filer on March 19, 2018 announcing the entering into of the Definitive Agreement, and the related material change report on the same date;

    (b) the Fairness Opinion, which will be filed by the Filer on SEDAR; and

    (c) any document issued and filed by the Filer on SEDAR in respect of the Proposed Transaction prior to the closing of the Proposed Transaction.

41. The Filer will apply to the Superior Court of Justice (Ontario) (the "**Court**") for an order approving a plan of arrangement under the *Business Corporations Act* (Ontario) to reduce the stated capital of the Class B Shares so that the Filer can satisfy the solvency test under applicable corporate laws required to repurchase the Subject Shares.

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 and section 9.1 of MI 61-101 that the Filer be exempt from the Issuer Bid Requirements in connection with the Share Repurchase, provided that:

    (a) as at the time of the closing of the Proposed Transaction, the Filer is in possession of executed written consents from Consenting Parties holding, in the aggregate , a majority of the outstanding Class B Shares, other than the Class B Shares held by Excluded Persons;

    (b) as at the time of the closing of the Proposed Transaction, each of the Board and the Special Committee remain of the view that the Proposed Transaction is in the best interests of the Filer and its Shareholders and that the terms of the Proposed Transaction are reasonable;

    (c) no Consenting Party (including those Consenting Parties that are not related parties of the Filer) has received, or will receive, any collateral benefit in respect of the Share Repurchase or in connection with agreeing to provide its written consent;

(d) each Consenting Party receives a copy of this order and the Subsequently Filed Documents;

(e) each Consenting Party has (a) received all material information in respect of the Proposed Transaction, (b) confirmed that it is familiar with the terms of the Proposed Transaction, and (c) has had the opportunity to obtain independent legal advice;

(f) the Filer does not close the Proposed Transaction unless and until the seventh (7th) calendar day after the granting of this order;

(g) the Filer issues and files a press release on SEDAR disclosing that the Filer has been granted exemptive relief from the Issuer Bid Requirements in connection with the Share Repurchase and that it will not close the Proposed Transaction earlier than the seventh (7th) calendar day after the granting of the order;

(h) there are no approvals required in respect of the Proposed Transaction that must be obtained at a meeting of Shareholders; and

(i) the Filer receives the approval of the Court to reduce the stated capital of the Class B Shares so that the Filer can satisfy the solvency test under applicable corporate laws required to repurchase the Subject Shares.

DATED at Toronto this 19th day of March, 2018.

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

2.2.6 Macquarie Capital Markets Canada Ltd., formerly known as Yorkton Securities Inc. – ss. 144(1), 144(2)

FILE NO.: 2018-4

IN THE MATTER OF
MACQUARIE CAPITAL MARKETS CANADA LTD.,
FORMERLY KNOWN AS YORKTON SECURITIES INC.

Robert P. Hutchison, Commissioner

March 19, 2018

ORDER
(Subsections 144(1) and (2) of the *Securities Act*, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission held a hearing in writing to consider an Application made by Macquarie Capital Markets Canada Ltd. (**Macquarie**), formerly known as Yorkton Securities Inc., to vary the terms of an Order issued by the Commission on December 19, 2001 (the **Order**) relating to the Settlement Agreement dated December 14, 2001 between Staff of the Commission and Yorkton Securities Inc.;

ON READING the materials filed by Macquarie, including the affidavit of Paula Hewitt sworn January 31, 2018 and correspondence from Macquarie dated February 6, 16 and March 2, 2018 and on reading the correspondence from Staff of the Commission dated February 6 and March 2, 2018, indicating that Staff consents to the order sought;

IT IS ORDERED THAT:

1. pursuant to subsection 144(1) of the Act, the Order is varied by removing the terms and conditions in paragraph 5 of the Order; and

2. pursuant to subsection 144(2) of the Act, Macquarie shall adopt new policies and procedures in accordance with applicable Ontario securities laws, including the Investment Industry Regulatory Organization of Canada (**IIROC**) Dealer Member Rules and Universal Market Integrity Rules to deal with the supervision of the accounts of officers and employees of Macquarie that will be transferred from Macquarie to, or otherwise established at, other IIROC dealers, and Macquarie shall confirm in writing to Staff of the Commission within 90 days of the date of this order that these new policies and procedures have been finalized and implemented.

“Robert P. Hutchison”

2.4 Rulings

2.4.1 Trident Brokerage Services LLC – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options

Headnote

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that the Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. As an introducing broker, the Applicant will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside of Canada and that are cleared through clearing corporations located outside of Canada, including block trades, to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (OSC Rule 91-502) exempting the Applicant and its Representatives from the proficiency requirements in section 3.1 of OSC Rule 91-502 for trades in commodity futures options on exchanges located outside of Canada.

Applicable Legislative Provisions

Instrument Cited

Commodity Futures Act, R.S.O. 1990, c. C20, as am., ss. 22, 33, 38.
Securities Act, R.S.O. 1990, c. S.5, as am.

Rule Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1, 6.1.

March 6, 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
ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
TRIDENT BROKERAGE SERVICES LLC

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

UPON the application (the **Application**) of Trident Brokerage Services LLC (TBS or the Applicant) to the Ontario Securities Commission (the **Commission**) for:

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

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in

Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicant acts in respect of such trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling; and

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

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

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

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

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

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

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

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

(vi) **"FCM"** means a futures commission merchant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The Applicant has a wholly-owned subsidiary Trident Brokerage Services Limited located in London, United Kingdom.

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

4. In order to provide these services, the Applicant is a member of and is regulated by the NFA (NFA ID number: 0445409) and is registered as an "introducing broker" with the CFTC. The Applicant is not a broker-dealer registered with the SEC, is not a member of FINRA and does not conduct a securities business in the U.S.

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

6. The Applicant is not a member of any exchange, but it is considered to be a "broker participant" by and has entered into a broker clearing agreement with each of the following U.S. exchanges that allows it to enter transactions on the exchanges' clearing systems on behalf of the Applicant's clients: CME (NYMEX), ICE Futures U.S., NFX (Nasdaq Energy Futures Exchange), and the Nodal Exchange.

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

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

9. The principal business of the Applicant is providing:

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

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

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

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

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

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

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

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

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

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

18. Permitted Clients of the Applicant will be able to execute trades in Exchange-Traded Futures through the Applicant by contacting the Applicant's execution desk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  (ii) a statement that the Applicant's head office or principal place of business is located in New York City, New York, United States;

  (iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

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

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

(g) the Applicant notifies the Commission of any regulatory action initiated after the date of this ruling in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action; provided that the Applicant may also satisfy this condition by filing with the Commission (i) a copy of any notice filed by the Applicant pursuant to CFTC Regulation 1.12(k), (l) or (m) at the same time such notice is filed with the CFTC and the NFA, and (ii) on a quarterly basis (A) a copy of the regulatory actions appearing on the Applicant's NFA Background Affiliation Status Information Center (BASIC) page and (B) a copy of any disclosures that would be required to be reported by the Applicant in the Regulatory Disclosures section of the Applicant's Annual Registration Update to the NFA;

(h) if the Applicant does not rely on the IDE, by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Applicant had relied on the IDE; and

(i) by December 1 of each year, the Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement in the CFA granted pursuant to this ruling by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*.

This Decision will terminate on the earliest of:

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

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirement in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicant acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

"Peter W. Currie"
Commissioner
Ontario Securities Commission

"Mark J. Sandler"
Commissioner
Ontario Securities Commission

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant and its Representatives in respect of trades in Exchange-Traded Futures, provided that:

(a) the Applicant and its Representatives maintain their respective registrations with the CFTC and membership with the NFA which permit them to trade commodity futures options in the United States; and

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

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

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirement in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

"Elizabeth King"
Director
Compliance and Registrant Regulation Branch
Ontario Securities Commission

March 12, 2018

APPENDIX A

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX B

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes _____ No _____

   If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

   If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Aurora Cannabis Inc. et al. – ss. 101 and 134 of the Saskatchewan Securities Act and ss. 104 and 127 of the Ontario Securities Act

SIMULTANEOUS HEARINGS OF
THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN (FCAAS)
AND
THE ONTARIO SECURITIES COMMISSION (OSC)

IN THE MATTER OF
AURORA CANNABIS INC.

AND

IN THE MATTER OF
CANNIMED THERAPEUTICS INC.

AND

IN THE MATTER OF
THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF
CANNIMED THERAPEUTICS INC.

REASONS FOR DECISION

(Sections 101 and 134 of *The Securities Act*, 1988, SS 1988-89, c S-42.2)
(Sections 104 and 127 of the *Securities Act*, RSO 1990, c S.5)

Citation: *Aurora Cannabis Inc. (Re)*, 2018 ONSEC 10
Date: 2018-03-15
File Nos.: 2017-71, 2017-73 and 2017-74

Hearing:	December 20 and 21, 2017	
Decision:	March 15, 2018	
FCAAS Panel:	Peter Carton	Member and Chair of the FCAAS Panel
	Howard Crofts	Member of the FCAAS Panel
	Honourable Eugene Scheibel	Member of the FCAAS Panel
OSC Panel:	D. Grant Vingoe	Vice-Chair and Chair of the OSC Panel
	Timothy Moseley	Vice-Chair
	Frances Kordyback	Commissioner
Appearances:	Geoff Moysa Paul Davis Stephen Brown-Okruhlik Leila Rafi Brett Harrison	For Aurora Cannabis Inc.
	James D.G. Douglas Caitlin R. Sainsbury Graham Splawski Ashley Thomassen	For CanniMed Therapeutics Inc.

Peter F.C. Howard Samaneh Hosseini Sinziana Hennig Zev Smith	For the Special Committee of the Board of Directors of CanniMed Therapeutics Inc.
Kate McGrann Naizam Kanji Jason Koskela David Mendicino	For Staff of the OSC
Sonne Udemgba Dean Murrison Nathanial D. Day	For Staff of the FCAAS

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REASONS FOR DECISION

I. OVERVIEW

[1] This decision relates to three separate applications for regulatory relief, all arising out of a contested take-over between cannabis companies.

[2] Aurora Cannabis Inc. ("**Aurora**") made an offer to acquire its competitor, CanniMed Therapeutics Inc. ("**CanniMed**"). Aurora entered into lock-up agreements with four of CanniMed's largest shareholders, and then submitted a proposal to the CanniMed Board of Directors, offering to purchase all of CanniMed's common shares for consideration in the form of Aurora shares. When the CanniMed Board did not respond favourably by the deadline, Aurora launched a formal take-over bid.

[3] Meanwhile, CanniMed moved forward with its own proposed acquisition, which had been under consideration since well before Aurora expressed interest in CanniMed. Between the time of Aurora's initial proposal and its formal offer, CanniMed entered into an arrangement agreement with Newstrike Resources Ltd. ("**Newstrike**"), the result of months of exclusive negotiations.

[4] The two potential transactions presented competing visions for CanniMed's future. Aurora's offer was conditional on the cancellation of CanniMed's proposed Newstrike arrangement. In order to defend against the Aurora offer and protect the Newstrike transaction, CanniMed adopted a shareholder rights plan. That plan prevented Aurora from acquiring, without CanniMed's approval, any CanniMed shares other than those tendered to its bid and from entering into any further lock-up agreements with CanniMed shareholders.

[5] Aurora was first to seek regulatory relief, filing applications with the Ontario Securities Commission (the "**Commission**") and the Financial and Consumer Affairs Authority of Saskatchewan (the "**FCAAS**"). It sought an order for exemptive relief from the requirements in section 2.28.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**"), which requires take-over bid offerors to allow securities to be deposited for an initial deposit period of at least 105 days from the date of the bid. Aurora sought to shorten the initial deposit period to 35 days, expiring in advance of the various scheduled shareholders' meetings for approval of the Newstrike transaction. Aurora also sought an order to cease trade CanniMed's rights plan.

[6] The Special Committee of CanniMed's Board of Directors then filed its own application, seeking an order characterizing Aurora's offer as an "insider bid" for the purposes of Multilateral Instrument 61-101 *Protection of Minority Shareholders* ("**MI 61-101**"). Such an order would require Aurora to obtain a formal valuation in connection with its offer, among other requirements. The Special Committee also asserted that Aurora and the locked-up shareholders should be deemed "joint actors", as defined in MI 61-101, and that the shares of the locked-up shareholders should be excluded from the 50% minimum tender condition in NI 62-104.

[7] Finally, CanniMed filed what it characterized as a "cross-application". It requested an order that the 5% exemption to the restrictions on an offeror's purchases during a take-over bid (found in subsection 2.2(3) of NI 62-104) not apply to Aurora until 105 days after the delivery of a compliant take-over bid circular to CanniMed's shareholders. CanniMed sought to prevent Aurora from purchasing any CanniMed shares prior to the expiry of the Aurora offer, arguing that such purchases could put Aurora in a blocking position, enabling it to preclude any superior offers.

[8] The relief sought in the various applications raised the following main issues:

a. Should Aurora's offer be exempted from the 105-day minimum deposit period for take-over bids?

b. Should Aurora be prohibited from acquiring up to 5% of CanniMed's common shares during the take-over bid period?

c. Were Aurora and the locked-up shareholders acting jointly or in concert?

d. Was Aurora's disclosure concerning the background of the offer in its news releases and take-over bid circular sufficient?

e. Should CanniMed's shareholder rights plan be cease-traded?

[9] In December 2017, the Commission and the FCAAS heard all three applications together in a joint hearing (the "**Hearing**"), on an urgent basis, and issued separate parallel Orders with Reasons to follow. In conclusion:

a. Aurora was denied the exemptive relief that would shorten the time required for Aurora's offer to remain open;

b. Aurora was not prohibited from acquiring up to 5% of CanniMed's common shares during the take-over bid period;

c. Insufficient evidence was advanced to establish that the locked-up shareholders were acting jointly or in concert with Aurora;

d. Aurora was ordered to issue amended news releases and an amended take-over bid circular to include information that would reasonably be expected to affect CanniMed's shareholders' decision to accept or reject Aurora's offer; and

e. CanniMed's shareholders rights plan was cease-traded.

[10] These are the collective reasons for the decisions of both the Commission and the FCAAS. Copies of our respective Orders are attached as Schedules 'A' and 'B'.

II. BACKGROUND

A. Parties

[11] The three applicants in these various proceedings are Aurora, CanniMed and CanniMed's Special Committee. Aurora is the sole respondent in the applications brought by the other two applicants. CanniMed is the sole respondent in Aurora's application.

[12] Aurora is a producer and distributor of medical marijuana. It is governed by the *Business Corporations Act* (British Columbia), SBC 2002, c 57 and is a reporting issuer in each province of Canada, with common shares listed on the Toronto Stock Exchange. Through wholly-owned subsidiaries, it has licences to produce cannabis pursuant to Canada's *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230.

[13] CanniMed is a publicly-traded biopharmaceutical company that cultivates and sells cannabis products to Canadians registered under the *Access to Cannabis for Medical Purposes Regulations*. Its subsidiaries are licensed producers and were the sole producers of cannabis for the Government of Canada for more than 13 years. CanniMed is a reporting issuer in each Canadian province other than Québec. CanniMed is incorporated under the laws of Canada, with its head office in Saskatoon, Saskatchewan.

[14] CanniMed's Special Committee was formed on November 13, 2017, and then reconstituted on November 17, 2017. It is composed of all the independent directors of the Board, with a mandate that included the consideration of Aurora's take-over bid (the "**Special Committee**").

B. CanniMed and Newstrike Begin Negotiations

[15] In April 2017, the Government of Canada announced that it would legalize marijuana for recreational use by July 2018. In June 2017, the Chief Executive Officers ("**CEOs**") of CanniMed and Newstrike were introduced to each other. Newstrike, through its subsidiaries, is a licensed producer of medical cannabis that plans to participate in the recreational market. The two CEOs discussed the possibility of collaborative ventures for the supply and storage of cannabis, and the potential for a future collaboration that would provide CanniMed with access to the recreational market. By the end of June 2017, CanniMed and Newstrike had entered into a mutual non-disclosure agreement ("**NDA**"). In July 2017, they expanded the scope of the NDA to include a covenant to negotiate exclusively with each other until the end of August 2017.

[16] During August 2017, CanniMed and Newstrike continued to discuss the terms of a possible storage arrangement (whereby CanniMed would provide storage for Newstrike's products), a supply arrangement (whereby Newstrike would supply products to CanniMed for distribution) and the possibility of future commercial agreements. They also discussed a possible investment by CanniMed in Newstrike.

[17] On September 7, 2017, CanniMed's CEO sent the CanniMed Board a slide deck prepared by CanniMed's financial advisor, AltaCorp Capital Inc. ("**AltaCorp**"), who recommended that CanniMed pursue a merger with Newstrike to strategically enter the recreational cannabis market. The CanniMed Board met to discuss a potential transaction with Newstrike. There was also an opportunity for CanniMed to subscribe for a convertible debenture of Newstrike, which could assist with the potential acquisition strategy. The Board directed management to engage a financial advisor and legal counsel in connection with the potential transactions.

[18] CanniMed retained AltaCorp as its financial advisor in connection with a potential acquisition of Newstrike. AltaCorp met with CanniMed management and some members of the Board to outline the Newstrike opportunity. Newstrike's financial advisor in respect of the transaction was Canaccord Genuity Corp. ("**Canaccord**").

[19] On September 20, 2017, the CanniMed Board resolved to create a special committee to review potential strategies and opportunities for merger and acquisition activities by CanniMed, and to make recommendations to the Board (the "**Initial Special Committee**"). At the same Board meeting, the Board also approved the terms of a convertible debenture financing with Newstrike, with a view to ensuring the continued exclusivity of discussions with Newstrike beyond September 2017. Ultimately, the covenant between CanniMed and Newstrike to negotiate exclusively with each other was extended until the end of October 2017.

C. Negotiations Proceed Over Objections of Some CanniMed Board Members and Shareholders

[20] As negotiations progressed, some CanniMed Board members and some shareholders raised concerns about CanniMed's corporate strategy. At a CanniMed Board meeting on September 27, 2017, Robert Duguid expressed concern that CanniMed's focus on the recreational cannabis market was not broad enough. Mr. Duguid was then a member of the Initial Special Committee and also the CanniMed nominee director for two of CanniMed's largest shareholders: SaskWorks Venture Fund Inc. ("**SaskWorks**") and Apex Investment Limited Partnership ("**Apex**"), which held approximately 8% and 3% of CanniMed's common shares, respectively. Mr. Duguid commented that CanniMed should entertain a strategic sale to a player in the recreational cannabis space. He suggested that the purpose of the Initial Special Committee should be broadened to: (i) determine the potential outcomes if another company proposed acquiring CanniMed, and (ii) investigate moving into the recreational market. The majority of the Board disagreed and resolved that the Initial Special Committee's mandate did not extend to CanniMed's initiation of a strategic sale process, including potential change of control transactions.

[21] CanniMed and Newstrike continued to confidentially negotiate an agreement for CanniMed's acquisition of Newstrike pursuant to a plan of arrangement. On October 2, 2017, Newstrike issued a press release announcing its issuance of a convertible debenture to a "strategic arm's length lender", without naming CanniMed as the lender.

[22] Then another CanniMed director, Doug Banzet, voiced concerns. Mr. Banzet was a nominee director for another of CanniMed's largest shareholders, Golden Opportunities Fund Inc. ("**Golden Opportunities**"), an investment fund holding about 17% of CanniMed's common shares. On October 4, 2017, Mr. Banzet told CanniMed's CEO that neither he nor Golden Opportunities supported the Newstrike transaction.

[23] The next day, October 5, 2017, CanniMed received a letter from another large shareholder, Vantage Asset Management ("**Vantage**"). Vantage is an institutional investment manager holding approximately 9% of CanniMed's common shares for Vantage's underlying clients. Vantage's letter outlined several specific challenges it perceived involving CanniMed and concluded that "the best path forward for all CanniMed shareholders is for [CanniMed] to pursue a strategic sale process". Vantage stated that it had identified "logical strategic acquirors" and anticipated discussing its strategic analysis with the CanniMed Board. Vantage believed that acquiring smaller licensed producers or late-stage applicants would introduce unnecessary risks for CanniMed shareholders.

[24] CanniMed's CEO provided the Board with management's written response to the Vantage letter. Management disagreed with Vantage, believing that it was premature to engage in a change of control transaction. AltaCorp, as CanniMed's advisor, also disagreed with the views expressed in the Vantage letter. On October 12, 2017, AltaCorp presented its views to the Initial Special Committee and advised against putting CanniMed up for sale. AltaCorp asserted that CanniMed's acquisition of a recreationally-focused licensed producer would create the most long-term value.

[25] There were continued differences of opinion. After the AltaCorp presentation, Mr. Banzet emailed the CanniMed Board, expressing unhappiness with the process and with the mandate of the Initial Special Committee. Vantage was also dissatisfied, writing a second letter to the CanniMed Board, in which it repeated the substance of the first letter and insisted that the Board should seek to sell CanniMed.

[26] At the CanniMed Board meeting that followed on October 27, 2017, the Initial Special Committee informed the Board that it could not reach a consensus about whether or not to begin discussions with Vantage. Both AltaCorp and Newstrike gave presentations and CanniMed finalized its 2018 business plan. The plan recommended a strategic acquisition of Newstrike. The Board meeting was adjourned, to reconvene several days later.

[27] Before the meeting reconvened, several more objections were voiced. Mr. Banzet again emailed the CanniMed Board, expressing frustration with the prior Board meeting and raising concerns about the availability of liquidity for Golden Opportunities. Mr. Duguid also sent the Board an analysis opposing the Newstrike transaction. In addition, minutes before the Board meeting convened, Vantage's counsel emailed the Board, citing serious concerns with CanniMed's

proposed strategic direction and threatening legal action against CanniMed's directors. It appeared to us that Mr. Duguid's and Vantage's counsel's communications were coordinated for maximum effect immediately before the CanniMed Board meeting.

[28] When the Board meeting reconvened on October 30, 2017, the CanniMed Board decided it was not in CanniMed's best interests to initiate a change of control transaction process. The majority of the Board authorized management to enter into formal negotiations with Newstrike for a potential acquisition of Newstrike. However, the Board also directed CanniMed's Chair and AltaCorp to meet with Vantage representatives to discuss the matters raised in Vantage's letters.

[29] On November 1, 2017, two members of the Initial Special Committee had a conference call with Vantage's Managing Partner and one of his colleagues in which Vantage expressed the view that "a merger with a smaller licensed producer would not be a good route for the Company." Vantage followed up the next day with a letter that stated in part:

> [I]f CanniMed's Board does in fact elect to move forward with an acquisition without evaluating all the benefits (and potential premium) associated with a sale process, we will be forced to escalate the current process.

[30] CanniMed proceeded to obtain an independent fairness opinion about the Newstrike arrangement and extended the covenant to negotiate exclusively with Newstrike until November 17, 2017. Meanwhile, CanniMed's Chair and AltaCorp held a number of conference calls with Vantage's representatives, allowing Vantage to elaborate on its views. Vantage wrote yet another letter to the CanniMed Board, dated November 2, 2017, insisting that the Board should seek to sell CanniMed and stating that CanniMed should not enter into any transaction in which it would be the acquiror.

[31] A further Board meeting was scheduled for the purpose of presenting the Newstrike arrangement to the CanniMed Board for approval. Management's due diligence report and a draft of the Board's authorizing resolution for the Newstrike transaction were circulated. Finally, on November 12, 2017, CanniMed and Newstrike agreed, in principle, on an exchange ratio for the purposes of the share exchange consideration.

[32] On November 13, 2017, Aurora sent its take-over proposal to CanniMed, approximately one hour before the CanniMed Board meeting at which the Newstrike transaction was scheduled to be put to a vote.

D. CanniMed Shareholder Contacts Aurora and Lock-Up Agreements are Negotiated

[33] While the Newstrike transaction was being finalized, Vantage remained dissatisfied with the responses to its several letters to the CanniMed Board and it began directly contacting potential acquirors. On November 6, 2017, Vantage contacted Aurora and suggested a business combination between Aurora and CanniMed. This led to internal discussions at Aurora, which were then followed by a call between Aurora, Vantage and the portfolio manager of both Apex and SaskWorks. In that call, on November 8, 2017, Aurora learned that CanniMed was looking to acquire an unnamed business in the cannabis market and that Vantage did not agree with the strategy. Aurora was informed of the need to act quickly if it wished to make a bid. Aurora was also informed that there would be other large shareholders interested in selling to Aurora if Aurora pursued a take-over of CanniMed. Through these communications, Aurora learned two facts material to its potential bid, namely that CanniMed was pursuing an acquisition that may well have an impact on the ability to make a bid and that such action was imminent.

[34] The following day, November 9, 2017, Aurora decided to pursue the CanniMed take-over bid and began conducting internal modelling. Aurora prepared a draft of its proposal and negotiated the purchase price of the proposed bid with the interested shareholders, in an effort to entice them to sign "hard" lock-up agreements (i.e., agreements by which the shareholder would promise to tender all of its shares into Aurora's bid, even if a higher bid materialized).

[35] Aurora also engaged a financial advisor in connection with the potential acquisition of CanniMed. Canaccord was Aurora's long time financial advisor, but was engaged at the time as Newstrike's financial advisor in respect of the Newstrike transaction. On November 10, 2017, Canaccord withdrew from the representation of Newstrike and began to advise Aurora in respect of the potential CanniMed bid. Unbeknownst to Newstrike or CanniMed, Canaccord had a contractual first right of refusal on any Aurora engagement once Canaccord cleared conflicts. Therefore, Canaccord could accept Aurora's engagement in connection with the potential acquisition of CanniMed if Canaccord could extricate itself from its Newstrike role.

[36] On November 12, 2017, Aurora entered into separate lock-up agreements with each of Golden Opportunities, Vantage, SaskWorks, and Apex (the "**Locked-up Shareholders**"). The Locked-up Shareholders agreed to tender their CanniMed common shares to any take-over bid by Aurora, should the bid meet certain price criteria. Specifically, the Locked-up Shareholders could back out if either (i) the Consideration Value (defined in part as "an implied price of C$21 per CanniMed common share …") per CanniMed share fell to below $16 per share at any time within 10 business

days prior to the expiry of the offer or (ii) within that time period the 20-day volume-weighted average of the consideration was less than $18 per share. Additionally, if the consideration exceeded $24 per share based on the 20-day volume-weighted average, Aurora was authorized to reduce the consideration such that the consideration "is not more than C$24 per share". The Locked-up Shareholders also agreed to exercise the voting rights attached to their CanniMed common shares to oppose any CanniMed share issuance or acquisition.

E. Aurora's Proposal to Acquire CanniMed

[37] On November 13, 2017, approximately one hour prior to the scheduled CanniMed Board meeting to vote on the Newstrike transaction, Aurora submitted a proposal to the CanniMed Board to purchase all of the issued and outstanding common shares of CanniMed (the "**Aurora Proposal**"). The Aurora Proposal indicated that Aurora had entered into lock-up agreements in support of its proposal with the Locked-up Shareholders, representing approximately 38% of CanniMed's then-outstanding common shares.

[38] At the CanniMed Board meeting, the proposed arrangement agreement between CanniMed and Newstrike was presented to the Board. AltaCorp provided its fairness opinion in respect of the proposed arrangement agreement, concluding that the consideration proposed to be paid by CanniMed to Newstrike shareholders was fair, from a financial point of view, to CanniMed.

[39] In light of the Aurora Proposal, the CanniMed Board also decided to form a second special committee that comprised all the independent directors of the Board to review the Aurora Proposal and report to the Board at a subsequent meeting on November 17, 2017. As later reconstituted, this is the Special Committee that is a party in these Applications.

[40] The day after the CanniMed Board meeting, on November 14, 2017, Aurora issued a press release announcing the Aurora Proposal and Aurora's intention to commence a formal take-over bid for CanniMed if CanniMed failed to respond to the proposal by November 17, 2017. On November 15, 2017, CanniMed issued a responding press release, advising its shareholders that the CanniMed Board was reviewing the terms of the Aurora Proposal. The press release also announced that CanniMed was in exclusive negotiations with Newstrike regarding the proposed arrangement agreement.

[41] As planned, the CanniMed Board reconvened on November 17, 2017. At that meeting:

a. Mr. Banzet (the nominee director for Golden Opportunities) recused himself from discussions relating to the Aurora Proposal and Mr. Duguid (the nominee director for SaskWorks and Apex) resigned from the CanniMed Board;

b. AltaCorp presented its views on the Aurora Proposal;

c. The Special Committee recommended that CanniMed should not engage in discussions with Aurora;

d. The Board approved the execution and delivery of the agreement for the Newstrike arrangement; and

e. The Board reconstituted the Special Committee to consist of all independent members of the CanniMed Board.

[42] That afternoon, CanniMed entered into the Newstrike arrangement agreement (the "**Arrangement Agreement**"), pursuant to which CanniMed agreed to purchase all of the issued and outstanding shares of Newstrike in exchange for common shares. The Arrangement Agreement provided that each Newstrike shareholder would receive 0.033 common shares of CanniMed in exchange for each share of Newstrike held and that Newstrike would become a wholly-owned subsidiary of CanniMed. Upon closing of the Arrangement Agreement, CanniMed and Newstrike shareholders would own in aggregate approximately 65% and 35%, respectively, of the newly combined CanniMed. CanniMed subsequently issued a press release announcing the terms of the Arrangement Agreement.

[43] The following week, CanniMed set January 23, 2018, as the date for a special meeting of its shareholders, to seek approval of the issuance of common shares as contemplated by the Arrangement Agreement, with a record date of November 30, 2017.

[44] On November 20, 2017, Aurora issued a press release announcing its intention to make a formal offer to purchase all of the issued and outstanding common shares of CanniMed (the "**Aurora Offer**").

[45] On November 22, 2017, in anticipation of the Aurora Offer, CanniMed issued a press release announcing that it had formed the Special Committee and advising its shareholders "to take no action on any proposal from Aurora until they have received further communication through the Director's Circular."

[46] On the same day, Aurora filed an exemptive relief application with the FCAAS and the Commission seeking to abbreviate the bid deposit period prescribed by section 2.28.1 of NI 62-104.

F. Aurora's Formal Offer

[47] On November 24, 2017, Aurora formally launched the Aurora Offer and issued a press release outlining its terms. The Aurora Offer contemplated that CanniMed shareholders would receive approximately 4.5 common shares of Aurora for each common share of CanniMed, subject to a maximum of $24.00 in common shares of Aurora. The Aurora Offer was set to remain open for acceptance until the earlier of March 9, 2018, or the abbreviated minimum deposit period sought by Aurora in its exemptive relief application.

[48] On the same day, Aurora scheduled a shareholders' meeting for January 15, 2018, with a record date of November 30, 2017, for the purpose of seeking shareholder approval of the issuance of shares in connection with the Aurora Offer.

[49] In response to the formal launch of the Aurora Offer, CanniMed issued a press release, also on November 24, 2017, urging its shareholders "to take NO action in response to" the Aurora Offer and stating that "shareholders have an attractive and accretive transaction available to them now as CanniMed and Newstrike are extremely well positioned to deliver significant shareholder value going forward."

G. Events After the Aurora Offer

[50] On November 28, 2017, pursuant to the recommendation of the Special Committee, CanniMed adopted a shareholder rights plan (the "**Rights Plan**"), stated to be designed "to ensure that all shareholders are fairly treated, well informed and not subject to coercive bids." As indicated in CanniMed's press release in relation to the Rights Plan, issued the same day, the Rights Plan prevents Aurora from acquiring any CanniMed shares other than those tendered to its bid or from entering into any additional lock-up agreements in respect of the bid.

[51] On the same day, Newstrike scheduled a shareholders' meeting for January 17, 2018, with a record date of November 28, 2017, for the purpose of seeking shareholder approval of the Arrangement Agreement.

[52] Aurora filed its Application on December 4, 2017, with both the FCAAS and the Commission, seeking an expedited joint hearing for exemptive relief under NI 62-104 and for an Order to cease trade the Rights Plan.

[53] On December 8, 2017, both the CanniMed Board and the Special Committee met with their financial and legal advisors to consider the Aurora Offer. After receiving the Special Committee's recommendation, the CanniMed Board rejected the bid, determining that the proposed consideration under the Aurora Offer was inadequate and that the bid was not in the best interests of CanniMed or its shareholders. The Board outlined its reasons as to why the bid was inadequate in the Directors' Circular dated December 8, 2017, which was subsequently mailed to CanniMed shareholders.

[54] CanniMed and the Special Committee filed their own respective Applications, again before both regulators, on December 11, 2017. Before issuing the related Notices of Hearing, the Commission's Registrar wrote to the parties at the direction of the Commission and noted that the relief sought in CanniMed's and in the Special Committee's respective Applications referred to entities that were not named as respondents (*i.e.*, the entities defined as the Locked-up Shareholders in these Reasons). The parties were asked to provide submissions regarding whether the Locked-up Shareholders ought to be respondents in the relevant Applications before Notices of Hearing would be issued. In response, CanniMed and the Special Committee filed Amended Notices of Application, amending their relief sought. Among other things, the Special Committee sought to have Aurora and the Locked-up Shareholders deemed as joint actors and CanniMed sought to have Aurora prohibited from acquiring up to 5% of CanniMed's common shares during the take-over bid period.

III. PRELIMINARY ISSUES

A. Standing of Aurora, CanniMed and the Special Committee

[55] We found that Aurora, as a bidder with a live take-over bid seeking to cease trade a shareholder rights plan alleged to be used for improper defensive purposes under National Policy 62-202 *Take-Over Bids – Defensive Tactics* ("**NP 62-202**"), had standing to bring an application under sections 104 and 127 of the *Securities Act*, RSO 1990, c S.5 (the "**Ontario Act**") and sections 101 and 134 of *The Securities Act*, 1988, SS 1988-89, c S-42.2 (the "**Saskatchewan**

Act"). As a related matter, we found that Aurora had standing to seek an exemption from the minimum deposit period under subsection 6.1(1) of NI 62-104.

[56] Further, we found that CanniMed, as the target of Aurora's take-over bid, had standing pursuant to section 127 of the Ontario Act and section 134 of the Saskatchewan Act to seek to deny Aurora the exemptions permitting purchases during a take-over bid otherwise permitted pursuant to subsection 2.2(1) of NI 62-104.

[57] Because the Special Committee was the governing body that was charged with evaluating the Aurora Offer, we determined that it had standing under sections 104 and 127 of the Ontario Act and sections 101 and 134 of the Saskatchewan Act to bring its application seeking:

a. to establish that the Aurora Offer was deficient since it did not reflect the alleged fact that Aurora was acting jointly or in concert with the Locked-up Shareholders for purposes of MI 61-101 and for purposes of the Aurora Offer; and

b. to enforce the consequences of such joint actor status under the take-over bid rules and for disclosure purposes.

B. Joint Hearing by Two Regulators

[58] The Commission and the FCAAS Panels determined to hold a joint hearing on the basis that this approach promoted efficiency in the administration of the take-over regime in Canada in respect of a pending bid. Although Saskatchewan has not adopted MI 61-101, we decided that both the Commission and the FCAAS would hear all the evidence in light of the possibility that issues presented under that instrument may also arise under the public interest authority vested in the FCAAS. This approach was also taken most recently in *Hecla Mining Company (Re)* (2016), 39 OSCB 8926, 2016 ONSEC 31, which involved a joint hearing of the Commission with the British Columbia Securities Commission. A joint hearing was also appropriate because this was the first opportunity following the February 2016 adoption of the take-over bid amendments to assess a shareholder rights plan adopted by a target company in response to a launched bid, and because a joint hearing would promote common approaches to the issues in these circumstances.

C. Motion for Intervenor Status

[59] After receiving written submissions from the parties, we granted full intervenor status to the Special Committee, including the right to adduce evidence and make submissions, in respect of Aurora's Application and CanniMed's Application. We made this determination pursuant to Rule 1.7.1 of Saskatchewan Policy Statement 12-602, *Procedure for Hearings and Reviews* (the "**Saskatchewan Rules**") and Rule 21(4) of the Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the "**Ontario Rules**"), which provide that a panel has discretion to grant leave to intervene or refuse the request on any terms and conditions that it deems appropriate.

[60] CanniMed and the Special Committee agreed not to duplicate their submissions. In managing the Hearing, we allocated approximately equal amounts of time for oral submissions to Aurora, on the one hand, and CanniMed and the Special Committee on a combined basis, on the other hand. We proceeded in this fashion given the expedited nature of the Hearing with a live bid underway and in the interest of efficiency in the conduct of the Hearing. Since the Special Committee was itself an applicant on grounds distinct from those relied on by CanniMed, we found that it would be most efficient to grant the Special Committee such intervenor status in respect of the Aurora application, provided that the time allocations were appropriately managed during the Hearing. This should not be viewed as a precedent for the full intervention of a special committee in an application in which the company itself is the respondent.

D. Confidentiality Order

[61] CanniMed and the Special Committee asked that certain exhibits from the materials filed in respect of the Applications be kept confidential, pursuant to Rule 6.2 of the Saskatchewan Rules and Rule 22 of the Ontario Rules. At the Hearing, CanniMed and the Special Committee provided a revised and narrowed list of documents for which they were seeking a confidentiality order.

[62] CanniMed and the Special Committee submitted that the documents for which confidentiality was sought were commercially sensitive and that their release would be prejudicial to CanniMed. Aurora had no objection to the documents being treated as confidential.

[63] Subsection 9(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, provides that a hearing shall be open to the public except where the tribunal is of the opinion that, among other grounds:

> [I]ntimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public.

[64] Rule 6.2 of the Saskatchewan Rules and Rule 22 of the Ontario Rules set out substantially similar tests.

[65] Accordingly, we heard the parties' submissions on this issue *in camera*. We agreed that certain documents included in the application materials contained financial information for which the desirability of avoiding disclosure outweighed the desirability of adhering to the principle of open hearings. We granted CanniMed's and the Special Committee's requests that such information be confidential and we specified the documents to be kept confidential in our Orders dated December 22, 2017.

E. Expert Evidence

[66] Aurora sought to introduce expert evidence through an affidavit of a Mergers and Acquisitions ("**M&A**") legal practitioner in Toronto regarding whether the following elements of the transaction documents were "off-market": (i) the bilateral break fees and non-solicitation provisions in the Arrangement Agreement, (ii) the fact that the lock-up agreements were identical or in substantially similar form, and (iii) the scope of the restrictions in the Rights Plan on Aurora entering into new lock-up agreements.

[67] Since this evidence had no statistical basis, but was based on one person's experience, we considered that it had limited utility. Whether certain features are "off-market" also has limited relevance to the issues we are considering. In M&A practice, every scenario has unique elements and it is not a useful exercise to pick and choose certain elements without looking at all the principal features of the transactions in question. The role of considering the transactions as a whole is one for the Commission itself as a specialized tribunal, without borrowing the anecdotal experience of one practitioner with regard to selected elements of the transactions involved offered as expert evidence. Such evidence is not necessary or helpful to our analysis.

[68] For these reasons, we declined to admit the purported expert report into the record.

IV. MAIN ISSUES

[69] As set out above, the relief sought in the applications raises the following main issues, which we will address in this order:

a. Should the Aurora Offer be exempted from the 105-day minimum deposit period for take-over bids?

b. Should Aurora be prohibited from acquiring up to 5% of CanniMed's common shares during the take-over bid period?

c. Were Aurora and the Locked-up Shareholders acting jointly or in concert?

d. Was Aurora's disclosure concerning the background of the offer in its news releases and take-over bid circular sufficient?

e. Should CanniMed's Rights Plan be cease-traded?

V. ANALYSIS

[70] For the following reasons, we found that:

a. the 105-day minimum deposit period should continue to apply to the Aurora Offer;

b. Aurora should continue to be able to acquire up to 5% of CanniMed's common shares;

c. Insufficient evidence was advanced to establish that Aurora and the Locked-up Shareholders were acting jointly or in concert,

d. Aurora should be required to amend its disclosures regarding the events leading up to its bid; and

e. CanniMed's Rights Plan should be cease traded.

A. Should the Aurora Offer be exempted from the 105-day minimum deposit period for take-over bids?

1. Overview

[71] Section 2.28.1 of NI 62-104 imposes a 105-day minimum initial deposit period for take-over bids. Aurora has applied for exemptive relief from that requirement for the Aurora Offer, such that the minimum deposit period would be shortened to a minimum period of at least 35 days from the date the Aurora Offer was made. If this relief is not granted, the bid would remain open until at least March 9, 2018. If the relief is granted, Aurora could set a deposit period of at least 35 days ending on or prior to the date of the CanniMed Meeting, set for January 23, 2018.

[72] Aurora admits that the two possible exceptions to the minimum deposit period are not applicable in this case. It argues instead that the policy rationale for the exception set out in section 2.28.3 of NI 62-104 (the "**Alternative Transaction Exception**") is present, and that the exemption should be granted to enable CanniMed shareholders to consider the Newstrike proposal and the Aurora Offer within the same time frame. This would enable CanniMed's shareholders to treat these transactions as essentially competing offers and make an election as between them without regard to the timing difference arising from the longer term presently in effect for the Aurora Offer.

2. Law

[73] The amendments to the take-over bid regime that came into force in Ontario on May 9, 2016, and Saskatchewan on June 3, 2016, and that have been adopted by all jurisdictions of Canada, were intended to rebalance that regime to enable target companies to have greater time to respond to bids, potentially enabling them to obtain higher offers to the advantage of their shareholders. Predictability of the regime, and particularly applicable time periods, is an important objective of take-over bid regulation and these reforms. Investors and market participants should be entitled to know with reasonable certainty what rules will govern the bid environment.

[74] The Alternative Transaction Exception permits a bidder to reduce the deposit period applicable to its bid if the target company announces that it intends to effect an alternative transaction, which is defined generally as a corporate action, including a plan of arrangement or amalgamation, as a result of which a target shareholder's interest in the issuer is extinguished, regardless of whether that interest is replaced with another security. This exception has the effect that if a target company subject to a live bid enters into a friendly transaction to be implemented by a plan of arrangement, pursuant to which the target company may be acquired by the friendly party, the original bidder can reduce its deposit period so that the two proposals can be considered closely in time and as alternatives open for the target's shareholders to choose. This exception is consistent with the possibility of multiple bids being advanced for shareholder consideration in addition to the target company board-endorsed alternative.

3. Application of the law

[75] Aurora submitted that CanniMed's rejection of the Aurora Offer and endorsement of the Newstrike transaction, together with the deal protections that CanniMed implemented to avoid interference with the Newstrike transaction, was tantamount to the Newstrike transaction being an alternative transaction in the spirit of the exception. Aurora made this argument notwithstanding that the shareholdings of CanniMed shareholders would not be extinguished and CanniMed was not undergoing a change of control as a result of the transaction.

[76] We do not believe that the policy rationale for the Alternative Transaction Exception exists in this case. The magnitude of the mutual break fees set out in the Arrangement Agreement is a limited financial deterrent to the Aurora Offer, or to any subsequent transaction. The fees are not a substantial obstacle to such transactions. The non-solicitation provisions in the Arrangement Agreement do not preclude the consideration of unsolicited offers, do not preclude an offer for CanniMed following the acquisition of Newstrike, and include a "fiduciary out" clause, which permits CanniMed's board to accept superior offers.

[77] The principal reason that the Newstrike transaction is, in an informal sense, 'alternative' to the Aurora Offer is that Aurora included a condition in its bid that the Newstrike transaction not be completed. This was a commercial decision by Aurora that could be revisited and the condition dropped by Aurora at any time. Aurora's decision to include this condition set up the narrative of alternative transactions, but does not give the Newstrike transaction legal character of an alternative transaction under NI 62-104.

[78] CanniMed's intention to acquire a recreational cannabis company had been made publicly known by CanniMed well before the Aurora Offer, and negotiations with Newstrike had been underway for some time. The developed strategic rationale for such an acquisition and the history of negotiations and timing of the Newstrike transaction convinced us that the acquisition was not intended as a defensive tactic against the Aurora Offer or that it developed as an alternative to a possible Aurora offer. To the contrary, the evidence showed that Aurora accelerated its bid when it learned that the CanniMed Board was about to meet to approve such an acquisition.

[79] Once the Newstrike transaction was approved by CanniMed's Board, Aurora and the Locked-up Shareholders were free to engage in a proxy solicitation to seek the rejection by CanniMed's shareholders of the Newstrike transaction. They were free, at the same time, to advocate for the Aurora Offer and seek to persuade CanniMed Shareholders to wait it out until the Aurora Offer was completed. In either event, CanniMed shareholders will have their say on both transactions, unless the Aurora Offer is terminated pursuant to the Newstrike condition or otherwise, or CanniMed abandons the Newstrike proposal. Abbreviating the 105-day period is not necessary to facilitate these choices; instead it would only seek to increase the timing advantage enjoyed by Aurora by its early start to its bid described in section V.C.3(b) of these Reasons, beginning at paragraph 109, below. Preserving the 105-day deposit period holds out the possibility of superior offers, which we find not to have been precluded by the Newstrike transaction, even if CanniMed is not currently conducting an auction for the sale of the company.

4. Conclusion on the minimum deposit period

[80] Given the rebalancing that has occurred as a result of the amendments to the Canadian take-over bid regime, we are reluctant to make piecemeal changes to timing requirements that affect planning by bidders and target companies and that would make bid pricing and secondary market price determinations less predictable. On the facts of this case, our reluctance is not seriously tested by the evidence Aurora presented, because the Newstrike transaction does not extinguish the interests of CanniMed Shareholders, CanniMed is not undergoing a change of control by virtue of the Newstrike transaction, and higher bids for CanniMed are not foreclosed.

B. Should Aurora be prohibited from acquiring up to 5% of CanniMed's common shares during the take-over bid period?

1. Overview

[81] CanniMed applied for an order that the exemption set out in subsection 2.2(3) of NI 62-104 to the restrictions on purchases by a bidder during a take-over bid not be available to Aurora. This 5% exemption provides a limited exception to the prohibition against bidders purchasing target shares outside of the take-over bid. This exemption permits such purchases beginning on the third business day following the date of the bid, provided that the bidder satisfies various conditions, including: (i) the bidder must make its intention to effect such purchases known in its take-over bid circular, or by news release at least one business day prior to making such purchases; and (ii) on each day that purchases are made, the bidder must issue a news release stating the number of securities acquired and price information. This exemption only permits open market transactions not pre-arranged with any seller or agent for a seller. For this reason, any shares purchased pursuant to this exemption cannot affect the vote on the Newstrike proposal since the record date for that vote has already passed, and the Rights Plan has had the effect of prohibiting such purchases pending our Orders.

2. Law

[82] The policy reason for the prohibition on purchases by a bidder alongside its bid is to ensure equal treatment of all shareholders, so that a shareholder cannot receive from the bidder consideration that is not available to all shareholders.

[83] The policy basis for the 5% exemption, as stated in *Falconbridge Ltd (Re)* (2006), 29 OSCB 6783 ("***Falconbridge***") at paragraph 73, is that:

> … the purchases under the 5% Exemption contribute to liquidity in the target company's shares, provide all target shareholders with an equal opportunity to sell their target shares prior to conclusion of the bid, raise the market price of the shares, and encourage bidders to raise their offer prices.

[84] In *Falconbridge*, the Commission utilized its public interest authority under section 127 of the Ontario Act to prohibit Xstrata Canada Inc. ("**Xstrata**") from making purchases pursuant to the exemption until the earlier of (i) a specified date approximately one month after the hearing of the matter to which the decision related and (ii) Xstrata satisfying its (otherwise waivable) "majority of the minority" condition and two-thirds minimum tender condition applicable to its bid. This time period was also utilized for determining when the Falconbridge Ltd. ("**Falconbridge**") shareholder rights plan was considered to have served its purpose and would, thereafter, be cease-traded.

[85] In the unique circumstances of the *Falconbridge* case, in which Xstrata owned 19.8% of Falconbridge's outstanding stock and Xstrata possessed the ability to waive the minimum tender conditions, the Commission intervened to seek to prevent Xstrata from blocking other bids by waiving those conditions, and taking up the shares that had been tendered, which together with its existing holdings could block the outstanding competing offer and prevent the auction for Falconbridge from continuing.

3. Application of the law

[86] The circumstances prevailing in *Falconbridge* are not applicable to the Aurora Offer. To the contrary, Aurora does not hold any stock of CanniMed. As discussed below, we have declined to find that the Locked-up Shareholders are acting jointly or in concert with Aurora, and therefore, their stock holdings cannot be attributed to Aurora. The Canadian take-over bid regime now includes a non-waivable minimum tender condition, so that Aurora cannot obtain a blocking position through a partial bid in which it obtains less than 50% of the shares subject to the bid. Since the minimum tender condition is calculated to exclude shares held by the bidder and persons acting jointly or in concert with the bidder, any shares acquired by Aurora pursuant to the 5% exemption are excluded from the calculation of the minimum tender condition. The concern in *Falconbridge* that a bidder could obtain enough stock through a bid after waiving its minimum conditions, which, in conjunction with its pre-existing holdings, could give it a blocking position of less than 50% cannot arise under the rules now in effect in the absence of any exemption. The risk that shareholders of a target company will be denied the ability to participate in a control premium has been mitigated by these changes in the take-over bid regime.

[87] Although the original rationale for the 5% exemption has been stated to be the promotion of liquidity in target company securities to allow shareholders to sell during the bid, the relative liquidity of the target securities will be relevant only if there are circumstances that otherwise support the removal of the exemption, as there were in *Falconbridge*. The Commission may then wish to weigh the impact of its order prohibiting such transactions on shareholders seeking to sell their securities in the market in relation to the benefits to the take-over process of prohibiting purchases by the bidder. The 5% exemption is an established feature of the Canadian take-over bid regime. Prohibiting the use of the 5% exemption may be appropriate in the public interest if the policies underlying the take-over bid regime are undermined by allowing its use. That is not the case here.

4. Conclusion on the acquisition allowance

[88] For these reasons, we denied the relief requested in the CanniMed's Application and declined to use our public interest authority to prohibit Aurora from making purchases pursuant to the exemption. The 5% exemption remains available to Aurora, as set out in subsection 2.2(3) of NI 62-104, so that Aurora may acquire up to 5% of CanniMed's common shares during the take-over bid period.

C. Were Aurora and the Locked-up Shareholders acting jointly or in concert?

1. Overview

[89] The CanniMed Special Committee seeks an order that Aurora and the Locked-up Shareholders are "joint actors" under section 1.1 of MI 61-101 and are "acting jointly or in concert" for the purposes of NI 62-104.

[90] The consequences of such a finding would include:

a. The shares held by the Locked-up Shareholders, amounting to approximately 35.66% of CanniMed's outstanding shares (on an undiluted basis), would have to be excluded in determining whether Aurora had satisfied the minimum tender condition;

b. The Aurora Offer would be an "insider bid" requiring additional information to be disclosed in Aurora's take-over bid circular, and, in the absence of an exemption, a formal valuation would have to be prepared;

c. The Aurora Offer may have to be restarted with new time periods running from the date its take-over bid circular is revised and complete; and

d. Aurora would have to issue new press releases and file early warning reports to reflect the ownership attributed to it as a result of the holdings of the Locked-up Shareholders.

Joint actor status would also trigger aspects of the Rights Plan. However, given our determination to cease trade the Rights Plan, we do not address those implications further in this section.

[91] Neither CanniMed, nor the CanniMed Special Committee, made the Locked-up Shareholders parties to these proceedings. Although specific notice was given to the Locked-up Shareholders pursuant to the Panel's direction through Aurora's counsel, none of the Locked-up Shareholders sought standing to intervene in this proceeding and representatives of the Locked-up Shareholders were not called as witnesses.

[92] Not having the Locked-up Shareholders participate in the Hearing necessarily limited the evidentiary record regarding the interactions between Aurora and these shareholders. However, since the focus of this application is on the Aurora

Offer, we were in a position to make an order, if appropriate, governing the Aurora Offer, even if such an order had indirect effects on the Locked-up Shareholders.

2. Law

[93] Subsection 1.9(1) of NI 62-104 provides, in relevant part, that it is a question of fact as to whether a person is acting jointly or in concert with an offeror or an acquirer. In addition to affiliates of the offeror, a person is deemed to be acting jointly or in concert with an offeror if, as a result of any agreement, commitment or understanding with the offeror or another person acting jointly or in concert with the offeror, that person acquires or offers to acquire securities of the same class as those subject to the offer. This prong of the test involves parties on the same side of the transaction – those aiming to acquire the securities on a group basis.

[94] A person is also deemed to be acting as part of such a group if they intend to exercise voting power together. On the other hand, a person is specifically not deemed to be a joint actor with an offeror solely because they have committed themselves to tender to an offeror's bid.

[95] The determination of "joint actor" status under MI 61-101 and persons "acting jointly or in concert" for the purposes of NI 62-104 involves identical considerations.

[96] Since it is a question of fact whether a person is acting jointly or in concert with a bidder, the details of each relationship between a person alleged to be acting jointly or in concert with a bidder need to be separately assessed. As set out in the Commission's decision in *Sterling Centrecorp Inc. (Re)* (2007), 30 OSCB 6683, 2007 ONSEC 9 ("***Sterling***"), evidence of a formal agreement between persons is helpful, but not necessary to find this status. The question is whether the parties are acting together "to bring about a planned result".[1]

3. Application of the law

[97] The Special Committee submits that Aurora has acted jointly or in concert with each of the Locked-up Shareholders, for two reasons.

[98] First, that the Locked-up Shareholders led by Vantage, shopped CanniMed to potential buyers and to Aurora in particular, and thereby instigated the Aurora Offer. The Special Committee alleges that in doing so, Vantage shared its analysis as to why Aurora should acquire CanniMed and that Vantage's analysis included confidential, non-public information about CanniMed's production capabilities. The Special Committee alleges that Vantage was a conduit in structuring the Aurora Offer, in recruiting Aurora as the acquiror, and in working with the other Locked-up Shareholders to establish the price for the Aurora Offer and conclude the lock-up agreements. The Special Committee submits that in doing so, each of the Locked-up Shareholders went from being a significant shareholder taking steps only to enhance the liquidity of its investments and to maximize the price that it would receive, to being an active participant in assisting Aurora in planning its bid, including the bid's timing and tactical considerations arising from the Newstrike proposal.

[99] Second, the Special Committee asserts that the terms and conditions of the lock-up agreements and the circumstances leading to their execution support the conclusion that the Locked-up Shareholders acted jointly or in concert with Aurora in making its bid.

(a) The lock-up agreements

[100] We turn first to the lock-up agreements. As provided in subsection 1.9(3) of NI 62-104, an agreement or understanding to tender securities to a bid does not, in and of itself, lead to a determination of acting jointly or in concert.

[101] This provision does not distinguish so-called "hard" lock-up agreements, as were entered into in this case, in which a shareholder is committed to tender to a bid as long as a threshold price is achieved, from "soft" lock-up agreements where the shareholder is permitted to tender to a superior offer.

[102] Consistent with the view taken in the *Re Sterling* decision, we conclude that both hard and soft lock-up agreements are covered by subsection 1.9(3). This provision does not allow us to conclude that the Locked-up Shareholders are acting jointly or in concert solely on the basis of the strong commitments to tender set out in the lock-up agreements. The terms of lock-up agreements or the context in which they are used can also raise additional public interest issues, but we did not find the lock-up agreements objectionable in this case.

[1] *Sterling* at paras 97 and 102, citing *Drilcorp Ltd v Nova Bancorp Investments Ltd*, No 0501-02360, March 24, 2005 (Unreported) (Alta QB) at p 7

[103] Entering into such agreements is consistent with the Locked-up Shareholders seeking enhanced liquidity and a higher price for their securities in their own and their investors' interests. Lock-up agreements are an established practice in M&A transactions that allow investors to pursue their financial interests. Such agreements can also help facilitate transactions by providing a degree of deal certainty to a bidder, who might otherwise be deterred from making a bid that is advantageous to all shareholders. This is especially true now that a bid is at risk to be countered during the extended minimum 105-day deposit period and in light of the minimum tender condition, which promotes a tactical drive to have certainty that the condition will be satisfied at the earliest possible time.

[104] Section 1.9 also includes a presumption that a person who enters into an agreement, commitment or understanding to vote jointly or in concert with a bidder will be found to be acting jointly or in concert in relation to the bid.

[105] In this case, the Locked-up Shareholders agreed to vote against the Newstrike transaction and to vote for the Aurora transaction if it were reformulated into a transaction requiring a shareholder vote. The Aurora Offer was conditioned on the Newstrike transaction not proceeding.

[106] Subject to these restrictions, the Locked-up Shareholders did not agree to vote in accordance with Aurora's instructions, and they did not agree to give Aurora their proxies to vote their securities. Aurora did not take steps to transfer voting rights or entitlements to Aurora generally or in respect of all significant matters requiring a vote of shareholders in a manner similar to what would prevail if the shares had already been transferred to Aurora or the Aurora Offer had been successful and the shares taken up by Aurora.

[107] In the absence of the voting provisions included in the lock-up agreements, the effect of the "hard" commitments would be substantially watered down, since the shareholders could otherwise thwart Aurora's plans either by supporting the Newstrike transaction, or by voting against a reformulated Aurora transaction (such as an amalgamation or plan of arrangement) that would have the same ultimate effect as the Aurora Offer.

[108] We conclude that the voting provisions in the lock-up agreements are consistent with the permissible objectives of the tender commitments made by the Locked-up Shareholders to Aurora, and do not result in these shareholders acting jointly or in concert with Aurora. The presumption that an agreement to exercise voting rights leads to joint actor status can be rebutted, where, as here, the voting rights are tailored to be consistent with and to support otherwise permissible commitments to tender securities to a bid.

(b) Circumstances leading to the Aurora Offer

[109] We turn now to the circumstances that led to Aurora making its bid and whether these circumstances lead us to the conclusion that Aurora is acting jointly or in concert with Vantage and the other Locked-up Shareholders.

[110] Aurora's take-over bid circular states in the section entitled, "Background to the Offer":

> On November 6, 2017, a unique opportunity presented itself to Aurora, when a representative of a large institutional shareholder of CanniMed contacted Mr. Joseph del Moral, a director of Aurora, to discuss the state of the cannabis industry and the business of Aurora in general. During the course of that conversation, the shareholder representative suggested to Mr. del Moral that if Aurora were to consider a business combination with CanniMed the shareholder group would be prepared to support the merger of Aurora and CanniMed. Mr. del Moral discussed the conversation internally at Aurora.

[111] The institutional shareholder that approached Aurora was Vantage, one of the Locked-up Shareholders, notably the one Locked-up Shareholder that did not have an associated person on the Board of CanniMed and was not an insider of CanniMed since it held less than 10% of its stock. This contact was made by Mark Tredgett, Managing Partner of Vantage.

[112] In the second affidavit of Terry Booth, Aurora's Chief Executive Officer, he indicates that in this initial approach, Mr. Tredgett stated "that it was important that the offer be made quickly." On November 8, 2017, Mr. Tredgett communicated that the CanniMed Board was looking at the acquisition of "a business in the adult cannabis market and that Vantage did not agree with such growth strategy." It was during this time that Newstrike negotiations were continuing, along with presentations from financial advisors to CanniMed's Board, evaluation of the Aurora Offer and the Newstrike proposal, and culminating in the execution of the Arrangement Agreement on November 17, 2017.

[113] The background section of the take-over bid circular states that after this initial approach, Mr. Booth instructed legal counsel to prepare a draft proposal for submission to CanniMed, as well as lock-up agreements based on discussions with certain institutional investors. Vantage took the lead in respect of the lock-up agreements, with its counsel, Norton

Rose Fulbright, preparing identical first drafts and then holding the pen. This ultimately resulted in identical lock-up agreements.

[114] Aurora continued its assessment of a possible bid, in conjunction with its financial advisers, including Canaccord, whose involvement is discussed further below. The lock-up agreements were then executed on November 12, 2017. On November 13, 2017, Aurora sent a letter making a non-binding take-over bid proposal to CanniMed, and also informed CanniMed about the execution of the lock-up agreements. On November 14, 2017, Aurora issued a news release announcing its intention to proceed with a formal offer for CanniMed. Aurora formally commenced its offer on November 24, 2017.

[115] The Locked-up Shareholders, other than Vantage, had representatives on CanniMed's Board of directors: Rob Duguid in respect of SaskWorks and Apex and Doug Banzet in respect of Golden Opportunities. During the course of Board deliberations, these directors had strongly objected to the Newstrike proposal and had advocated for a possible sale of the company. Their views did not prevail with the Board. Mr. Duguid resigned from the Board on November 17, 2017. Mr. Banzet remained on the Board, but recused himself from the discussions relating to the Aurora Proposal.

[116] These events must be viewed against the backdrop of the fact that for a month or so, Vantage had been communicating by letter and otherwise, advocating for a strategic sale process for CanniMed. During the third week of October, Vantage had specifically objected to a possible M&A transaction involving a recreational-focussed target.

[117] In the face of Vantage's objections, and those from Messrs. Duguid and Banzet, CanniMed conducted a further evaluation of the Newstrike transaction as well as potential sale opportunities, including a sale to Aurora. This process resulted in the completion of the negotiation of the Newstrike proposal as the Board's favoured course of action.

[118] The Special Committee submits that the timing of communications to the Board of CanniMed by Vantage permits an inference that one or more of Mr. Duguid and Mr. Banzet shared information with Vantage (as well as the investors with whom they are each associated) concerning at least the timing of Board meetings considering the Newstrike acquisition and the characteristics, if not the identity, of the proposed CanniMed acquisition target.

[119] We agree. Such an inference is supported by the course of communications between Vantage, Mr. Duguid, Mr. Banzet and the CanniMed Board, including Mr. Duguid's communication hours before the October 30, 2017 meeting to consider the Newstrike proposal in which he referred to "our analysis" of why CanniMed should not proceed with the Newstrike transaction. This was followed, minutes before the Board meeting, by a communication from Vantage's counsel to the CanniMed Board that if Vantage were not afforded an opportunity to directly communicate its views to the Board:

> Vantage would be compelled to take such actions as necessary to make its concerns known and to hold each director and officer of the Company personally liable for their actions.

[120] This communication from Vantage strongly suggests that it knew that action by the CanniMed Board to move forward with negotiations for the acquisition was imminent.

[121] On November 1, 2017, two members of the Initial Special Committee had a conference call with Mr. Tredgett and one of his colleagues from Vantage in which Vantage expressed the view that "a merger with a smaller licensed producer would not be a good route for the Company." Vantage followed up the next day with a letter that stated in part:

> … [I]f CanniMed's Board does in fact elect to move forward with an acquisition without evaluating all the benefits (and potential premium) associated with a sale process, we will be forced to escalate the current process.

[122] Following a similar pattern of prescient knowledge of CanniMed Board meetings, on November 13, 2017, Aurora sent its take-over proposal to CanniMed, approximately one hour before the CanniMed Board meeting at which the Newstrike transaction was scheduled to be put to a vote.

[123] From the timing of these communications we infer that Vantage had learned the timing and nature of the actions proposed to be taken by CanniMed's Board, and had shared this information with Aurora. To us, knowing the timing of these deliberations and the general characteristics of CanniMed's acquisition target was material non-public information that was extremely valuable to Aurora in formulating its bid. We find that this knowledge impelled Aurora to pursue this bid on an accelerated basis, from a standing start to its news release announcing its bid in eight days, gaining valuable time for its campaign, and allowing it to proceed before the Newstrike Arrangement Agreement was entered into.

[124] Once the bid was made and the Arrangement Agreement was entered into, the receipt of the material non-public information described above was, for Aurora, cleansed by disclosure.

[125] With the Newstrike transaction now public and the Aurora Offer having been made, the timing of these Board deliberations and the characteristics of CanniMed's acquisition target was no longer material non-public information. The market was aware of these material facts. It was then the Rights Plan, and not the fact that Aurora held material non-public information, that prevented market purchases using the 5% exemption.

[126] If the goal on the part of Vantage, or the directors associated with Locked-up Shareholders, was to maximize the liquidity and price received for their investments in CanniMed, it is not obvious that the disclosure of the material non-public information we have outlined means that Aurora is a joint actor with the Locked-up Shareholders. Aurora is still the only buyer, did not make toehold purchases based upon such information, and the Locked-up Shareholders were seeking the most attractive exit possible. That does not mean that the transfer of material non-public information to a bidder could never be a factor in finding joint actor status. If such a transfer was clear and extensive, it could suggest a level of cooperation that would mean that the shareholders are 'under the tent' with the bidder and are participating in the planning of the bid beyond appropriately seeking to maximize the price and liquidity for their shares. The receipt of such non-public information by Aurora in this case does not rise to the level that Aurora can be said to have become a joint actor with the Locked-up Shareholders.

[127] In some cases, the improper transfer of information may also warrant remedies fashioned to level the playing field to avoid the timing advantage a bidder has obtained through the receipt of such information. This would be the case, for example, if the transfer of information was clear and extensive enough that it prevented an auction process from being feasible or otherwise denying the other shareholders a choice of transactions.

[128] Notwithstanding the information received by Aurora in this case, which afforded Aurora a timing advantage, the fact remains that Vantage and the other Locked-up Shareholders were all sellers and were demonstrably acting in their own financial interests to maximize their returns, while Aurora is the only buyer in this transaction. The Locked-up Shareholders wanted an attractive exit and Aurora was pursuing a long-term business combination. These are not circumstances in which their share positions should be aggregated since Aurora and these shareholders are fundamentally on different sides of the transaction. The disclosure of information to Aurora, while raising other issues, is not inconsistent with the Locked-up Shareholders seeking to have the Aurora Offer succeed based upon their self-interest as sellers.

[129] Evidence of any benefits to the Locked-up Shareholders beyond an increased price and liquidity would potentially have been relevant, but there was no such evidence in this case.

[130] The transmission of such information could independently give rise to concerns properly addressed under corporate and commercial law, in addition to the use of the concept of joint actors in securities regulation.

4. Conclusion on joint actor issue

[131] We have therefore determined that joint actor status has not been established by the Special Committee in respect of Aurora and the Locked-up Shareholders.

D. Was Aurora's disclosure concerning the background of the offer in its news releases and take-over bid circular sufficient?

1. Overview

[132] Although the circumstances we have described relating to the receipt of the information are not sufficient to establish joint actor status by Aurora with Vantage or the other Locked-up Shareholders, the receipt by Aurora of this information raises disclosure concerns related to the Aurora Offer.

2. Law

[133] Item 23 of Form 62-104F1, the form of Take-Over Bid Circular, requires an offeror to disclose, in addition to the other prescribed items:

> Any other matter not disclosed in the take-over bid circular that has not previously been generally disclosed, is known to the offeror, and that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

[134] This requirement is not limited to purely financial effects, and covers conduct by the bidder that can be expected to be important to the decision to tender. Conduct by the bidder is especially relevant where the consideration being offered consists of common shares of the bidder, since the tendering shareholder is deciding whether to invest in the bidder, whether on a short term or longer term basis.

3. Application of the law

(a) Disclosure to Aurora of material non-public information

[135] In deciding whether to accept Aurora's bid, CanniMed shareholders are entitled to consider whether the receipt of material non-public information by Aurora, which gave it a tactical advantage in launching its bid, will have an impact on their decision whether to tender or not. It may affect their confidence in the board or management of the companies involved. Financial considerations are not the only criteria that shareholders will weigh in making a decision to tender where they are receiving the bidder's shares as consideration, and have the option to continue as shareholders in the enlarged enterprise. Shareholders can reasonably be expected to consider the facts related to the transmission of material non-public information as a potential ethical consideration in deciding whether to tender to a bid. These considerations can have long-term financial effects and are reasonable consideration in and of themselves for a potentially broad segment of shareholders. To the extent that this information might support litigation on corporate law grounds against Aurora or others, the possibility of such litigation and the possible resulting disruption is also a reasonable matter for CanniMed shareholders to consider. If, on the other hand, Aurora discloses the circumstances surrounding such disclosure and an innocent explanation is provided under the strength of the certification required for its take-over bid circular, this can also be appropriately considered by the CanniMed shareholders.

(b) Canaccord's role

[136] CanniMed and the CanniMed Special Committee also raised concerns regarding the role that Canaccord performed for Aurora in implementing its bid. Canaccord had been Newstrike's financial advisor in respect of the Newstrike transaction with CanniMed, a role it continued to perform until November 10, 2017. Canaccord had full access to the data room for the Newstrike transaction, including due diligence materials on both companies. Canaccord withdrew from the representation of Newstrike on November 10, 2017. CanniMed and Newstrike were conducting due diligence on their respective businesses in connection with the Newstrike proposal from the end of October through November 2017.

[137] Canaccord's Managing Director and Co-Head of M&A accessed that data room the morning of the day that Canaccord withdrew from its representation of Newstrike. Mr. Booth indicates that at the time of the engagement, he was not aware of the nature of the conflict, and states that Aurora had already determined to make a bid for CanniMed and had set the price it was willing to pay. Mr. Booth indicates in his affidavit that he had inquired of Canaccord who assured him that no confidential information was used by Canaccord in the course of the Aurora mandate. Mr. Booth also states that he did not receive, and to the best of his knowledge no one else at Aurora received, any confidential information from Canaccord.

[138] We note that while CanniMed and the CanniMed Special Committee raised reasonable concerns regarding the role that Canaccord performed on behalf of Newstrike before terminating this retainer and acting for Aurora in implementing its bid, there was insufficient evidence to conclude that confidential information was transmitted to Aurora through Canaccord's activities. Evidence was provided that Canaccord implemented informational barriers. Through our order requiring additional disclosure concerning the information Aurora received leading to its bid, Aurora bears the onus of verifying that it did not benefit from inappropriate disclosures of material non-public information. Our order requires Aurora to inquire of its advisers, including Canaccord, and to determine whether any information was inappropriately obtained that assisted it in implementing its bid.

4. Conclusion on disclosure issue

[139] For the above reasons, we ordered that Aurora:

a. with respect to its news releases dated November 14, 2017, and November 20, 2017, relating to the Aurora Offer, and after making inquiries of Aurora's relevant agents, affiliates and advisors, amend those news releases as necessary so that they include the following information:

   i. the circumstances under which, and the means by which, Aurora became aware that the Board of CanniMed would be meeting on November 13, 2017 to, among other things, consider for approval an arrangement agreement entered into between CanniMed and Newstrike Resources Limited, which information the Commission has determined would reasonably be expected to affect the decision of CanniMed's shareholders to accept or reject the Aurora Offer;

ii. any other information that was:

1. obtained directly or indirectly by Aurora from any person who is, or was at the relevant time, in a special relationship with CanniMed (by reference to the definitions in subsection 76(5) of the Ontario Act and clause 85(1)(a) of the Saskatchewan Act); and

2. material to Aurora in structuring, determining the timing of, delivering or implementing the Aurora Offer; and

iii. any other information within Aurora's knowledge that would reasonably be expected to affect the decision of the security holders of CanniMed to accept or reject the offer made by the Aurora Offer;

b. issue and file the amended news releases;

c. amend the take-over bid circular issued by Aurora on November 24, 2017, in connection with the Aurora Offer, by means of a Notice of Change, and in the same manner as described above in subparagraph (2)(a) for the news releases; and

d. distribute the Notice of Change to every person to whom the Aurora Offer circular was required to be sent, and in the manner required by Ontario securities law applicable to the filing and delivery of take-over bid circulars.

E. Should CanniMed's Rights Plan be cease-traded?

1. Overview

[140] CanniMed adopted and announced the Rights Plan on November 28, 2017, several days after the date of the Aurora Offer and the day before Aurora could make any purchases under the 5% exemption. Since the adoption of the Rights Plan occurred in response to the Aurora Offer, timing constraints did not permit shareholder approval to be obtained prior to this action being taken.

[141] The purpose of the Rights Plan was described in CanniMed's news release as follows (with defined terms removed):

> The Plan prevents Aurora from acquiring any CanniMed shares other than those tendered to its Hostile Bid or from entering into any lock-up agreements in respect of its Hostile Bid other than those it has already entered into and filed on SEDAR … in order to (i) encourage fair treatment of the shareholders of the Company in connection with any other potential acquisition transaction of the Company, (ii) ensure that CMED shareholders have the opportunity to vote on the previously announced acquisition of Newstrike Resources Ltd. … by the Company, and (iii) ensure that shareholders are not coerced into tendering to the Hostile Bid. The Plan is not intended to deter the Hostile Bid or any other bid, and as described below, the Hostile Bid is deemed to be a "Permitted Bid" under the Plan, and the Current Lock-up Agreements are deemed to be Permitted Lock-up Agreements under the Plan, even though they would not otherwise meet the typical requirements of being a Permitted Lock-up Agreement.

[142] The Rights Plan is stated by CanniMed to achieve these goals through a dilutive rights issue typical of such plans (excluding the bidder and those acting jointly or in concert with them), with the rights being separated and becoming exercisable on the tenth trading day following (i) the acquisition by a person of 20% of CanniMed's outstanding stock, (ii) a non-permitted hostile bid being initiated, or (iii) a permitted bid being modified so it is no longer a permitted bid.

[143] The Rights Plan replicates the 105-day deposit period now present in the revised take-over bid rules, but without reduction in the case of an alternative bid as specified in section 2.28.3 of NI 62-104. The mandatory 10-day extension after the satisfaction of the minimum tender condition arising under the take-over rules is changed to ten business days.

[144] The Rights Plan deems all securities subject to lock-up agreements to be beneficially owned by Aurora. The interaction of this provision and the definition of a 20% acquiror, means that the use of the 5% exemption is denied to Aurora. The CanniMed Board is vested with broad discretion to amend the Rights Plan.

2. Law

[145] NP 62-202 sets out the views of the Commission, the FCAAS and the other Canadian securities regulatory authorities on the use of defensive tactics in relation to take-over bids. Our review of defensive tactics is based on the objectives of the take-over regime as described in subsection 1.1(2) of this Instrument:

> The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision.

[146] The optimum outcome for target shareholders is described in subsection 1.1(5) of NP 62-202:

> The Canadian securities regulatory authorities consider that unrestricted auctions produce the most desirable results in take-over bids and they are reluctant to intervene in contested bids. However, they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or to a competing bid.

3. Application of the law

[147] Implementation of the Rights Plan is clearly a defensive tactic subject to NP 62-202, designed by CanniMed to protect the Newstrike proposal in the face of a bid conditional on that transaction being abandoned. The Rights Plan is designed to prevent additional lock-ups that, together with permitted market acquisitions, could lead to Aurora's success. We concluded that it was a secondary motivation to permit potential higher bids for CanniMed that might arise on an unsolicited basis (since CanniMed was prohibited by the Arrangement Agreement from soliciting other transactions) or bids that would engage both CanniMed and Newstrike through a bid for the combined enterprise if the Newstrike transaction was completed. Given these constraints, it was not surprising that CanniMed was not engaged in an auction process for the company since it was committed to the Newstrike transaction.

[148] Since the Rights Plan had primarily a tactical motivation in simultaneously protecting the Newstrike arrangement and resisting the Aurora Offer, its function could not primarily be said to be giving the Board time to conduct an auction or to allow time for higher bids to emerge. Such a function was a possibility as a secondary matter, but there was no evidence that the ability to seek other transactions was being utilized by CanniMed. There was also no evidence of higher bids surfacing in the approximately five weeks that had elapsed between Aurora's announcement of its intention to make its bid and the Hearing. On the contrary, the Rights Plan could operate to deny CanniMed shareholders the potential benefits of the Aurora Offer if Aurora is prohibited from strengthening its position by additional lock-ups and market purchases, leading to its abandonment of its bid. As things stand, shareholder choice is being promoted without the operation of the Rights Plan since CanniMed shareholders will decide on whether the Newstrike transaction will proceed well before the Aurora Offer ends, since we have declined to shorten the 105-day deposit period. Aurora and the Locked-up Shareholders can continue to oppose that transaction and, if they wish, reinforce with CanniMed shareholders that the Bid may be terminated if the Newstrike proposal is not abandoned. Regardless of the outcome of the Newstrike vote, the 105-day period allows additional bids to emerge, whether for CanniMed alone if the Newstrike transaction is not completed, or for the combined enterprise.

[149] The rebalancing of the take-over bid regime by mandating the 105-day deposit period, the minimum tender condition and the mandatory 10-day extension following satisfaction of that condition, provides sufficient protections in this case for shareholder choice to occur while allowing bids to be made and management to respond to such bids in an appropriately predictable and even-handed manner. These amendments make the prior decisions of the Commission regarding shareholder rights plans of limited use in this case since the amendments have introduced features designed to provide sufficient time for other bids to surface without the need for Commission intervention to determine how long before a poison pill must be terminated.[2]

[150] We agree with Staff's submissions that lock-up agreements are a lawful and established feature of the planning for M&A transactions in Canada, and are even more important in a bidder's planning after the adoption of the take-over bid amendments since the risks to the completion of a transaction have been increased by virtue of the lengthening of the period that a bid must remain open and since the minimum tender condition cannot be waived by the bidder. If tactical shareholder rights plans could, as a general matter, operate to prevent lock-ups and permitted market purchases, the

[2] See, for instance, *Canadian Jorex (Re)* (1992), 15 OSCB 257; *Royal Host Real Estate Investment Trust (Re)* (1999), 22 OSCB 7819; *Chapters Inc. (Re)* (2001), 24 OSCB 1657 and *Thirdcoast Ltd. (Re)* (2012), 37 OSCB 7709, 2012 ONSEC 20.

take-over regime would be made far less predictable and the planning and implementation of shareholder value-enhancing transactions made more difficult or inappropriately discouraged by such intervention.

[151] As a general matter, tactical plans that reproduce the features of the take-over regime, *e.g.* the 105-day period, the minimum tender condition and the 10-day extension, can be confusing to investors and market participants. Reproducing these features, with variations in how the requirements are to be satisfied, would generate confusion and in this case serve no useful purpose. Similarly, such plans should not generally be utilized to deem a bidder to beneficially own locked-up shares in circumstances where they would not be deemed to be joint actors under the applicable rules.

[152] It will be a rare case in which a tactical plan will be permitted to interfere with established features of the take-over bid regime such as the opportunity for bidders and shareholders to make decisions in their own interests regarding whether to tender to a bid by entering into lock-up agreements of the kind under consideration in this case. In this case, the Rights Plan constitutes an impermissible defensive tactic.

4. Conclusion on the Rights Plan

[153] For the above reasons, we cease-traded the Rights Plan pursuant to our public interest jurisdiction.

VI. CONCLUSION

[154] Given the careful rebalancing of the Canadian take-over bid regime and in the absence of factors requiring our intervention in the public interest, we have preserved the take-over bid requirements as prescribed in our rules. We have cease-traded the tactical Rights Plan since its continuation was unnecessary, given this rebalancing that operates, in this case, to preserve shareholder choice. We have also sought to counter potential unfairness in the timing advantage enjoyed by Aurora by ordering disclosure of information reasonably expected to affect the decision of CanniMed's shareholders to accept or reject the Aurora Offer.

Dated this 15th day of March, 2018.

FCAAS PANEL

“Peter Carton”

“Howard Crofts”

“Eugene Scheibel”

OSC PANEL

“D. Grant Vingoe”

“Timothy Moseley”

“Frances Kordyback”

SCHEDULE 'A' – OSC ORDER

FILE NOS.: 2017-71
2017-73
2017-74

IN THE MATTER OF
AURORA CANNABIS INC.

AND

IN THE MATTER OF
CANNIMED THERAPEUTICS INC.

AND

IN THE MATTER OF
THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF
CANNIMED THERAPEUTICS INC.

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Timothy Moseley, Vice-Chair
Frances Kordyback, Commissioner

December 22, 2017

ORDER
(Sections 104 and 127 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on December 20 and 21, 2017, the Ontario Securities Commission (the "**Commission**") held a hearing in conjunction with the Financial and Consumer Affairs Authority of Saskatchewan (the "**FCAAS**") in the following three Applications:

i) the Application filed by Aurora Cannabis Inc. ("**Aurora**"), dated December 4, 2017, File No. 2017-71 (the "**Aurora Application**"), in respect of a request for (i) an order granting exemptive relief from the requirements set forth in section 2.28.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**"), and (ii) an order to cease trade the shareholder rights plan between CanniMed Therapeutics Inc. ("**CanniMed**") and Computershare Investor Services Inc., dated November 28, 2017 (the "**Shareholder Rights Plan**");

ii) the Amended Application filed by the Special Committee of the Board of Directors of CanniMed (the "**Special Committee**"), dated December 11, 2017, File No. 2017-73 (the "**CanniMed Special Committee Application**"), in respect of a request for an order that, along with related relief, Aurora, SaskWorks Venture Fund Inc., Apex Investments Limited Partnership, Golden Opportunities Fund Inc., and Vantage Asset Management Inc. are deemed to be joint actors, as defined in Multilateral Instrument 61-101 *Protection of Minority Shareholders in Special Transactions* ("**MI 61-101**"), and are acting jointly or in concert in connection with Aurora's unsolicited take-over bid to acquire all of the issued and outstanding common shares in the capital of CanniMed, pursuant to Aurora's take-over bid circular, dated November 24, 2017 (the "**Aurora Offer**"); and

iii) the Amended Application filed by CanniMed, dated December 11, 2017, File No. 2017-74 (the "**CanniMed Application**"), in respect of a request for an order that the exemption created by section 2.2(3) of NI 62-104 to the restrictions on purchases during a take-over bid found in section 2.2(1) of NI 62-104 shall not apply to Aurora until (i) March 9, 2018, or (ii) if the Commission grants the relief sought in the CanniMed Special Committee Application, then 105 days after the date upon which a take-over bid circular that complies with insider bid rules is delivered to CanniMed's shareholders;

ON HEARING the submissions of the representatives for Aurora, CanniMed, the Special Committee, Staff of the Commission and Staff of the FCAAS and on reading the application materials and written submissions filed by the parties;

With Reasons to follow;

IT IS ORDERED THAT:

1. Pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), and in accordance with the guidance in National Policy 62-202 – *Take-Over Bids – Defensive Tactics*, all trading shall cease in respect of any securities issued, or that are proposed to be issued, in connection with the Shareholder Rights Plan;

2. pursuant to clause 104(1)(b) and paragraph 5 of subsection 127(1) of the Act, Aurora shall, on or before January 12, 2018:

    a. with respect to its news releases dated November 14, 2017, and November 20, 2017, relating to the Aurora Offer, and after making inquiries of Aurora's relevant agents, affiliates and advisors, amend those news releases as necessary so that they include the following information:

        i. the circumstances under which, and the means by which, Aurora became aware that the board of CanniMed would be meeting on November 13, 2017 to, among other things, consider for approval an arrangement agreement entered into between CanniMed and Newstrike Resources Limited, which information the Commission has determined would reasonably be expected to affect the decision of CanniMed's shareholders to accept or reject the Aurora Offer;

        ii. any other information that was:

            1. obtained directly or indirectly by Aurora from any person who is, or was at the relevant time, in a special relationship with CanniMed (by reference to the definition in subsection 76(5) of the Act); and

            2. material to Aurora in structuring, determining the timing of, delivering or implementing the Aurora Offer; and

        iii. any other information within Aurora's knowledge that would reasonably be expected to affect the decision of the security holders of CanniMed to accept or reject the offer made by the Aurora Offer;

    b. issue and file the amended news releases;

    c. amend the take-over bid circular issued by Aurora on November 24, 2017, in connection with the Aurora Offer, by means of a Notice of Change, and in the same manner as described above in subparagraph (2)(a) for the news releases; and

    d. distribute the Notice of Change to every person to whom the Aurora Offer circular was required to be sent, and in the manner required by Ontario securities law applicable to the filing and delivery of take-over bid circulars;

3. The exemptive relief sought in the Aurora Application regarding the requirements set forth in section 2.28.1 of NI 62-104 is denied;

4. The relief sought in the CanniMed Special Committee Application is denied;

5. The relief sought in the CanniMed Application is denied; and

6. Pursuant to clause 9(1)(b) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, and Rule 22(3) of Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988, the following filed documents are confidential:

    a. In Exhibit 4, Tabs "10" and "11" of the Affidavit of John Knowles sworn December 15, 2017;

    b. In Exhibit 4, Tab "6" of the Affidavit of Jeffrey Fallows sworn December 15, 2017; and

    c. In Exhibit 5, Tabs "7" and "8" of the Affidavit of Richard Hoyt sworn December 14, 2017.

"D. Grant Vingoe"

"Timothy Moseley"

"Frances Kordyback"

SCHEDULE 'B' – FCAAS ORDER

**HEARING PURSUANT TO
THE SECURITIES ACT, 1988,
S.S.1988-89, c.S-42.2**

**IN THE MATTER OF
AURORA CANNABIS INC.**

AND

**IN THE MATTER OF
CANNIMED THERAPEUTICS INC.**

AND

**IN THE MATTER OF
THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF
CANNIMED THERAPEUTICS INC.**

Peter Carton, Chair of the FCAAS Panel
Howard Crofts
Honourable Eugene Scheibel

December 22, 2017

ORDER
(Sections 101 and 134 of *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2 and
Section 22 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*, SS 2012, c F-13.5)

WHEREAS, pursuant to section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*, S.S. 2012, c F-13.5 (the "**FCAAS Act**"), the Chairperson of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAAS") has appointed a panel (the "**FCAAS Panel**") to hear the above-noted matter;

AND WHEREAS, by virtue of subsection 17(7) of the FCAAS Act, a decision or action of the FCAAS Panel in relation to this matter is a decision of the FCAAS;

AND WHEREAS on December 20 and 21, 2017, the FCAAS Panel held a hearing in conjunction with the Ontario Securities Commission (the "**Commission**") in the following three Applications:

i) the Application filed by Aurora Cannabis Inc. ("**Aurora**"), dated December 4, 2017, (the "**Aurora Application**"), in respect of a request for (i) an order granting exemptive relief from the requirements set forth in section 2.28.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**"), and (ii) an order to cease trade the shareholder rights plan between CanniMed Therapeutics Inc. ("**CanniMed**") and Computershare Investor Services Inc., dated November 28, 2017 (the "**Shareholder Rights Plan**");

ii) the Amended Application filed by the Special Committee of the Board of Directors of CanniMed (the "**Special Committee**"), dated December 11, 2017, (the "**CanniMed Special Committee Application**"), in respect of a request for an order that, along with related relief, Aurora, SaskWorks Venture Fund Inc., Apex Investments Limited Partnership, Golden Opportunities Fund Inc., and Vantage Asset Management Inc. are deemed to be joint actors, as defined in Multilateral Instrument 61-101 *Protection of Minority Shareholders in Special Transactions* ("**MI 61-101**"), and are acting jointly or in concert in connection with Aurora's unsolicited take-over bid to acquire all of the issued and outstanding common shares in the capital of CanniMed, pursuant to Aurora's take-over bid circular, dated November 24, 2017 (the "**Aurora Offer**"); and

iii) the Amended Application filed by CanniMed, dated December 11, 2017, (the "CanniMed Application"), in respect of a request for an order that the exemption created by section 2.2(3) of NI 62-104 to the restrictions on purchases during a take-over bid found in section 2.2(1) of NI 62-104 shall not apply to Aurora until (i) March 9, 2018, or (ii) if the FCAAS Panel grants the relief sought in the CanniMed Special Committee Application, then 105 days after the date upon which a take-over bid circular that complies with insider bid rules is delivered to CanniMed's shareholders;

ON HEARING the submissions of the representatives for Aurora, CanniMed, the Special Committee, Staff of the Commission and Staff of the FCAAS and on reading the application materials and written submissions filed by the parties;

With Reasons to follow:

IT IS ORDERED THAT:

1. Pursuant to clause 134(1)(b) of *The Securities Act, 1988*, S.S. 1988-89, c.S-42.2 (the "**Act**"), and in accordance with the guidance in National Policy 62-202 – *Take-Over Bids – Defensive Tactics*, all trading shall cease in respect of any securities issued, or that are proposed to be issued, in connection with the Shareholder Rights Plan;

2. Pursuant to clause 101(b) and subsection 134(1) of the Act, Aurora shall, on or before January 12, 2018:

    a. with respect to its news releases dated November 14, 2017, and November 20, 2017, relating to the Aurora Offer, and after making inquiries of Aurora's relevant agents, affiliates and advisors, amend those news releases as necessary so that they include the following information:

        i. the circumstances under which, and the means by which, Aurora became aware that the board of CanniMed would be meeting on November 13, 2017 to, among other things, consider for approval an arrangement agreement entered into between CanniMed and Newstrike Resources Limited, which information the FCAAS Panel has determined would reasonably be expected to affect the decision of CanniMed's shareholders to accept or reject the Aurora Offer;

        ii. any other information that was:

            1. obtained directly or indirectly by Aurora from any person who is, or was at the relevant time, in a special relationship with CanniMed (by reference to the definition in clause 85(1)(a) of the Act); and

            2. material to Aurora in structuring, determining the timing of, delivering or implementing the Aurora Offer; and

        iii. any other information within Aurora's knowledge that would reasonably be expected to affect the decision of the security holders of CanniMed to accept or reject the offer made by the Aurora Offer;

    b. issue and file the amended news releases;

    c. amend the take-over bid circular issued by Aurora on November 24, 2017, in connection with the Aurora Offer, by means of a Notice of Change, and in the same manner as described above in subparagraph (2)(a) for the news releases; and

    d. distribute the Notice of Change to every person to whom the Aurora Bid circular was required to be sent, and in the manner required by Saskatchewan securities law applicable to the filing and delivery of take-over bid circulars;

3. The exemptive relief sought in the Aurora Application regarding the requirements set forth in section 2.28.1 of NI 62-104 is denied;

4. The relief sought in the CanniMed Special Committee Application is denied;

5. The relief sought in the CanniMed Application is denied; and

6. Pursuant to section 6.2 of Saskatchewan Policy Statement 12-602 *Procedures for Hearings and Reviews*, the following filed documents are confidential:

    a. In Exhibit 4, Tabs "10" and "11" of the Affidavit of John Knowles sworn December 15, 2017;

    b. In Exhibit 4, Tab "6" of the Affidavit of Jeffrey Fallows sworn December 15, 2017; and

    c. In Exhibit 5, Tabs "7" and "8" of the Affidavit of Richard Hoyt sworn December 14, 2017.

"Peter Carton"

"Howard Crofts"

3.1.2 Volkmar Guido Hable – ss. 127(1), 127(10)

IN THE MATTER OF
VOLKMAR GUIDO HABLE

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the
Securities Act, RSO 1990, c S.5)

Citation: *Hable (Re)*, 2018 ONSEC 11
Date: March 16, 2018
File No.: 2018-2

Hearing:	In Writing	
Decision:	March 16, 2018	
Panel:	Janet Leiper	Commissioner
Appearances:	Keir D. Wilmut	For Staff of the Commission
		No submission was made by or on behalf of Volkmar Guido Hable.

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

[1] On February 5, 2018, Staff of the Commission (**Staff**) elected to bring a proceeding, using the expedited procedure as set out in Rule 11(3) of the Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules of Procedure**), for an order pursuant to section 127 of the Ontario *Securities Act*, RSO 1990, s S.5 (the **Act**) to consider:

a. Whether Volmar Guido Hable (**Hable** or the **Respondent**), who is subject to an order made by a securities regulatory authority, namely the British Columbia Securities Commission (the **BCSC**), should be made subject to sanctions, conditions, restrictions or requirements in Ontario, pursuant to paragraph 4 of subsection 127(10) of the Act; and if so,

b. Whether the Ontario Securities Commission (the **Commission**) should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondent pursuant to subsection 127(1) of the Act.

[2] Staff rely on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Act in requesting that a protective order be issued in the public interest.

[3] The Respondent was served with a Notice of Hearing issued on February 6, 2018 and a Statement of Allegations dated February 5, 2016. Although duly served, he did not respond or make submissions in this proceeding.

[4] The Commission may proceed in the absence of a party where that party has been given notice of the hearing (*Statutory Powers Procedure Act*, RSO 1990 c. S.22, s7(2) and *Rules of Procedure*, Rule 21(3)).

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[5] Subsection 127(1) allows for orders to be made in the public interest. The Commission has regard to the purposes of the Act under section 1.1, which are to provide protection to investors from unfair, improper and fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk.

[6] Orders made under subsection 127(1) of the Act are "protective and prospective" and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132 (SCC) at para 43).

[7] Subsection 127(10) of the Act facilitates cross-jurisdictional enforcement of findings for breaches of securities law by providing the Commission with the ability to issue protective and preventative orders to ensure that misconduct which has taken place in other jurisdictions will not be repeated in Ontario's capital markets.

[8] In exercising its jurisdiction under subsection 127(10), the Commission does not require a pre-existing connection to Ontario (*Re Biller* (2005), 28 OSCB 10131 at paras 32-35).

III. THE BRITISH COLUMBIA PROCEEDINGS AND FINDINGS

[9] On June 26, 2017 the BCSC found that the Respondent contravened section 57(a) of the British Columbia *Securities Act*, RSBC 1996, c. 418 (the **BC Act**) by engaging in or participating in conduct relating to a security that the Respondent knew, or reasonably should have known resulted in an artificial price for the security.

[10] The BCSC also found that the Respondent contravened section 168.1(1)(a) of the BC Act by submitting false or misleading information to BCSC Staff.

[11] The BCSC made an order on November 7, 2017 that imposed sanctions, conditions, restrictions and requirements upon the Respondent.

A. The Findings

[12] The Respondent was sanctioned for conduct that took place between February 18 and February 22, 2013. At the time, the Respondent was a resident of British Columbia. He was employed by Samaranta Mining Corporation (**Samaranta**) as the Executive Vice President of Mining and Exploration.

[13] Samaranta was a Vancouver-based corporation, whose shares were listed on the TSX Venture Exchange.

(a) Breach of Section 57(a) of the BC Act

[14] As at February 12, 2013, through four companies, the Respondent along with his minor children, beneficially owned or controlled a total of 5,067,055 shares of Samaranta. The shares were held in accounts, over which the Respondent had control and direction, in Canada and Switzerland.

[15] Between February 12 and February 15, 2013, the Respondent attempted to sell 4,957,055 of his Samaranta shares. He initially offered his shares at $0.03 per share on the TSXV on February 12, 2013. None were sold. On February 13, 2013, the Respondent lowered the price to $0.02 per share. 410,000 of the shares were sold. The Respondent was unable to sell the remaining shares.

[16] On February 18, 2013, Samarium Group Holding (**Samarium**) submitted a letter, signed by the Respondent, to Samaranta indicating it was going to make a take-over bid for at least 51% of Samaranta's shares at $0.12 per share. The Respondent was listed as one of Samarium's directors.

[17] On February 19, 2013, before the market opened, the Respondent drafted and issued a press release containing the terms of Samariums' proposed offer to acquire the Samaranta shares. The Respondent withdrew his outstanding offers to sell 4,547,055 Samaranta shares for $0.02. Next, the Respondent reoffered his shares for sale at $0.04 per share. After the market opened, Samaranta shares traded on the TSXV for two hours until they were halted by the exchange at the request of Samaranta. During those two hours there was a significant increase in both trading volume and price of Samaranta's shares.

[18] On February 19, 2013, Samaranta issued a press release stating it had no prior notice of Samarium's offer.

[19] During the trading days of February 20, 21, and 22, 2013, the Respondent sold all of his remaining 4,657,055 Samaranta shares at prices between $0.25 and $0.55, for total proceeds of $157,596.96.

[20] On February 22, 2013, after the Respondent had sold his Samaranta shares, Samarium issued a press release indicating that it was not proceeding with its previously announced take-over bid for the Samaranta shares. The Respondent was terminated from his position at Samaranta that same day.

[21] On February 25, 2013, Samaranta issued a press release stating that it was never provided with any evidence of Samarium's financial ability to carry out its announced take-over bid, and that Samaranta did not believe the offer was genuine.

[22] The BCSC concluded that the Respondent had contravened section 57(a) of the Act.

(b) Breach of Section 168.1(1)(a) of the BC Act

[23] During the investigation by the BCSC, Staff asked the Respondent to turn over certain documents and in particular, proof of Samarium's financial ability to carry out its announced intention to complete a take-over bid for the shares of Samaranta.

[24] Eventually, the Respondent provided BCSC Staff with a document purporting to be the 2012 Annual Report for a company called Samariums Group (Holding) Pte. Ltd., described in the report as a Singapore-incorporated entity.

[25] The Monetary Authority of Singapore, the government agency responsible for corporate registry of Singapore corporations, advised that it had no record of Samarium Pte. The text and numbers in the two annual reports were identical except that the name Samarium replaced the other company's name and some of the dollar amounts had been changed. The BCSC found the annual report had been an altered version of an unrelated company's annual report.

[26] The BCSC concluded that the Respondent had contravened section 168.1(1)(a) of the Act.

(c) The BCSC Order

[27] The BCSC imposed the following sanctions, conditions, restrictions and requirements on the Respondent:

a. Under section 161(1)(d)(i) of the BC Act, the Respondent resign any position he holds as a director or officer of an issuer or registrant;

b. The Respondent is permanently prohibited:

   i. Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;

   ii. Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

   iii. Under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;

   iv. Under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

   v. Under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and

   vi. Under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

c. The Respondent to pay to the BCSC $157,596.96 pursuant to section 161(1)(g) of the BC Act; and

d. The Respondent to pay to the BCSC an administrative penalty of $400,000 under section 162 of the BC Act.

IV. ORDER REQUESTED IN THE PUBLIC INTEREST

[28] Staff seek an order imposing terms that are similar to the sanctions imposed by the BCSC to the extent possible under the Act, in order to protect the capital markets in Ontario. Staff's submissions substantially mirror the terms within the BC Order, with the addition of a term that prohibits the Respondent from becoming or acting as an investment fund manager. This provision is not available under the BC Act.

V. ANALYSIS AND DECISION

[29] Subsection 127(10) of the Act plays an important role in facilitating the cross-jurisdictional enforcement of judgments. The Respondent's conduct in B.C. would have constituted a breach of the Act in Ontario. His market manipulation and submission of a fabricated document to Staff would clearly have been considered to be contrary to the public interest and it would attract the same or similar sanctions had this conduct taken place in Ontario.

[30] The Commission must make its own determination of what is in the public interest while being responsive to an interconnected securities industry. The threshold for reciprocity is low. This ensures effectiveness and responds to the protection of the public interest. It also reflects the principle found in section 2.1 of the Act which provides: "The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[31] The Commission may consider a number of factors in determining the nature and scope of sanctions, including:

- the seriousness of the allegations proved;
- the respondent's experience in the marketplace;
- the level of a respondent's activity in the marketplace;
- whether or not there has been a recognition of the seriousness of the improprieties;
- the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;
- whether the violations are isolated or recurrent;
- any size of the profit gained or loss avoided from the illegal conduct;
- any mitigating factors, including the remorse of the respondent;
- the effect any sanction might have on the livelihood of the respondent;
- the effect any sanction might have on the ability of the respondent to participate without check in the capital markets;
- in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and
- the size of any financial sanctions or voluntary payment when considering other factors.

(*Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at paras 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1134)

[32] The findings of the BCSC describe serious and "particularly cynical" misconduct by the Respondent. He engaged in conduct that he knew, or reasonably should have known, would create an artificial price for a security. Then, he gave a fabricated document to the BCSC Staff during the investigation into his conduct.

[33] The Respondent was enriched by his misconduct in the amount of $157,596.96. Harm to investors was involved as purchases of the Samaranta shares were based on false information.

[34] The BCSC found no mitigating factors. The Respondent misused his position at Samaranta for financial gain, which was found to be an aggravating factor, given his role as an officer of the "target" company, which would give the take-over bid announcement more credibility. Ultimately the take-over bid was revealed to be from a phantom company

created by the Respondent. His attempt to mislead the BCSC Staff led the BCSC to question his ability to be regulated. It found that he represented a serious risk to the capital markets.

[35] These findings support the making of an interjurisdictional order along the lines requested by Staff. In this way, the Ontario markets will be protected from this Respondent. It is a reasonable regulatory response to make orders that aim to prevent similar conduct from taking place in this province. Given the nature of the misconduct, an additional term prohibiting the Respondent from becoming or acting as an investment fund manager will be added.

VI. CONCLUSION

[36] For the reasons provided, the following Order will be made, pursuant to section 127(10):

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Hable cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Hable cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Hable permanently;

(d) pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Hable resign any positions that he holds as a director or officer of any issuer or registrant;

(e) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Hable be prohibited from becoming or acting as a director or officer of any issuer or registrant;

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Hable be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

Dated at Toronto this 16th day of March, 2018.

“Janet Leiper”

3.1.3 Macquarie Capital Markets Canada Ltd., formerly known as Yorkton Securities Inc. – ss. 144(1), 144(2)

IN THE MATTER OF
MACQUARIE CAPITAL MARKETS CANADA LTD.,
FORMERLY KNOWN AS YORKTON SECURITIES INC.

REASONS AND DECISION
(Subsections 144(1) and (2) of the
***Securities Act*, RSO 1990, c S.5)**

Citation: *Macquarie Capital Markets Canada Ltd. (Re)*, 2018 ONSEC 12
Date: 2018-03-19
File No.: 2018-4

Hearing:	In writing	
Decision:	March 19, 2018	
Panel:	Robert P. Hutchison	Commissioner
Submissions by:	Derek Ferris	For Staff of the Commission
	Garth J. Foster	For Macquarie Capital Markets Canada Ltd., formerly known as Yorkton Securities Inc.

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REASONS AND DECISION

I. MACQUARIE'S APPLICATION

[1] This is an application made by Macquarie Capital Markets Canada Ltd., formerly Yorkton Securities Inc., (the **Applicant**) pursuant to section 144 of the *Securities Act*[1] (the **Act**), to vary an order made by the Ontario Securities Commission (the **Commission**) on December 19, 2001 (the **Order**).[2]

[2] The Order, among other things, approved a settlement agreement dated December 17, 2001 made between the Applicant and Staff of the Commission (**Staff**) in respect of trading conduct by officers and employees and compliance practices and procedures of the Applicant. The Order imposed a number of sanctions against the Applicant.

[3] The settlement and Order followed "lengthy and intensive Staff, CDNX and TSE investigations of Yorkton and individual registrants employed by Yorkton in respect of supervision and compliance, trading, personal investment and conflict of interest issues arising from Yorkton's business activities involving issuers and institutional and retail investors."[3] The misconduct was extensive and notorious at the time in terms of market and regulatory response. In this regard the Order referred specifically to compliance by the Applicant with proposed amendments to the Regulations of the Investment Dealers Association of Canada (now the Investment Industry Regulatory Organization of Canada (**IIROC**)) in respect of account supervision and related trading standards.

[4] Paragraph 5 of the Order required officers and employees of the Applicant to execute an undertaking that they would carry any trading accounts they may have (or have a beneficial interest in) at the Applicant. Paragraph 5 also required that the Applicant report any breaches of this undertaking to Staff.

1 RSO 1990, c S.5.

2 *Yorkton Securities Inc. (Re),* (2001) 25 OSCB 1106 (***Yorkton***).

3 *Yorkton*, Appendix, Settlement Agreement at para 114.

[5] The purpose of this term was to ensure that the accounts and trading activities of officers and employees of the Applicant would be subject to appropriate supervision. The Applicant requests the Commission to vary the Order by removing the terms and conditions in paragraph 5 of the Order. The primary reason for the request is that the Applicant now only deals with institutional accounts and no longer has any retail clients, other than the accounts of its existing officers and employees. The Applicant proposes to transfer the accounts of its officers and employees to other IIROC Dealers. In addition, IIROC has requested that the Applicant no longer carry personal accounts of its officers and employees.

[6] The Applicant proposes that paragraph 5 be removed from the Order and that the variation provide for the manner in which officers and employees must transfer their accounts at the Applicant to other pre-approved IIROC dealers and include provisions as to how those accounts will be operated including reporting, confirmation of compliance and certain trade pre-approvals. In addition, the Applicant advised that it was in the process of implementing new policies and procedures in respect of account supervision.

II. SUBMISSIONS OF THE PARTIES

[7] The hearing in this proceeding was conducted in writing in accordance with the Commission's *Rules of Procedure and Forms*[4] and with the consent of the parties.

[8] Apart from the initial application materials which included a copy of the Order and a supporting affidavit of the Chief Compliance Officer and Senior Vice President, Risk Management Group of the Applicant,[5] the Panel asked in writing two sets of questions of counsel for the Applicant and for Staff. Counsel provided helpful and prompt responses to the questions. A number of versions of the draft order varying the Order were developed and commented on by the parties. Ultimately, the parties consented to the form of an order to be issued by the Commission.

III. ANALYSIS

[9] Under section 144 of the Act the Commission is authorized to vary a previous decision of the Commission on the application of, among others, a person affected by such decision if, in the opinion of the Commission, the order would not be prejudicial to the public interest. In addition, pursuant to subsection 144(2) the Commission may impose terms and conditions in making a variation order.

[10] The Panel has determined for the reasons that follow that it would not be prejudicial to the public interest to make the order described below and which has been consented to by the parties. However, in view of the fact that the order made differs substantially from the language in the order initially requested by the Applicant some further comment is in order.

[11] The conduct and circumstances that paragraph 5 of the Order pertained and responded to occurred approximately 20 years ago. Since that time it is apparent from the submissions of the Applicant – and without any objection by Staff – that the nature of the Applicant and the regulatory environment to which it is subject have changed considerably. First, the ownership (now foreign institutional), senior management and nature of business (no retail accounts, with the exception of its existing officer and employee accounts) have substantially changed. Second, the relevant regulatory requirements to which the Applicant is subject relating to account supervision have changed, including those in the course of development by IIROC's predecessor at the time of the Order. Finally, there has been no evidence adduced to suggest that the culture of non-compliance which characterized the Applicant 20 years ago is present today.

[12] In view of the foregoing, the Panel finds that it is no longer necessary nor in the public interest for the Order to include the terms and conditions in paragraph 5. In addition, the terms and conditions and conditions to be included in an amended Order as initially proposed by the applicant appear to be generally duplicative of the relevant statutory and IIROC requirements. To the extent that the Applicant believes that more rigorous policies and procedures are in order for any reason including the nature of its business, it is free to implement them – in fact, IIROC requirements invite such an approach.

[13] In addition, the order to be made will include a term requiring the Applicant to report to Staff within 90 days of the date of the order to confirm that its proposed new policies and procedures have been finalized and implemented. To the extent that there may be perceived deficiencies in such policies and procedures, they can be addressed by Commission Staff or IIROC, or both.

[14] The Commission in its general statutory mandate and, in the present context, under section 144 is required to act in the public interest or in a manner that is not prejudicial to the public interest. In carrying out its responsibilities it has

4 (2017), 40 OSCB 8988.

5 Marked as Exhibit #1 in the written hearing.

identified and adopted certain principles and priorities, one of which is the reduction of regulatory burden.[6] It is worth noting that this application invites consideration of that objective in at least two ways. First and as indicated above, the Panel does not see any reason why the Applicant should be subject to regulatory requirements that may be duplicative of, or additive to, other requirements imposed by order rather than pursuant to compliance with securities law requirements of general application to all comparable registrants. Second, regulatory burden not only affects registrants and other market participants, but also the regulator as well. In this application, there does not seem to be any reason why (1) the authority of the Commission should be invoked in continuing to impose terms on the registration of the Applicant, or (2) the resources of the Staff of the Commission should be spent on monitoring, or potentially enforcing as appropriate, an outstanding order.

[15] Lastly, the Panel would like to make clear that its approach to this application and its decision is not to be construed as critical of the Applicant in any way or that the Applicant's implied deference to the outstanding Order is not recognized. However, it would appear that the Applicant's interests and the public interest are best served by the variation to the Order described below.

IV. CONCLUSION

[16] For the reasons above, a separate order shall be issued giving effect to the reasons, and the Order is varied as follows:

1. pursuant to subsection 144(1) of the Act, the Order is varied by removing the terms and conditions in paragraph 5 of the Order; and

2. pursuant to subsection 144(2) of the Act, Macquarie shall adopt new policies and procedures in accordance with applicable Ontario securities laws, including the IIROC Dealer Member Rules and Universal Market Integrity Rules to deal with the supervision of the accounts of officers and employees of Macquarie that will be transferred from Macquarie to, or otherwise established at, other IIROC dealers, and Macquarie shall confirm in writing to Staff of the Commission within 90 days of the date of this order that these new policies and procedures have been finalized and implemented.

Dated at Toronto this 19th day of March, 2018.

"Robert P. Hutchison"

[6] See paragraph 6 of section 2.1 of the Act.

3.1.4 Benedict Cheng et al. – Rules 28 and 29 of the OSC Rules of Procedure and Forms

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

REASONS FOR DECISION ON A MOTION TO ADJOURN
(Rules 28 and 29 of the Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988)

Citation: Cheng (Re), 2018 ONSEC 13
Date: 2018-03-19

Hearing:	March 15, 2018	
Reasons:	March 19, 2018	
Panel:	Philip Anisman	Chair of the Panel
	Deborah Leckman	Commissioner
	Robert P. Hutchison	Commissioner
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

REASONS FOR DECISION ON A MOTION TO ADJOURN

[1] On March 16, 2018, the Commission made an order granting a motion by Benedict Cheng (**Cheng**), a respondent in this proceeding, to adjourn the hearing on the merits that was scheduled to begin on April 16, 2018. These brief reasons explain why the motion was granted.

[2] On January 10, 2018, the Commission dismissed a motion by Cheng that had requested a stay of this proceeding or, alternatively, an order prohibiting the testimony of a proposed witness to be called by staff of the Commission (**Staff**) on the basis of Cheng's allegations that information previously provided by the witness to Staff was, and his evidence would be, in breach of Cheng's solicitor-client privilege.[1]

[3] On February 9, 2018, Cheng filed an appeal to the Divisional Court from the Commission's decision.[2] A few days later, on February 13, 2018, his counsel informed Staff that he would be requesting an adjournment of the merits hearing, scheduled to begin on April 16 and continue to May 4, 2018, pending the decision on his appeal. Cheng has perfected his appeal, and has requested a hearing in May or June.

[4] A motion brought by Staff to quash Cheng's appeal is to be heard in the Divisional Court on April 6, 2018.

[5] Cheng's motion to adjourn the hearing was filed on March 5, 2018 pursuant to Rules 28 and 29 of the Commission's *Rules of Procedure and Forms*.[3] Rule 29 provides that a hearing shall proceed on the date scheduled, unless the requesting party satisfies a Commission panel that "there are exceptional circumstances requiring an adjournment."

1 *Cheng (Re)* (2018), 41 OSCB 819, 2018 ONSEC 2.

2 Pursuant to section 9 of the *Securities Act*, RSO 1990, c S.5. Following discussion with Staff, Cheng subsequently filed an application for judicial review of the Commission's January 10 decision, to be heard concurrently with his appeal. In these reasons, references to the appeal include both the appeal and the application for judicial review.

3 *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 28-29 (***OSC Rules***).

This standard reflects the objective of the OSC *Rules*, that Commission proceedings be conducted "in a just, expeditious and cost-effective manner."[4]

[6] It is in the public interest that enforcement and other proceedings proceed expeditiously to a timely resolution and that proceedings are conducted in a manner that is fair, particularly to respondents.[5] The balancing of these objectives is necessarily fact-based and must take into account the circumstances of the parties and the manner in which they have conducted themselves in the proceeding.[6] In determining whether exceptional circumstances require an adjournment, the dominant factor will usually be the requesting respondent's ability to make full answer and defence in the circumstances.

[7] The parties' written submissions were far apart. Staff opposed the requested adjournment in light of its motion to quash. Cheng submitted that proceeding with the hearing would render his appeal meaningless, even if it succeeds, because his request for a stay would be moot and the information over which he claims privilege would become public. In his submission, a successful appeal would preclude or significantly shorten the merits hearing and reduce the costs to all parties. Supported by the other respondents, he requested that the hearing be adjourned to October or November to ensure time for preparation after his appeal is decided by the Divisional Court. Staff agreed that an adjournment would be appropriate, if its motion to quash does not succeed.

[8] At the beginning of the hearing, the hearing panel (the **Panel**) informed the parties that on the basis of the record and their written submissions, it was prepared to adjourn the hearing for the week of April 16, but thought it in the public interest to have this matter proceed as expeditiously as possible, taking both Cheng's appeal and Staff's motion into account. The Panel requested the parties to consider possible schedules for the hearing on the basis that Staff's motion is granted by the Divisional Court and on the basis that it is dismissed, and suggested the possibility of staggered dates, with Staff presenting its case beginning in the week of April 23 (to preserve some of the days previously scheduled), followed by an adjournment to dates in June, July or August, when the respondents would call their evidence, with a view to completing the hearing in the Summer.

[9] The Panel also requested the parties to consider a date in the week of April 16 for the hearing of a disclosure motion that Cheng intends to bring and to address the timing of required procedural matters preceding the hearing on the merits. The Panel then adjourned the hearing to enable the parties to discuss possible dates under both scenarios.

[10] When the hearing reconvened, the parties agreed that if Staff's motion is not granted by the Divisional Court, the hearing on the merits should be held during the first three weeks of September. They were in substantial agreement on all but one of the remaining issues. Staff submitted that if its motion is successful, the hearing should begin on April 23 for Staff to present its evidence and then be adjourned to and completed in the first three weeks of September. Cheng argued that in both scenarios the hearing would end around the same time, but that he would have a fuller opportunity to prepare his defence if it begins on the later date and he and the other respondents would avoid the extra costs of counsel having to prepare for hearings in both April and September.

[11] All parties agree that an adjournment is necessary if Cheng's appeal proceeds. In view of the fact that the majority of the hearing will be conducted in September even if Staff's motion is granted, the proceeding will not be significantly expedited by beginning in April. The Panel determined, therefore, to grant Cheng's motion and to schedule the hearing to begin in September. Dates for the hearing and other matters were then selected, with the agreement of all the parties, to ensure that the hearing will be completed without the need for a further adjournment.

[12] At the conclusion of the hearing, the Panel informed the parties that it would make an order adjourning the hearing on the merits to the agreed dates, setting the agreed date for the hearing of Cheng's disclosure motion and scheduling the other dates necessary for the merits hearing to proceed. This order was issued the next day, March 16, 2018.

[13] The Panel wishes to thank all counsel for their cooperation in resolving these issues.

Dated at Toronto this 19th day of March, 2018.

"Philip Anisman"

"Deborah Leckman"

"Robert P. Hutchison"

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4 *OSC Rules*, r 1.

5 See *Darrigo (Re)* (2016), 39 OSCB 5443, 2016 ONSEC 21 at para 9; *Law Society of Upper Canada v. Igbinosun*, 2009 ONCA 484 at para 48.

6 See, e.g., *Axcess Automation LLC (Re)* (2012), 35 OSCB 9019, 2012 ONSEC 34 at paras 39-41; *Meharchand (Re)* (2018), 41 OSCB 1317, 2018 ONSEC 5 at paras 31-38.

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
Velocity Data Inc.	06 March 2018	15 March 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 5

Rules and Policies

5.1.1 OSC Rule 72-503 Distributions Outside Canada

ONTARIO SECURITIES COMMISSION RULE
72-503 *DISTRIBUTIONS OUTSIDE CANADA*

The text box in this Rule located above section 2.4 refers to National Instrument 45-102 Resale of Securities. The text box does not form part of this Rule.

PART 1
DEFINITIONS

Definitions

1.1 In this Rule,

"distribution date" has the same meaning as in National Instrument 45-102 *Resale of Securities*;

"FINRA" means the self-regulatory organization in the United States of America known as the Financial Industry Regulatory Authority; and

"specified foreign jurisdiction" means a jurisdiction listed in Appendix A of this Rule.

PART 2
EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

Distribution Under Public Offering Document in Foreign Jurisdictions

2.1 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if, at the time of the distribution, one or both of the following apply:

(a) the issuer has filed a registration statement in accordance with the 1933 Act registering the securities in connection with the distribution, and that registration statement is effective;

(b) the issuer has filed an offering document that qualifies, registers, or permits the public offering of those securities in accordance with the securities laws of a specified foreign jurisdiction and, if required, a receipt or similar acknowledgement of approval or clearance has been obtained for the offering document in the specified foreign jurisdiction.

Concurrent Distribution under Final Prospectus in Ontario

2.2 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if,

(a) the issuer of the securities or the selling security holder has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and

(b) the issuer of those securities has filed with the Commission, and a receipt has been issued for, a final prospectus qualifying a concurrent distribution of the same class, series or type of securities to purchasers in Ontario in accordance with Ontario securities law.

Distributions by Reporting Issuers

2.3 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person or company outside Canada if,

(a) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and

(b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding the distribution.

Distributions by Non-Reporting Issuers

Refer to Appendix D of National Instrument 45-102* Resale of Securities*. First trades are subject to a restricted period on resale.

2.4 The prospectus requirement does not apply to a distribution by an issuer that is not a reporting issuer in a jurisdiction of Canada of a security of its own issue to a person or company outside Canada if, the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements.

Exchange or Market Outside Canada

2.5 For the purposes of sections 2.1, 2.2, 2.3 and 2.4, a distribution made on or through the facilities of an exchange or market outside Canada is a distribution to a person or company outside Canada if neither the seller nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged with a buyer in Canada.

Anti-avoidance

2.6 The prospectus exemptions in sections 2.1, 2.2, 2.3 and 2.4 are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a distribution to a person or company in Canada.

PART 3
EXEMPTION FROM THE DEALER AND UNDERWRITER REGISTRATION REQUIREMENTS

Exemption from the Dealer and Underwriter Registration Requirements

3.1 The dealer registration requirement and the underwriter registration requirement do not apply to a person or company in connection with a distribution of securities to a person or company outside Canada if all of the following apply:

(a) the distribution is qualified by a prospectus filed in a jurisdiction of Canada or is exempt from the prospectus requirement under Part 2 of this Rule or by another exemption from the prospectus requirement under Ontario securities law;

(b) the head office or principal place of business of the person or company is in the United States of America, a specified foreign jurisdiction or a jurisdiction of Canada;

(c) if the distribution is made to a purchaser located in the United States of America,

(i) the person or company is registered as a broker-dealer with the SEC, is a member of FINRA and materially complies with all applicable conduct and other regulatory requirements of U.S. federal securities law, state securities law of the United States of America and FINRA rules in connection with the distribution; or

(ii) the person or company is exempt from registration as a broker-dealer with the SEC and materially complies with all applicable regulatory requirements of U.S. federal securities law in connection with the distribution;

(d) if the distribution is made to a purchaser located in a specified foreign jurisdiction,

(i) the person or company

(A) is registered under the securities legislation of the specified foreign jurisdiction in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario, and

(B) materially complies with all applicable dealer registration requirements and other broker-dealer regulatory requirements of the specified foreign jurisdiction in connection with the distribution; or

(ii) the person or company is exempt from registration in the specified foreign jurisdiction and materially complies with all applicable securities regulatory requirements of the specified foreign jurisdiction in connection with the distribution;

(e) the person or company does not carry on business as a dealer or underwriter from an office or place of business in Ontario except in accordance with Ontario Securities Commission Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario,* an exemption from the registration requirement in this Rule or another exemption from the registration requirement under Ontario securities law;

(f) the person or company is not registered in any jurisdiction of Canada in the category of dealer.

Issuer Exemption from the Dealer and Underwriter Registration Requirements

3.2 The dealer registration requirement does not apply to an issuer in connection with a distribution of securities to a person or company outside Canada that is qualified by a prospectus filed in any jurisdiction of Canada or that is exempt from the prospectus requirement under Part 2 of this Rule or another exemption from the prospectus requirement under Ontario securities law if one or both of the following apply:

(a) the trade is made through or to a person or company that is relying on the exemption in section 3.1 or another exemption from registration under Ontario securities law;

(b) the trade is made in accordance with the dealer and underwriter registration requirements of the investor's jurisdiction and the issuer is not otherwise registered in any jurisdiction in Canada in the category of dealer.

PART 4
REPORT OF DISTRIBUTION OUTSIDE CANADA

Report of Distribution outside Canada

4.1 An issuer that relies on an exemption in section 2.3 or 2.4 must electronically file a report of trade with respect to the distribution as required by Form 72-503F *Report of Distributions Outside Canada* and its instructions.

4.2 Filing Deadline

(1) An issuer, other than an investment fund, must file the report required under section 4.1 on or before the tenth day after the distribution date.

(2) An issuer that is an investment fund must file the report required under section 4.1 not later than 30 days after the end of the calendar year in which the distribution occurred.

Investment Funds

4.3 An issuer that is an investment fund is not required to file the report under section 4.1 if the seller electronically files a Form 45-106F1 not later than 30 days after the end of the calendar year in which the distribution occurred that also includes the required information set forth in Form 72-503F *Report of Distributions Outside Canada* and its instructions.

PART 5
EXEMPTION

Exemption

5.1 The Director may grant an exemption from Part 4, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6
EFFECTIVE DATE

Effective Date

6.1 This Rule comes into force on March 31, 2018.

APPENDIX A – SPECIFIED FOREIGN JURISDICTIONS

1. Australia
2. France
3. Germany
4. Hong Kong
5. Italy
6. Japan
7. Mexico
8. The Netherlands
9. New Zealand
10. Singapore
11. South Africa
12. Spain
13. Sweden
14. Switzerland
15. United Kingdom of Great Britain and Northern Ireland
16. Any other member country of the European Union

FORM 72-503F
REPORT OF DISTRIBUTIONS OUTSIDE CANADA

***Instructions*:**

1. An issuer that is required to complete this Form must do so through the online e-form available at http://www.osc.gov.on.ca.

2. Security codes: Wherever this form requires disclosure of the type of security, use the following security codes:

Security code	Security type
BND	Bonds
CER	Certificates *(including pass-through certificates, trust certificates)*
CMS	Common shares
CVD	Convertible debentures
CVN	Convertible notes
CVP	Convertible preferred shares
DEB	Debentures
FTS	Flow-through shares
FTU	Flow-through units
LPU	Limited partnership units
NOT	Notes *(include all types of notes except convertible notes)*
OPT	Options
PRS	Preferred shares
RTS	Rights
UBS	Units of bundled securities *(such as a unit consisting of a common share and a warrant)*
UNT	Units *(exclude units of bundled securities, include trust units and mutual fund units)*
WNT	Warrants
OTH	Other securities not included above *(if selected, provide details of security type in Item 7d)*

1. Full name, address and telephone number of the Issuer.

a) Full name of issuer

b) Head office address

Street address		Province/State	
Municipality		Postal code/Zip code	
Country		Telephone number	

2. Type of security, the aggregate number or amount distributed and the aggregate purchase price.

Types of securities distributed

Provide the following information for all distributions of securities relying on an exemption in section 2.2, 2.3 or 2.4 of the Rule on a per security basis. Refer to section 2 of the Instructions for how to indicate the security code. If providing the CUSIP number, indicate the full 9-digit CUSIP number assigned to the security being distributed.

Security code			CUSIP number (if applicable)	Description of security	Number of securities	Canadian $		
						Single or lowest price	Highest price	Total amount

Details of rights and convertible/exchangeable securities

If any rights (e.g. warrants, options) were distributed, provide the exercise price and expiry date for each right. If any convertible/exchangeable securities were distributed, provide the conversion ratio and describe any other terms for each convertible/exchangeable security.

Security code			Underlying Security code			Exercise price (Canadian $)		Expiry date (YYYY-MM-DD)	Conversion ratio	Describe other terms (if applicable)
						Lowest	Highest			

3. Date of distribution(s).

Distribution date

State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates. If the report is being filed for securities distributed on a continuous basis, include the start and end dates for the distribution period covered by the report.

Start date	End date
YYYY MM DD	YYYY MM DD

4. State the name and address of any person acting as dealer or underwriter (including an underwriter that is acting as agent) in connection with the distribution(s) of the securities.

Dealer and underwriter information				
Full legal name				
Street address				
Municipality		Province/State		
Country		Postal code/Zip code		
Telephone number		Website		*(if applicable)*

5. Certification

Certification
Provide the following certification and business contact information of an officer, director or agent of the issuer. If the issuer is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund. *The certification may be delegated, but only to an agent that has been authorized by an officer or director of the issuer to prepare and certify the report on behalf of the issuer.* *The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.*

Securities legislation requires an issuer that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/investment fund manager, to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

Name of issuer/investment fund manager/agent			
Full legal name	Family name	First given name	Secondary given names
Title			
Telephone number		Email address	
Signature		Date	YYYY / MM / DD

5.1.2 Companion Policy 72-503 Distributions Outside Canada

COMPANION POLICY 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

PART 1 APPLICATION AND PURPOSE

This Policy sets out how the Ontario Securities Commission (the **Commission** or the **OSC**) interprets and applies section 53 of the *Securities Act* (Ontario) (the **Act**), the provisions of OSC Rule 72-503 *Distributions of Securities Outside Canada* (the **Rule**) and section 25 of the Act in the context of distributions outside Canada.

Statement of Principle

The Commission takes the view that an investor outside Canada will ordinarily expect to rely on the prospectus, registration statement or similar protections of the securities laws of the foreign jurisdiction in which the investor is located. The Commission recognizes that compliance with the prospectus requirement or conditions of a prospectus exemption under Ontario securities law may be unnecessarily duplicative of these protections and will generally not be necessary to fulfill the purposes of the Act.

Accordingly, the Commission does not interpret the Ontario prospectus requirement as applying to a distribution of securities outside Canada that is made in compliance with the securities laws of the foreign jurisdiction in which the investor is located. However, the Commission would expect the issuer, a selling security holder, an underwriter and other participants in the distribution to take sufficient measures in the circumstances of the distribution to make it reasonable to conclude that the offered securities come to rest outside Canada, meaning that it is unlikely that they will be redistributed back into Canada by an original purchaser outside Canada that has acquired the securities with a view to distribution, rather than with investment intent. The following are examples of measures they may take in support of their reliance on this Statement of Principle:

(1) A restriction in the underwriting, banking group, selling group, or agency agreement that prohibits the sale of securities to any person or company in Canada, except pursuant to a Canadian prospectus or prospectus exemption;

(2) Clear statements in the offering document that the securities: (i) have not been qualified for distribution by prospectus in Canada, and (ii) may not be offered or sold in Canada during the course of their distribution except pursuant to a Canadian prospectus or prospectus exemption;

(3) The class or series of securities being distributed have an existing trading market outside Canada that would not be materially less advantageous for investors outside Canada than making resales on any exchange or market in Canada on which the securities may also be traded;

(4) The distribution is conducted as a broad-based public offering in one or more countries outside Canada and, if there is no existing trading market outside of Canada, it is reasonable to expect that a trading market for the offered securities outside Canada will develop;

(5) Purchasers outside Canada provide representations and warranties, or are given notice that their purchase of the securities will be deemed to constitute a representation and warranty, that they are purchasing the securities with investment intent and not with a view to distribution, and such representations and warranties are reasonable in the circumstances, having regard to the nature of the purchaser, the number of securities purchased, the purchaser's investment strategy, and any other facts or circumstances that a reasonable person would consider relevant in determining whether a purchaser is purchasing with investment intent and not with a view to distribution.

This list of examples of measures that may be taken is provided for illustrative purposes, and is not intended to be a definitive list of any or all of the measures or other factors that participants may take into account in order to reasonably conclude that securities have come to rest outside Canada. Furthermore, the list is intended to assist in determining whether the prospectus requirement applies to a distribution, and is not intended to have a bearing on the ability of market participants to rely on the Rule's exemptions. As the Rule's exemptions are intended to provide greater certainty for market participants, the Commission would not view reliance or purported reliance on an exemption, itself, as determinative that the Ontario prospectus requirement would otherwise apply to a distribution outside Canada or to activities related to the distribution.

The Integrity of the Ontario Capital Markets and the Jurisdiction of the Commission

The Rule's exemptions are intended only for distributions being made in good faith outside Canada, and not as part of a plan or scheme to conduct an indirect distribution to a person or company in Canada.

Neither the Rule nor this Policy impacts the jurisdiction of the Commission. Where the Commission becomes aware of conduct that may bring the reputation of Ontario's capital markets into disrepute or otherwise impair its mandate, the Commission may assert its jurisdiction and exercise its powers to take appropriate action against issuers, underwriters and other persons, including in connection with distributions of securities to an investor outside Canada. The Commission may exercise its discretionary authority to cease trade securities, make orders to prevent conduct contrary to the public interest, and make regulations to foster fair and efficient capital markets and confidence in capital markets irrespective of whether there is a "distribution" in Ontario in breach of section 53 of the Act.

PART 2 EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

General

The prospectus exemptions under Part 2 of the Rule are intended to facilitate cross-border offerings by removing the potentially duplicative application of Ontario prospectus requirements where offerings to an investor outside Canada are made in material compliance with the securities laws of the foreign jurisdiction.

An issuer or selling security holder meets the requirement to sell to "a person or company outside Canada" if the issuer or selling security holder has no knowledge, and no reason to believe, that the purchaser is a person or company in Canada. Further, section 2.5 of the Rule provides that a distribution made through the facilities of an exchange or market outside Canada will qualify as a distribution outside Canada if neither the seller, nor any person acting on its behalf, has reason to believe the distribution has been pre-arranged with a buyer in Canada. Where the transaction has been pre-arranged, the exemption from the prospectus requirement will only be available if the pre-arranged buyer is in fact a person or company outside Canada.

An issuer or selling security holder will have "materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction" if the issuer or selling security holder has taken reasonable steps to ensure the distribution is effected in accordance with the securities laws of the foreign jurisdiction.

Concurrent Distribution under Final Prospectus in Ontario

An issuer or selling security holder distributing securities to an investor outside Canada may concurrently distribute securities to purchasers in Ontario provided that the distribution of securities to an investor in Ontario is qualified by a prospectus filed under the Act, or is conducted in reliance on an exemption from the prospectus requirement. The condition under paragraph 2.2(b) of the Rule therefore requires the filing of a prospectus in Ontario in connection with a concurrent distribution in Ontario. The prospectus exemption under section 2.2 of the Rule may be relied on for purposes of the distribution to an investor outside Canada only.

If an issuer or selling security holder files a prospectus to qualify a concurrent distribution to a person or company in Ontario, the issuer may choose to file a prospectus in Ontario to qualify the distribution of securities to an investor outside Canada, rather than rely on the exemption in section 2.2 of the Rule. Any prospectus filed in such circumstances should clearly state whether or not it also qualifies the distribution of securities to an investor outside Canada, recognizing that purchasers of Ontario prospectus-qualified securities may be entitled to certain rights and investor protections under the Act even if the investor is outside Canada.

If there is no concurrent distribution in Ontario but the issuer files an Ontario prospectus in connection with the distribution of securities to an investor outside Canada, the securities being distributed outside Canada will be qualified by the Ontario prospectus. In this case, the issuer or selling security holder would not be relying on the exemption from the prospectus requirement in section 2.2 of the Rule because a prospectus in Ontario is qualifying the distribution.

Resale

Securities distributed under an exemption from the prospectus requirement in section 2.1, 2.2, or 2.3 of the Rule are free trading.

The first trade of securities distributed under an exemption from the prospectus requirement in section 2.4 of the Rule is subject to a restricted period on resale. Refer to Appendix D of National Instrument 45-102 *Resale of Securities*.

The Multijurisdictional Disclosure System

Nothing in the Rule is intended to affect the guidance in section 4.3 of Companion Policy 71-101CP To National Instrument 71-101 *The Multijurisdictional Disclosure System*. An issuer relying on an exemption from the prospectus requirement in paragraph 2.1(a) of the Rule may file a Form F-10 in connection with a distribution solely in the United States of America under the multijurisdictional disclosure system adopted by the SEC, select Ontario as the review jurisdiction, file the registration statement filed with the SEC with the Commission contemporaneously with the filing of the registration statement with the SEC, obtain

notification of clearance from the Commission and advise the SEC of the issuance of the notification of clearance. In this situation, the exemption in paragraph 2.1(a) of the Rule will be available once the Form F-10 has become effective.

PART 3 EXEMPTIONS FROM THE REGISTRATION REQUIREMENT

Section 25 of the Act and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) set out the general requirements for registration as well as certain exemptions from these requirements. The Companion Policy to NI 31-103 provides guidance to issuers and intermediaries on how to apply the triggers for registration as well as interpret the exemptions from these requirements.

Part 3 of the Rule provides an exemption from the dealer and underwriter registration requirements in Ontario securities law for certain foreign dealers (including dealers acting as underwriters) with respect to distributions to investors outside Canada that are made under a prospectus filed in Ontario or made in reliance on a prospectus exemption available under Ontario securities law, including the exemptions in Part 2 of the Rule. The registration exemption in section 3.1 may also be relied on by an entity that has its head office in Canada, is not registered as a dealer in Canada but is registered as a dealer (or exempt from registration) in the United States of America or a specified foreign jurisdiction. The exemption includes entities that have their head office in Canada to address the situation of certain foreign broker-dealer affiliates of Canadian firms that have no foreign offices and share space and personnel with the affiliated Canadian dealer.

The Commission reminds market participants that registration in Ontario is generally required (unless an exemption is otherwise available) where registerable services are provided to investors in Ontario or where registerable activities are otherwise conducted within Ontario, regardless of the location of the investors.

The Commission recognizes that, in the case of a distribution of securities by an Ontario issuer to purchasers outside Canada, there may be a question as to whether foreign dealers or underwriters that participate in the distribution are subject to the dealer and underwriter registration requirements of Ontario securities law. The Commission has introduced the exemption in section 3.1 of the Rule to provide greater certainty to market participants and to help address the challenges that foreign dealers and underwriters may face in determining whether the dealer and underwriter registration requirements apply to their activities. The provision of these exemptions is not determinative of whether Ontario securities law would otherwise apply to the activities of the foreign dealer or underwriter related to the distribution. Foreign dealers and advisers may also wish to consider the registration exemptions in OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*.

The registration exemption in section 3.2 is intended to parallel the existing registration exemption in section 8.5 of NI 31-103 [*Trades to or through a registered dealer*], but broaden it to apply in circumstances where that exemption may not be available because it requires the trades to occur through a dealer that is registered (rather than relying on an exemption from registration). Issuers that distribute securities with regularity and for a business purpose may in certain circumstances be required to be registered. The companion policy to NI 31-103 provides guidance to issuers on how to apply the registration business trigger.

PART 4 FORM 72-503F

Issuers are required to file the information required by Form 72-503F *Report of Distributions Outside Canada* (the **Form**) electronically through the Commission's Electronic Filing Portal. The electronic filing requirement applies to all issuers that are subject to the Form's disclosure requirements. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* for further information.

APPENDIX A

The Commission is prepared to consider applications for exemptive relief in respect of distributions in a jurisdiction outside Canada that is not listed as a specified foreign jurisdiction in Appendix A of the Rule.

5.1.3 Amendments to OSC Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 11-501
ELECTRONIC DELIVERY OF DOCUMENTS
TO THE ONTARIO SECURITIES COMMISSION

1. Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission is amended by this Instrument.

2. The second row below is added, immediately after the row containing "71-101F1***", to Appendix A:***

Document Reference	Description of Document
72-503F	Form 72-503F *Report of Distributions Outside Canada*

3. This Instrument comes into force on March 31, 2018.

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:
AGF Canadian Growth Equity Class
AGF Canadian Large Cap Dividend Class
AGF Canadian Large Cap Dividend Fund
AGF Canadian Small Cap Fund
AGF Canadian Stock Fund
AGF Dividend Income Fund
AGF American Growth Class
AGF American Growth Fund
AGF Asian Growth Class
AGF Asian Growth Fund
AGF China Focus Class
AGF EAFE Equity Fund
AGF Emerging Markets Class
AGF Emerging Markets Fund
AGF European Equity Class
AGF European Equity Fund
AGF Global Dividend Class
AGF Global Dividend Fund
AGF Global Equity Class
AGF Global Equity Fund
AGF Global Select Fund
AGF U.S. Risk Managed Fund
AGF U.S. Sector Class
AGF U.S. Small-Mid Cap Fund
AGF Global Resources Class
AGF Global Resources Fund
AGF Global Sustainable Growth Equity Fund
AGF Precious Metals Fund
AGF Canadian Asset Allocation Fund
AGF Monthly High Income Fund
AGF Tactical Income Fund
AGF Traditional Income Fund
AGF Diversified Income Class
AGF Diversified Income Fund
AGF Emerging Markets Balanced Fund
AGF Flex Asset Allocation Fund
AGF Global Balanced Fund
AGF Tactical Fund
AGF Canadian Money Market Fund
AGF Fixed Income Plus Class
AGF Fixed Income Plus Fund
AGF Short-Term Income Class
AGF Emerging Markets Bond Fund
AGF Floating Rate Income Fund
AGF Global Bond Fund
AGF Global Convertible Bond Fund
AGF High Yield Bond Fund
AGF Total Return Bond Class
AGF Total Return Bond Fund
AGF Elements Balanced Portfolio
AGF Elements Conservative Portfolio
AGF Elements Global Portfolio
AGF Elements Growth Portfolio
AGF Elements Yield Portfolio
AGF Elements Balanced Portfolio Class
AGF Elements Conservative Portfolio Class
AGF Elements Global Portfolio Class
AGF Elements Growth Portfolio Class
AGF Elements Yield Portfolio Class
AGF Equity Income Focus Fund
AGF Income Focus Fund
Principal Regulator - Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated March 13, 2018
NP 11-202 Preliminary Receipt dated March 15, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
N/A
Project #2740888

Issuer Name:
IG FI U.S. Large Cap Equity Fund
Principal Regulator - Manitoba
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 16, 2018
Received on March 16, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Investors Group Securities Inc.
Investors Group Financial Services Inc.
Investors Group Financial Inc.
Promoter(s):
I.G. INVESTMENT MANAGEMENT, LTD.
Project #2636004

Issuer Name:
IG FI U.S. Large Cap Equity Class
Principal Regulator - Manitoba
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 16, 2018
Received on March 16, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Investors Group Securities Inc.
Investors Group Financial Services Inc.
Investors Group Financial Inc.
Promoter(s):
I.G. Investment Management Ltd.
Project #2636043

Issuer Name:
Federated Strategic Value U.S. Equity Dividend Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 9, 2018
Received on March 14, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2691840

Issuer Name:
First Trust International Capital Strength ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 13, 2018
NP 11-202 Preliminary Receipt dated March 13, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
FT Portfolios Canada Co.
Project #2740252

Issuer Name:
Horizons Blockchain and Cryptocurrency Technologies ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 12, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2740774

Issuer Name:
IG Mackenzie Emerging Markets Pool
IG Mackenzie Global Inflation-Linked Pool
IG Mackenzie Low Volatility Emerging Markets Equity Pool
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectus dated March 16, 2018
NP 11-202 Preliminary Receipt dated March 20, 2018
Offering Price and Description:
Series P Mutual Fund Units
Underwriter(s) or Distributor(s):
Investors Group Financial Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. Investment Management Ltd.
Project #2741796

Issuer Name:
Meritage American Equity Portfolio
Meritage Balanced Income Portfolio
Meritage Balanced Portfolio
Meritage Canadian Equity Class Portfolio
Meritage Canadian Equity Portfolio
Meritage Conservative Income Portfolio
Meritage Conservative Portfolio
Meritage Diversified Fixed Income Portfolio
Meritage Dynamic Growth Class Portfolio
Meritage Dynamic Growth Income Portfolio
Meritage Dynamic Growth Portfolio
Meritage Global Balanced Portfolio
Meritage Global Conservative Portfolio
Meritage Global Dynamic Growth Class Portfolio
Meritage Global Dynamic Growth Portfolio
Meritage Global Equity Class Portfolio
Meritage Global Equity Portfolio
Meritage Global Growth Class Portfolio
Meritage Global Growth Portfolio
Meritage Global Moderate Portfolio
Meritage Growth Class Portfolio
Meritage Growth Income Portfolio
Meritage Growth Portfolio
Meritage International Equity Portfolio
Meritage Moderate Income Portfolio
Meritage Moderate Portfolio
Meritage Tactical ETF Balanced Portfolio
Meritage Tactical ETF Equity Portfolio
Meritage Tactical ETF Fixed Income Portfolio
Meritage Tactical ETF Growth Portfolio
Meritage Tactical ETF Moderate Portfolio
National Bank Balanced Diversified Fund
National Bank Conservative Diversified Fund
National Bank Growth Diversified Fund
National Bank Moderate Diversified Fund
National Bank Secure Diversified Fund
NBI Balanced Portfolio
NBI Bond Fund
NBI Canadian All Cap Equity Fund
NBI Canadian Bond Index Fund
NBI Canadian Bond Private Portfolio
NBI Canadian Diversified Bond Private Portfolio
NBI Canadian Equity Fund
NBI Canadian Equity Growth Fund
NBI Canadian Equity Index Fund
NBI Canadian Equity Private Portfolio
NBI Canadian High Conviction Equity Private Portfolio
NBI Canadian Index Fund
NBI Canadian Preferred Equity Private Portfolio
NBI Canadian Short Term Income Private Portfolio
NBI Canadian Small Cap Equity Private Portfolio
NBI Conservative Portfolio
NBI Corporate Bond Fund
NBI Corporate Bond Private Portfolio
NBI Dividend Fund
NBI Emerging Markets Equity Private Portfolio
NBI Equity Income Private Portfolio
NBI Equity Portfolio
NBI Floating Rate Income Fund
NBI Global Bond Fund
NBI Global Diversified Equity Fund
NBI Global Equity Fund
NBI Global Real Assets Income Fund
NBI Global Tactical Bond Fund
NBI Growth Portfolio
NBI High Yield Bond Fund
NBI High Yield Bond Private Portfolio
NBI Income Fund
NBI International Currency Neutral Index Fund
NBI International Equity Index Fund
NBI International Equity Private Portfolio
NBI International High Conviction Equity Private Portfolio
NBI International Index Fund
NBI Jarislowsky Fraser Select Balanced Fund
NBI Jarislowsky Fraser Select Canadian Equity Fund
NBI Jarislowsky Fraser Select Income Fund
NBI Moderate Portfolio
NBI Money Market Fund
NBI Multiple Asset Class Private Portfolio
NBI Municipal Bond Plus Private Portfolio
NBI Non-Traditional Capital Appreciation Private Portfolio
NBI Non-Traditional Fixed Income Private Portfolio
NBI North American Dividend Private Portfolio
NBI Precious Metals Fund
NBI Preferred Equity Fund
NBI Preferred Equity Income Fund
NBI Quebec Growth Fund
NBI Real Assets Private Portfolio
NBI Resource Fund
NBI Science and Technology Fund
NBI Secure Portfolio
NBI Short Term Canadian Income Fund
NBI Small Cap Fund
NBI SmartBeta Canadian Equity Fund
NBI SmartBeta Global Equity Fund
NBI SmartData International Equity Fund
NBI SmartData U.S. Equity Fund
NBI Strategic U.S. Income and Growth Fund
NBI Tactical Equity Private Portfolio
NBI Tactical Fixed Income Private Portfolio
NBI Tactical Mortgage & Income Fund
NBI U.S. Bond Private Portfolio
NBI U.S. Currency Neutral Index Fund
NBI U.S. Dividend Fund
NBI U.S. Equity Fund
NBI U.S. Equity Index Fund
NBI U.S. Equity Private Portfolio
NBI U.S. High Conviction Equity Private Portfolio
NBI U.S. Index Fund
NBI Unconstrained Fixed Income Fund
NBI Westwood Emerging Markets Fund
Principal Regulator - Quebec

Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated March 16, 2018
NP 11-202 Preliminary Receipt dated March 19, 2018

Offering Price and Description:
Securities of the O Series

Underwriter(s) or Distributor(s):
National Bank Investments Inc.

Promoter(s):
N/A

Project #2741752

Issuer Name:
Purpose Alternate Yield Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated March 13, 2018
Received on March 13, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2644964

Issuer Name:
Purpose Enhanced Dividend Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Annual Information Form dated March 16, 2018
Received on March 16, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2674554

Issuer Name:
RBC International Equity (CAD Hedged) Index ETF
RBC U.S. Banks Yield (CAD Hedged) Index ETF
RBC U.S. Banks Yield Index ETF
RBC U.S. Equity (CAD Hedged) Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 14, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
RBC Global Asset Management Inc.
Project #2740844

Issuer Name:
AGF Asian Growth Class
AGF Asian Growth Fund
AGF Canadian Growth Equity Class
AGF Canadian Small Cap Fund
AGF Emerging Markets Balanced Fund
AGF Emerging Markets Class
AGF Emerging Markets Fund
AGF European Equity Fund
AGF Fixed Income Plus Class
AGF Fixed Income Plus Fund
AGF Global Dividend Class
AGF Global Dividend Fund
AGF Global Resources Fund
AGF U.S. Small-Mid Cap Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated March 8, 2018
NP 11-202 Receipt dated March 13, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
AGF Investments Inc.
Project #2596084

Issuer Name:
Dividend Select 15 Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus (NI 44-101) dated March 14, 2018
NP 11-202 Receipt dated March 15, 2018
Offering Price and Description:
$7,814,700
914,000 Equity Shares @$8.55 per share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
N/A
Project #2737855

Issuer Name:
Dynamic Active Investment Grade Floating Rate Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated March 15, 2018
NP 11-202 Receipt dated March 16, 2018
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2728023

Issuer Name:
Dynamic iShares Active Investment Grade Floating Rate ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 15, 2018
NP 11-202 Receipt dated March 16, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2728127

Issuer Name:
Fidelity ClearPath® 2005 Portfolio
Fidelity ClearPath® 2010 Portfolio
Fidelity ClearPath® 2015 Portfolio
Fidelity ClearPath® 2020 Portfolio
Fidelity ClearPath® 2025 Portfolio
Fidelity ClearPath® 2030 Portfolio
Fidelity ClearPath® 2035 Portfolio
Fidelity ClearPath® 2040 Portfolio
Fidelity ClearPath® 2045 Portfolio
Fidelity ClearPath® 2050 Portfolio
Fidelity ClearPath® 2055 Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus and Amendment #3 to AIF dated March 1, 2018
NP 11-202 Receipt dated March 16, 2018
Offering Price and Description:
Series A, B, E1, E1T5, E2, E2T5, E3, E4, F, O, P1, P2, P3, S5, S8, T5, T8 units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
N/A
Project #2675619

Issuer Name:
First Trust Indxx Innovative Transaction and Process ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 15, 2018
NP 11-202 Receipt dated March 19, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
FT Portfolios Canada Co.
Project #2724510

Issuer Name:
Ridgewood Canadian Bond Fund
Ridgewood Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated March 12, 2018
NP 11-202 Receipt dated March 13, 2018
Offering Price and Description:
units @ net asset value
Underwriter(s) or Distributor(s):
Ridgewood Capital Asset Management Inc.
Promoter(s):
N/A
Project #2725831

NON-INVESTMENT FUNDS

Issuer Name:
Antioquia Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 16, 2018
NP 11-202 Preliminary Receipt dated March 19, 2018
Offering Price and Description:
$62,500,000.00 - Offering of Rights to Subscribe for Up to [*] Common Shares at a Price of [*] Per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
Infinita Prosperidad Minera Sac
Project #2741937

Issuer Name:
Auryn Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 12, 2018
NP 11-202 Preliminary Receipt dated March 13, 2018
Offering Price and Description:
US$*
* Common Shares
Price: US$* per Common Share
Underwriter(s) or Distributor(s):
Cantor Fitzgerald Canada Corporation
PI Financial Corp.
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #2740070

Issuer Name:
Auryn Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated March 13, 2018 to Preliminary Short Form Prospectus dated March 12, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
US$6,800,001.00
5,230,770 Common Shares
Price: US$1.30 per Common Share
Underwriter(s) or Distributor(s):
Cantor Fitzgerald Canada Corporation
PI Financial Corp.
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #2740070

Issuer Name:
Bell Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated March 14, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
$4,000,000,000.00
Debt Securities (Unsecured)
Unconditionally guaranteed as to payment of principal, interest and other payment obligations by BCE Inc.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2740824

Issuer Name:
High Mountain Capital Corporation
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated March 14, 2018
NP 11-202 Preliminary Receipt dated March 16, 2018
Offering Price and Description:
Minimum Offering: $240,000.00 (2,400,000 Common Shares)
Maximum Offering: $350,000.00 (3,500,000 Common Shares)
Price: $0.10 per common share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
William A. Kanters
Project #2741569

Issuer Name:
IAMGOLD Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 14, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
U.S.$1,000,000,000.00
Common Shares
First Preference Shares
Second Preference Shares
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2740817

Issuer Name:
InterRent Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2018
NP 11-202 Preliminary Receipt dated March 14, 2018
Offering Price and Description:
$85,086,000.00 (8,700,000 trust units)
Price: $9.78 per Offered Unit
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Industrial Alliance Securities Inc.
National Bank Financial Inc.
Raymond James Ltd.
Echelon Wealth Partners Inc.
GMP Securities L.P.
Promoter(s):
-
Project #2739419

Issuer Name:
Sarment Holding Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 19, 2018
NP 11-202 Preliminary Receipt dated March 19, 2018
Offering Price and Description:
Minimum C$33,000,000.00 (* Ordinary Shares)
Maximum C$53,000,000.00 (* Ordinary Shares)
Offering Price: C$* per Ordinary Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Paradigm Capital Inc.
Promoter(s):
Bertrand Faure Beaulieu
Project #2742246

Issuer Name:
Steppe Gold Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment dated March 16, 2018 to Preliminary Long Form Prospectus dated November 2, 2017
NP 11-202 Preliminary Receipt dated March 16, 2018
Offering Price and Description:
$*
* Units
* Common Shares Issuable on the Exercise of 1,287,210 Special Warrants
Price: $* Per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
PI Financial Corp.
Promoter(s):
Matthew Wood
Project #2689951

Issuer Name:
Tinka Resources Limited
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 19, 2018
Received on March 13, 2018
Offering Price and Description:
$7,008,000.00
14,600,000 Units
Price: $0.48 per Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Genuity Corp.
Beacon Securities Limited
CIBC World Markets Inc.
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #2740423

Issuer Name:
Apolo III Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus (TSX-V) dated March 13, 2018
NP 11-202 Receipt dated March 14, 2018
Offering Price and Description:
Offering: $500,000 (5,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #2728925

Issuer Name:
Bombardier Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated March 16, 2018
NP 11-202 Receipt dated March 16, 2018
Offering Price and Description:
$638,400,000.00 - 168,000,000 Class B Shares
(Subordinate Voting)
Underwriter(s) or Distributor(s):
Credit Suisse Securities (Canada), Inc.
National Bank Financial Inc.
UBS Securities Canada Inc.
TD Securities Inc.
Goldman Sachs Canada Inc.
Citigroup Global Markets Canada Inc.
J.P. Morgan Securities Canada Inc.
Merrill Lynch Canada Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
Promoter(s):
-
Project #2737612

Issuer Name:
Cen-ta Real Estate Ltd.
Plum Financial Planning Ltd. (formerly Gro-Net Financial Tax & Pension Planners Ltd.)
Type and Date:
Final Long Form Prospectus dated March 16, 2018
Receipted on March 16, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2729010

Issuer Name:
Prometic Life Sciences Inc.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated March 14, 2018
NP 11-202 Receipt dated March 14, 2018
Offering Price and Description:
$250,000,000.00
Common Shares
Preferred Shares
Warrants
Subscription Receipts
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2730767

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Burlington Capital Management Ltd.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	March 13, 2018
Voluntary Surrender	Storeyworks Capital Inc.	Exempt Market Dealer	March 13, 2018
Voluntary Surrender	Legacy Partners Wealth Strategies Inc.	Exempt Market Dealer	March 16, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1.1 SROs

13.1.1 MFDA – Proposed Continuing Education Requirements for MFDA Members and their Approved Persons

REQUEST FOR COMMENT

MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

PROPOSED CONTINUING EDUCATION REQUIREMENTS FOR MFDA MEMBERS AND THEIR APPROVED PERSONS

The MFDA is publishing for public comment proposed MFDA Rules 1.2 (Definitions) and 1.2.6 (Continuing Education), and proposed MFDA Policy No. 9 – *Continuing Education (CE) Requirements*. The primary objective of the proposed Rules and Policy is to establish CE requirements for MFDA Members and their Approved Persons, and minimum standards for complying with such requirements, which will further assist Approved Persons in maintaining high standards of professionalism, and keeping their industry knowledge current.

A copy of the MFDA Notice including the proposed Rules and Policy is published on our website at www.osc.gov.on.ca. The comment period ends on June 20, 2018.

13.3 Clearing Agencies

13.3.1 CDS – Material Amendments to CDS Participant Rules Related to Non-LVTS Settlement Agents – OSC Staff Notice of Request for Comments

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PARTICIPANT RULES RELATED TO NON-LVTS SETTLEMENT AGENTS

The Ontario Securities Commission is publishing for 30 day public comment material amendments to the CDS Rules relating to non-LVTS Settlement Agents. The purpose of the proposed participant rules amendments is to remove reference to the ability of a non-LVTS user to deliver, or to the Bank of Canada accepting eligible collateral from CDS Participants who are not LVTS users in exchange of funds.

The comment period ends on April 23, 2018.

A copy of the CDS Notice is published on our website at http://www.osc.gov.on.ca.

Chapter 25

Other Information

25.1 Approvals

25.1.1 Avenue Investment Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager that is registered as an investment fund manager and portfolio manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited:

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 19, 2017

Dentons Canada LLP
77 King Street West, Suite 400
Toronto, Ontario M5K 0A1

Attention: Marah Smith

Dear Sirs/Mesdames:

Re: Avenue Investment Management Inc. (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application No. 2017/0613

Further to your application filed on November 8, 2017 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that assets of Avenue Equity Portfolio Pooled Fund (the "Fund") and any other future mutual fund trusts that the Applicant may establish and manage from time to time, the securities of which will be offered pursuant to prospectus exemptions, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Janet Leiper"
Commissioner

"Frances Kordyback"
Commissioner

25.1.2 LionGuard Capital Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with prior track record acting as trustee, for approval to act as trustee of mutual fund trusts and any future mutual fund trusts to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

March 16, 2018

Borden Ladner Gervais LLP
1000 De La Gauchetière Street West
Suite 900
Montreal, Québec H3B 5H4

Attention: Matthew P. Williams

Dear Sirs/Mesdames:

Re: LionGuard Capital Management Inc. (the "Applicant")

Application under clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application #2018/0032

Further to your application dated January 19, 2018 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of LionGuard Opportunities Trust Fund and any other future mutual fund trusts that the Applicant may establish and manage from time to time, the securities of which will be offered pursuant to prospectus exemptions, will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of LionGuard Opportunities Trust Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"J.A. Leiper"
Commissioner
Ontario Securities Commission

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