The Ontario Securities Commission

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

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

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Contact Centre – Inquiries, Complaints: Fax: 416-593-8122
TTY: 1-866-827-1295

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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 46-308 Securities Law Implications for Offerings of Tokens

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA Staff Notice 46-308
Securities Law Implications for Offerings of Tokens

June 11, 2018

Purpose and background

CSA staff (**we** or **staff**) are issuing this notice to respond to inquiries on the applicability of securities laws to offerings of coins or tokens, including ones that are commonly referred to as "utility tokens".

In CSA Staff Notice 46-307 *Cryptocurrency Offerings* (**SN 46-307**), we stated that many cryptocurrency offerings, such as initial coin offerings (**ICO**) and initial token offerings (**ITO**), involve sales of securities. This is because the offering and/or the coins or tokens issued under the offering constitute investment contracts or are otherwise securities, when the totality of the offering or arrangement is considered. We also stated that, depending on the facts and circumstances, these products may also be considered to be derivatives and subject to legislation and regulatory requirements that apply to derivatives.

Since SN 46-307 was published, staff have engaged with numerous businesses wishing to complete offerings of tokens and have found that most of these offerings have involved securities.

As part of this engagement with businesses, we have received various inquiries relating to offerings of tokens referred to as "utility tokens". "Utility token" is an industry term often used to refer to a token that has one or more specific functions, such as allowing its holder to access or purchase services or assets based on blockchain technology.

We have seen many businesses offering tokens to raise capital for the development of their software, online platform or application. In many of these cases, the offering will involve securities despite the fact that the tokens have one or more utility functions.

This notice provides guidance on the following issues relating to offerings of tokens:

- when an offering of tokens may or may not involve an offering of securities; and
- offerings of tokens that are structured in multiple steps.

The views outlined in this notice are based on the features we have seen in offerings to date and may change over time, as the market and business models continue to evolve.

When an offering of tokens may or may not involve an offering of securities

As we indicated in SN 46-307, every offering is unique and must be assessed on its own characteristics. An offering of tokens may involve the distribution of securities, including because:

- the offering involves the distribution of an investment contract; and/or
- the offering and/or the tokens issued are securities under one or more of the other enumerated branches of the definition of security or may be a security that is not covered by the non-exclusive list of enumerated categories of securities.

In determining whether or not an investment contract exists, the case law endorses a purposive interpretation that includes considering the objective of investor protection. This is especially important for businesses to consider in the context of offerings of tokens where the risk of loss to investors can be high. Businesses and their professional advisors should consider and apply the case law interpreting the term "investment contract"[1], including considering whether the offering involves:

1. An investment of money
2. In a common enterprise
3. With the expectation of profit
4. To come significantly from the efforts of others

In analyzing whether an offering of tokens involves an investment contract, businesses and their professional advisors should assess not only the technical characteristics of the token itself, but the economic realities of the offering as a whole, with a focus on substance over form.

We have received submissions from businesses and their professional advisors that a proposed offering of tokens does not involve securities because the tokens will be used in software, on an online platform or application, or to purchase goods and services. However, we have found that most of the offerings of tokens purporting to be utility tokens that we have reviewed to date have involved the distribution of a security, namely an investment contract. The fact that a token has a utility is not, on its own, determinative as to whether an offering involves the distribution of a security.

Examples of situations and their possible implication on one or more of the elements of an investment contract

We have identified in the table below situations that have an implication on the presence of one or more of the elements of an investment contract.

The examples that we have provided are intended to be illustrative and are based on situations that staff have seen to date. This list is not exhaustive and we expect that it will change over time, as the market and business models continue to evolve. Also, we emphasize that none of these examples should be interpreted as determinative on its own of whether or not a security exists. It is possible that an offering of tokens may be viewed as involving, or not involving, a security even with the existence, or absence, of one or more of the characteristics listed below. As such, businesses and their professional advisors should complete a meaningful analysis based on the unique characteristics of their offering of tokens and should not use the following table to complete a mechanical "tick the box" exercise.

	Examples of situations	**Possible implications**
1.	The proposed function of the token is to use software or an online platform or application, or to purchase goods and services, but the software, online platform or application or goods and services do not exist, are not yet available or are still in development.	This could indicate that the purchaser is not purchasing the tokens for their immediate utility, but because of an expectation of profit, which will depend on the issuer's ability to complete the development of the software, online platform or application or to offer the goods and services. Although some purchasers may be purchasing the token for the utility function, many purchasers may be purchasing the token in order to sell it on a cryptoasset trading platform or otherwise in the secondary market. This could also indicate the existence of a common enterprise because management's efforts are still needed to develop or deliver the software, online platform or application or goods and services. Regardless of the motivation of the purchaser, the purchaser bears the risk of loss if management's efforts are not successful.

[1] See, for example: the Supreme Court of Canada's decision in *Pacific Coast Coin Exchange v. Ontario (Securities Commission)*, [1978] 2 SCR 112, the Ontario Securities Commission's decision in *Universal Settlements International Inc.* (2006), 29 OSCB 7880, and the Alberta Securities Commission's decisions in *The Land Development Company Inc. et al* (2002), ABSECCOM REA #1248840 v1 and *Kustom Design Financial Services Inc.* *(Re),* 2010 ABASC 179.

	Examples of situations	Possible implications
		Whether or not a functional software or online platform or application has been developed is a question of fact. For example, we may consider that a platform is not fully developed in cases where the significant intended functions are not yet available or where end users are unable to participate, even where there may be developer functionality.
2.	The tokens are not immediately delivered to purchasers.	This could indicate that the software, online platform or application or goods and services are not yet available and purchasers are not purchasing the tokens for their immediate utility but because of an expectation of profit. It could also indicate a common enterprise exists because of the purchaser's reliance on management to deliver the tokens.
3.	The stated purpose of the offering is to raise capital, which will be used to perform key actions that will support the value of the token, the value of the issuer's business or the platform's usability. These key actions may include expanding the team of developers, developing relevant applications and products, expanding the network of participants on the platform, installing necessary infrastructure and marketing efforts.	This could indicate the existence of a common enterprise between management and purchasers. This could also indicate that the purchaser is not purchasing the tokens for their immediate utility, but to invest in a business under development with an expectation of profit, which will be dependent on the issuer's ability to perform key actions.
4.	The issuer has set up a "bounty" or similar program that offers free tokens or other benefits to persons who promote the offering through various channels, including on social media, in blogs or elsewhere on the Internet.	Persons participating in this kind of program may have an incentive to make statements promoting the offering as an investment; for example, by suggesting the tokens have the potential to increase in value. Such statements create an expectation of profit.
5.	The issuer's management retains for themselves a significant number of unsold tokens from the offering or "pre-mines" a significant number of tokens before they are publicly available as a form of compensation for their efforts.	This could indicate the existence of a common enterprise, as any future increase in the value of the tokens will financially benefit both management and the investor.
6.	The issuer suggests that the tokens will be used as a currency or have a utility beyond the issuer's platform, but at the time of these suggestions, the issuer is not able to demonstrate that the tokens are widely used or accepted.	This could indicate a common enterprise because of the reliance on management to take key actions to establish uses for the token beyond the platform.
7.	The issuer's management has represented that it has specific skills or expertise that will likely increase the value of the token.	This could indicate a common enterprise because of the reliance on management and could also indicate an expectation of profit.
8.	Tokens have a fixed value on the platform that does not automatically increase over time, or change based on non-commercial factors.	This may reduce the purchaser's expectation of profit if tokens are continually available from the platform at a fixed value.
9.	The number of tokens issuable is finite or there is a reasonable expectation that access to new tokens will be limited in the future.	As there is a limited or reduced supply of tokens, initial purchasers may have an expectation of profit as increased demand with limited or reduced supply should lead to an increase in price. In contrast, a continuous or unlimited supply of tokens may reduce the probability that purchasers buy with an expectation of profit.

	Examples of situations	Possible implications
10.	The issuer permits or requires purchasers to purchase tokens for an amount that does not align with the purported utility of tokens. For example, the issuer permits a purchaser to acquire a disproportionately large purchase amount (e.g. $100,000) of tokens that can be used only for downloading music for personal use.	This could indicate that some purchasers are not purchasing the tokens for personal use, but rather with an expectation to sell them at a profit.
11.	Marketing of the offering targets persons or companies who would not reasonably be expected to use the issuer's product, service or application. For example, an offering of a token that permits holders to use an existing application is marketed in Canada, but Canadian residents cannot use the product, service or application.	This could indicate that purchasers are primarily motivated by the potential for profit, not the ability to use the product, service or application. Performing know your client on purchasers may help issuers to establish the general profile of their purchasers, potentially enabling the issuer to demonstrate a purchaser's intended use of the token.
12.	Management makes statements suggesting that the tokens will appreciate in value, or compares them to other cryptocurrencies that have increased in value. Management encourages others to make, or acquiesces in others making, such statements.	This could indicate that the offering is being marketed and sold as an investment, thus creating an expectation of profit. In contrast, to the extent that management clearly and uniformly promotes the token in a manner that, taken as a whole, promotes only its utility and not its investment value, the implication that purchasers have an expectation of profit may be reduced.
13.	Tokens are distributed to users for free.	The distribution of tokens for free will likely not involve an investment of money. However, the distribution of free tokens as part of an overall sale of an ancillary or secondary product or service, may involve an investment of money if it is appropriate to "look through" the token distribution to the investment of money in the overall offering.
14.	Tokens are not fungible or interchangeable and each token has unique characteristics that result in the purchaser exercising their personal preferences to value it as a mode of entertainment or as a collectible item; any objective future market value of the token is primarily based on market forces and not on continued development of a business by the issuer.	The value of the token may be based on its unique characteristics, and not on the efforts of others. There may not be a common enterprise.

Tokens reasonably expected or marketed to trade on cryptoasset trading platforms.

Another situation that may have an implication on the presence of one or more of the elements of an investment contract is the fact that tokens are reasonably expected or marketed to trade on one or more cryptoasset trading platforms (including decentralized or "peer-to-peer" trading platforms) or to otherwise be freely tradeable in the secondary market.

This fact indicates that purchasers may purchase the tokens with an expectation to resell them at a profit. This is particularly true where the existence of secondary trading is critical to the success of the offering of tokens or is featured prominently in the marketing of the offering.

To determine whether tokens are reasonably expected to trade in the secondary market, we consider representations made by the issuer either formally in a whitepaper or informally through social media channels (e.g., messaging platforms, community meetups, online videos). We also consider representations made by third parties that have been explicitly or implicitly endorsed by the issuer or management.

We have heard from some token issuers, for example those using the Ethereum ERC20 token standard, that they may have no control over the transferability of their token, or the creation of a market by other parties, including cryptoasset trading platforms. This possible absence of control over secondary trading is generally not, on its own, relevant in assessing whether purchasers expect a profit.

In general, with the offerings of tokens we have seen that have involved securities, the public transferability of the tokens has not been restricted, potentially placing persons trading the tokens offside resale restrictions in securities laws.

Offerings of tokens that are structured in multiple steps

We are aware of offerings of tokens that are structured in multiple steps.

As a general statement, nothing in this notice should be interpreted as staff supporting or endorsing the use of multiple step transactions to offer tokens.

For example, staff have seen offerings with two steps. In the first step, the purchaser agrees to contribute money in exchange for a right to receive tokens at a future date. This may be completed pursuant to an agreement referred to as a "simple agreement for future tokens" or "SAFT". At the time of purchase, no token is delivered. In the first step, there is generally a distribution of a security, specifically the right to a future token, which is often made under a prospectus exemption, such as the accredited investor exemption.

In the second step, the token is delivered. At that time, the issuer has generally represented that the software, online platform or application is built or the goods or services are available and the token is functional. In several instances, issuers have taken the position that the token itself is not a security.

Staff would like to note the following:

- We may consider that a token delivered at a second or later step is a security, despite the fact that the token may have some utility. This may be because the token that is unlocked or delivered involves an investment contract because it continues to have a number of the factors identified above or because the token has other security-like attributes, such as a profit-sharing interest.

- The distribution of the security is subject to the prospectus requirement. Issuers may contemplate relying on prospectus exemptions, such as the accredited investor exemption or the offering memorandum exemption provided in National Instrument 45-106 *Prospectus Exemptions*. An issuer that uses a prospectus exemption must ensure that it meets all conditions of the exemption. Securities that are distributed using capital-raising prospectus exemptions are typically subject to the resale restrictions in National Instrument 45-102 *Resale of Securities*, including, in the case of a non-reporting issuer, that they cannot be resold for an indefinite period except under another prospectus exemption.

- A person or company that is in the business of trading in securities is subject to the dealer registration requirement under securities laws.[2] The term "trade" is broad and includes acts, advertisements, solicitations, conduct or negotiation directly or indirectly in furtherance of a trade.

- If the distribution of the security at the first step is made without complying with securities law requirements, the issuer will remain in default of securities law requirements, even though subsequent steps may have occurred.

- We will have concerns where a multiple step transaction is used in an attempt to avoid securities legislation. As stated earlier in this notice, businesses and their professional advisors should assess the economic realities of the offering as a whole, with a focus on substance over form.

Enforcement Activity

Staff are conducting active surveillance of coin and token offerings activity to identify past, ongoing and potential future violations of securities laws or conduct in the capital markets that is contrary to the public interest. CSA members have taken and intend to continue taking regulatory and/or enforcement action against businesses that do not comply with securities laws.

Complying with Securities Legislation

In order to avoid costly regulatory surprises, we encourage businesses with proposed offerings of tokens to consult qualified securities legal counsel in their local jurisdiction about the potential application of, and possible approaches required to comply with, securities legislation.

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[2] Please refer to section 1.3 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* for a description of the factors that we consider relevant in determining whether a person or company is trading securities for a business purpose.

As trends in the cryptocurrency industry are evolving quickly, we encourage businesses seeking flexible approaches to compliance with securities laws to contact their local securities regulatory authority to discuss their project at the contact information below. When contacting their local securities regulatory authority, businesses should be ready to provide a draft whitepaper, a business plan or a detailed description of their proposed offering. We may also ask for copies of promotional materials in connection with the offering, and a description of the promotional activities and marketing efforts in respect of the offering, as well as information on the corporate structure and principals involved.

We remind businesses to consider securities law requirements that may apply to their activities, regardless of where investors are located. A Canadian securities regulatory authority may have jurisdiction over trades to investors outside of that jurisdiction where there is a real and substantial connection between the transaction and that jurisdiction.[3]

CSA Regulatory Sandbox

We welcome digital innovation and we recognize that new fintech businesses may not fit neatly into the existing securities law framework. The CSA Regulatory Sandbox is an initiative of the CSA to support fintech businesses seeking to offer innovative products, services and applications in Canada. It allows firms to register and/or obtain exemptive relief from securities law requirements, under a faster and more flexible process than through a standard application, in order to test their products, services and applications throughout the Canadian market, generally on a time-limited basis.

The CSA have granted, through the CSA Regulatory Sandbox, exemptive relief from certain securities law requirements to firms in the context of offerings of tokens that involve the distribution of securities, subject to conditions to ensure adequate investor protection. A list of the firms that have been authorized in the CSA Regulatory Sandbox is available on the CSA website at https://www.securities-administrators.ca/.

Applications to the CSA Regulatory Sandbox are analyzed on a case-by-case basis.

Businesses contemplating offerings of tokens are invited to contact the securities regulatory authority in the jurisdiction where their head office is located:

Province	**Contact Information**
British Columbia	The BCSC Tech Team at TechTeam@bcsc.bc.ca
Alberta	Mark Franko at Mark.Franko@asc.ca, Denise Weeres at Denise.Weeres@asc.ca, Danielle Grover at Danielle.Grover@asc.ca or Christopher Peng at Christopher.Peng@asc.ca
Saskatchewan	Dean Murrison at dean.murrison@gov.sk.ca or Liz Kutarna at liz.kutarna@gov.sk.ca
Manitoba	Chris Besko at chris.besko@gov.mb.ca
Ontario	The OSC LaunchPad Team at osclaunchpad@osc.gov.on.ca
Québec	The Fintech Working Group at fintech@lautorite.qc.ca.
New Brunswick	Susan Powell at registration-inscription@fcnb.ca
Nova Scotia	Jane Anderson at Jane.Anderson@novascotia.ca

[3] The Supreme Court of Canada's decision in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584; as well as the various decisions that have been issued subsequent to that case. See also *Reference Re Securities Act (Canada)* 2011 SCC 66, 3 SCR 837 at para. 45.

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Clayton Smith – ss. 127(1), 127.1(1)

FILE NO.: 2018-35

IN THE MATTER OF
CLAYTON SMITH

NOTICE OF HEARING
Subsections 127(1) and 127.1(1) of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: June 13, 2018 at 11:00 a.m.

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

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated May 28, 2018 between Staff of the Commission and Clayton Smith in respect of the Statement of Allegations filed by Staff of the Commission dated June 8, 2018.

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 8th day of June, 2018

"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.

IN THE MATTER OF
CLAYTON SMITH

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127.1(1) of the
Securities Act, RSO 1990, c S.5)

A. ORDER SOUGHT:

Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order pursuant to subsections 127(1) and 127.1(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to approve the settlement agreement dated as of May 28, 2018 between Clayton Smith ("**Smith**" or the "**Respondent**") and Enforcement Staff.

B. FACTS:

Enforcement Staff make the following allegations of fact:

I. OVERVIEW

1. For there to be fairness and confidence in Ontario's capital markets, it is critical that investment fund managers ("**IFMs**") and the individuals who control them faithfully and diligently fulfill their fiduciary duty to act in the best interests of their funds and the investors in those funds. Investors must be in a position to believe that their investments will be treated with the utmost care by those in whose trust they are placed. This matter concerns the conduct of Smith who engaged in fraud, and breached his duty to act fairly, honestly and in good faith with clients, while directing the affairs, and being the registered Ultimate Designated Person ("**UDP**") and Chief Compliance Officer ("**CCO**"), of a registered firm, Crystal Wealth Management System Limited ("**Crystal Wealth**").

2. The conduct at issue occurred during the period April 2012 to April 2017 (the "**Material Time**").

3. Smith was an experienced market participant and registered with the Commission during the Material Time. Crystal Wealth was the IFM, portfolio manager ("**PM**") and trustee for a suite of 15 proprietary investment funds ("**Crystal Wealth Funds**"). Smith was the directing mind of Crystal Wealth, its sole officer and director as well as the firm's UDP and CCO.

4. Smith, Crystal Wealth and Smith's holding companies engaged in fraud involving two Crystal Wealth Funds – Crystal Wealth Mortgage Strategy (formerly, Crystal Enhanced Mortgage Fund, the "**Mortgage Fund**") and Crystal Wealth Media Strategy (formerly, Crystal Wealth Strategic Yield Media Fund, the "**Media Fund**"). Smith caused monies to be advanced from the Mortgage and Media Funds, purportedly in connection with the purchase of investments for the funds. In fact, at Smith's direction, certain of the monies were transferred directly to Smith's holding company, as described in paragraph 20. With respect to other monies, Smith instructed the third-party recipients to transfer the funds to Smith, his holding company or a related company.

5. Smith also arranged to personally receive payments from an entity that sold investments to the Media Fund, creating a material conflict of interest that Crystal Wealth neither responded to nor disclosed.

6. By engaging in fraud and failing to respond to or disclose a material conflict, Crystal Wealth breached its obligation to discharge its duties honestly, in good faith and in the best interests of the Mortgage and Media Funds. Smith and Crystal Wealth continued to cause Crystal Wealth clients to be invested in the Mortgage and Media Funds and in so doing, they failed to deal fairly, honestly and in good faith with clients.

7. As Crystal Wealth's CCO and UDP, Smith failed to discharge his obligations to ensure, promote and monitor compliance with securities legislation by Crystal Wealth and individuals acting on its behalf. He also misled Enforcement Staff during his examination under oath about his relationship to one of the corporate entities involved in the fraud.

II. DETAILED FACTS

(1) Crystal Wealth, Clayton Smith and Smith's Holding Companies

8. Crystal Wealth is a Burlington-based Ontario corporation that was registered with the Commission in several categories, including as an IFM and PM.

9. Crystal Wealth created and managed the Crystal Wealth Funds, which were structured as open-ended mutual fund trusts and distributed on a prospectus-exempt basis, pursuant to offering memoranda ("**OMs**").

10. Crystal Wealth performed the roles of trustee, IFM, PM and promoter for the Crystal Wealth Funds. As the IFM, Crystal Wealth managed the day-to-day business of the Crystal Wealth Funds and oversaw the PM function. As PM, Crystal Wealth was required to make suitable investment decisions for the Crystal Wealth Funds' portfolios consistent with the respective fund's investment objectives.

11. As at April 20, 2017, Crystal Wealth recorded a value for the assets under management ("**AUM**") of all of the Crystal Wealth Funds of approximately $193,198,912.

12. There were approximately 1,250 Crystal Wealth clients that had discretionary managed accounts for which Crystal Wealth was the PM. Many of these clients were invested in various of the Crystal Wealth Funds. Smith was the advising representative for a number of clients with managed accounts.

13. Smith, an Ontario resident, founded Crystal Wealth in 1998 and was the firm's directing mind. From 1998 onward, Smith was Crystal Wealth's President, Chief Executive Officer and Chief Financial Officer. During the Material Time, Smith beneficially owned a controlling interest in Crystal Wealth and was its sole officer and director.

14. Smith was registered with the Commission in a number of capacities, including as an advising representative in the category of PM, and as Crystal Wealth's CCO and UDP. As CCO and UDP, Smith bore responsibility for supervising, promoting and monitoring Crystal Wealth's compliance with Ontario securities law.

15. Smith was also the directing mind of CLJ Everest Ltd. ("**CLJ Everest**") and 1150752 Ontario Limited ("**115 Limited**"), Ontario holding companies for which Smith was the sole officer and director. Smith owned 100% of CLJ Everest which, in turn, owned 100% of 115 Limited's voting shares. 115 Limited owned the majority of Crystal Wealth's outstanding shares. 115 Limited's registered business name was MBS Partners.

16. Crystal Wealth Marketing Inc. ("**CWMI**") is an Ontario company that was owned by Smith and Scott Whale ("**Whale**"), a shareholder and advising representative of Crystal Wealth. Smith acted as a director and officer of CWMI between August 2014 and February 2015, when the conduct described in section (5) below occurred.

17. Chrysalis Yoga Inc. ("**Chrysalis**") is a yoga studio owned by Smith's former common law wife, at which Smith taught yoga and meditation part-time. Smith was initially a 50% owner and a director and officer of Chrysalis. During much of the Material Time, Smith dealt with Chrysalis' finances and bookkeeping and had signing authority over its bank account.

18. On April 26, 2017, on application by the Commission under subsection 129(1) of the Act, the Ontario Superior Court of Justice made an order appointing Grant Thornton Limited receiver and manager of the assets of Smith, personally, and the assets of Crystal Wealth, the Crystal Wealth Funds, CLJ Everest, 115 Limited and receiver of a bank account owned by Chrysalis.

(2) Misappropriation of Investor Monies from the Mortgage Fund involving 115 Limited

19. The April 12, 2007 and August 31, 2012 Offering Memoranda for the Mortgage Fund (the "**Mortgage Fund OMs**") stated that the Mortgage Fund's investment objective was to "generate a consistently high level of interest income while focusing on preservation of capital by investing primarily in residential mortgages in Canada." The Mortgage Fund OMs also stated that Crystal Wealth would enter into agreements with independent companies to procure and service mortgage loans and that Crystal Wealth would rely on the expertise of licensed mortgage brokers to service and monitor the mortgages in which the Mortgage Fund invested.

20. Despite these representations, during the period of April 2012 to September 2013, Smith caused the Mortgage Fund to make six payments, totaling approximately $894,932, to his holding company, 115 Limited. 115 Limited was neither independent nor a registered mortgage broker and the six payments were not used to acquire mortgages from 115 Limited. Instead, shortly after each payment from the Mortgage Fund, Smith caused 115 Limited to pay all, or a significant portion, of the funds to Chrysalis, CLJ Everest (Smith's holding company), or himself. In total, Smith caused 115 Limited to pay $511,000 to Chrysalis, $389,000 to CLJ Everest and $10,000 to himself, substantially with funds received from the Mortgage Fund.

21. Subsequently, in respect of these transactions, Smith advised the Mortgage Fund's auditors, BDO Canada LLP ("**BDO**") that the Mortgage Fund held interests in mortgages obtained through an entity known as MBS Partners (the "**Purported Mortgage Investments**"). The amounts of the advances from the Mortgage Fund to 115 Limited

correspond approximately to the principal amounts for six Purported Mortgage Investments reflected in the correspondence provided to BDO.

(3) Misappropriation of Investor Monies from the Media and Mortgage Funds

22. The Media Fund was the largest of the Crystal Wealth Funds, with a recorded AUM of approximately $54,466,843 as at April 20, 2017. The April 30, 2013 and August 30, 2014 Offering Memoranda for the Media Fund (the "**Media Fund OMs**") stated that the Media Fund's investment objective was "to generate a high level of interest income with minimum volatility and low correlation to most traditional asset classes by investing in asset-backed debt obligations of motion pictures and series television productions."

23. According to the Media Fund OMs, Media House Capital (Canada) Corp. ("**Media House**") was to source, advise in connection with the procurement of and service investments in film loans for the Media Fund. On behalf of the Media Fund, Smith dealt principally with Aaron Gilbert ("**Gilbert**"), Media House's majority shareholder and sole director, and Steven Thibault ("**Thibault**"), Media House's Vice President, Finance. After the purchase of a film loan by the Media Fund, Media House was to monitor and report on the performance of the investment, including the actual sales performance of the related production compared with target projections on an ongoing basis.

24. The Media Fund OMs described the film loans it intended to purchase as short to medium term loans of 12 to 30 months that have been made "to independent producers used to fund a portion of the production costs to complete motion pictures and series television productions." Once a potential debt investment was sourced for the Media Fund by Media House, which was to have evaluated it and reported on whether it complied with due diligence guidelines, Crystal Wealth was to perform its due diligence and examine how the new debt investment fit into the overall investment portfolio from a diversification point of view.

25. Among the film loans recorded in the Media Fund's financial statements were six film loans acquired from Media House during the period October 2013 to July 2015 (the "**Bron Film Loans**") that were for film productions produced by Gilbert's company, Bron Studios Inc. Gilbert and Thibault had a role with the borrower film production companies on the Bron Film Loans, and signed loan documents on behalf of both Media House as lender, and the production companies as borrower. The Media Fund acquired four of the Bron Film Loans from Media House. Two of the Bron Film Loans were initially purchased by the Mortgage Fund and subsequently sold to the Media Fund. The monies for the Bron Film Loans flowed largely from the Media Fund or the Mortgage Fund to Media House, Bron Animation Inc. ("**Bron Animation**") or BSI Developments Inc. ("**BSI Developments**"), other companies related to Gilbert.

26. With respect to three of the Bron Film Loans (*Henchmen*, *Mercy* and *Kingdom*), Smith caused the Media Fund to advance investor monies to Media House or Bron Animation in tranches, and then directed Gilbert and/or Thibault to:

    (a) transfer a portion of the funds advanced from the Media Fund to Smith, CLJ Everest and Chrysalis, which resulted in transfers totaling approximately $465,000 to Smith, $2.3 million to CLJ Everest and $125,000 to Chrysalis; and

    (b) transfer approximately $4.1 million of the funds advanced from the Media Fund to Spectrum-Canada Mortgage Services Inc. ("Spectrum"), a service provider for the Mortgage Fund, to buy from the Mortgage Fund:

        (i) certain mortgages in arrears involving third parties; and

        (ii) the Purported Mortgage Investments;

    on behalf of Media House or BSI Developments, removing these mortgages and the Purported Mortgage Investments from the Mortgage Fund's books.

27. With respect to the purchase of another Bron Film Loan (*A Good Day's Work*) by the Mortgage Fund, Smith directed Spectrum to advance $1.25 million from funds held in trust for the Mortgage Fund to BSI Developments. Smith then directed Gilbert and Thibault to, on receiving the funds advanced, transfer approximately $1 million of the funds to a law firm representing Smith, which funds were then used for the purchase of a residential property for Smith in Burlington, Ontario, and approximately $200,000 to CLJ Everest. Smith later caused the Mortgage Fund to advance additional monies to BSI Developments as additional loan advances for *A Good Day's Work*. These monies were substantially used by Gilbert and/or Thibault to transfer $375,000 to CLJ Everest.

28. Smith used the monies that had been transferred to him and to CLJ Everest, as described in subparagraph 26(a) and paragraph 27, substantially for personal purposes, including the purchase of another residential property at which Smith resided in Burlington, Ontario. Some of the funds were transferred to Crystal Wealth.

(4) Misappropriation of Investor Monies from the Mortgage Fund involving CLJ Everest

29. Smith caused Crystal Wealth to enter into an agreement (the "**Master Financing Agreement**") dated July 6, 2016 with Magnitude CS Energy Inc. ("**MCS**"), which was described as being in the business of installing power and heat co-generating equipment for large energy users ("**MCS Energy Projects**"). Craig Clydesdale ("**Clydesdale**"), an Ontario resident, is a director and officer of MCS. The Master Financing Agreement contemplated that the Crystal Wealth Funds could provide financing for MCS Energy Projects, and that separate project specific financing agreements would be entered into. In addition, CLJ Everest entered into an agreement dated July 6, 2016 with MCS, pursuant to which CLJ Everest would be paid a monthly consulting fee of "15% of the Net Free Cash Flow from all Energy Projects" for its assistance with any aspect of MCS's business operations.

30. Smith also caused Crystal Wealth and CLJ Everest to enter into a share purchase agreement (the "**Share Purchase Agreement**") dated October 21, 2016 with Whale. The Share Purchase Agreement provided that CLJ Everest would acquire all of Whale's shares in Crystal Wealth for a purchase price of $1,586,277, with a closing date of November 7, 2016.

31. On November 2, 2016, Smith caused the Mortgage Fund to advance $2 million to MCSNoxrecovery ("**MCSNox**"), another Clydesdale company, which was recorded as a loan in the Mortgage Fund's financial statements. On November 7, 2016, MCSNox advanced $1.75 million to CLJ Everest, substantially funded with the monies received from the Mortgage Fund. The day after MCSNox advanced the $1.75 million to CLJ Everest, Smith caused CLJ Everest to use $1,586,277 of it to buy the Crystal Wealth shares held by Whale.

32. The course of conduct Smith and Crystal Wealth engaged in with respect to the Mortgage and Media Funds as described in sections (2) and (3) above and this section (4), was deceptive and placed the pecuniary interests of Mortgage and Media Funds' investors at risk. By engaging in this conduct, Smith, Crystal Wealth, CLJ Everest and 115 Limited engaged or participated in acts, practices or courses of conduct relating to the Mortgage and Media Funds that Smith, Crystal Wealth, CLJ Everest and 115 Limited, knew or reasonably ought to have known perpetrated a fraud on investors, in breach of subsection 126.1(1)(b) of the Act.

(5) Failure to Respond to or Disclose Material Conflict of Interest

33. Between August 2014 and February 2015, Smith received a substantial financial benefit from the purchase of certain film loans by the Media Fund from Media House. At the time, Smith was the directing mind of Crystal Wealth, and on behalf of Crystal Wealth, served as the lead PM for the Media Fund. The benefit obtained by Smith created a material conflict of interest that Crystal Wealth neither responded to nor disclosed to investors.

34. According to the Media Fund OMs, Media House was to receive compensation for sourcing and administering the film loans in the form of a loan facilitation fee of up to 10% of the face value of any loans the Media Fund purchased from Media House (the "**Loan Facilitation Fee**"). Crystal Wealth was to receive a management fee at an annual rate of 2% of the AUM of the Media Fund.

35. The Media Fund OMs did not disclose that for several of the film loans, a portion of the Loan Facilitation Fee was paid to CWMI, a company for which Smith was a 50% shareholder, and an officer and director. From August 2014 to February 2015, Media House and Bron Management Ltd., another company associated with Gilbert, paid CWMI approximately 30% of the Loan Facilitation Fee on film loans acquired by the Media Fund during that period. The Loan Facilitation Fee payments to CWMI totaled approximately $622,780. CWMI used substantially all of the monies to make payments to its two shareholders, Whale and Smith. Smith received $323,000, funded substantially from those Loan Facilitation Fee payments.

36. Causing the Media Fund to purchase film loans for which Smith received a substantial personal payment created a material conflict of interest that Crystal Wealth had an obligation to respond to and that reasonable investors would be expected to be informed about. Crystal Wealth failed to respond to or disclose the conflict to investors, contrary to subsections 13.4(2) and (3) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**").

(6) Failure to Deal Fairly, Honestly, and in Good Faith with Clients

37. As registered advisers, Crystal Wealth and Smith had an obligation to deal honestly, fairly and in good faith with their clients. While Smith and Crystal Wealth engaged in the conduct described in sections (2) to (5) above, Smith and Crystal Wealth caused clients to be invested in the Mortgage and Media Funds. In so doing, Smith and Crystal Wealth breached their obligation to deal fairly, honestly and in good faith with clients, contrary to section 2.1 of OSC Rule 31-505 – *Conditions of Registration* ("**OSC Rule 31-505**").

(7) Failure to Discharge Duties as an IFM Honestly, in Good Faith, and in the Best Interests of the Investment Fund

38. Crystal Wealth was the IFM for the Mortgage and Media Funds, and as such, had the obligation to discharge its duties honestly, in good faith, and in the best interests of the Mortgage and Media Funds. Crystal Wealth, as trustee for the Crystal Wealth Funds, had an express fiduciary obligation under the master declaration of trust for the funds, to act in good faith and in the best interests of the unitholders or investors, who were the beneficiaries of the trusts and whose monies were entrusted to Crystal Wealth.

39. By engaging in the conduct described in sections (2) to (5) above, Crystal Wealth breached its fiduciary duty and failed to discharge its duties honestly, in good faith and in the best interests of the Mortgage and Media Funds, contrary to subsection 116(a) of the Act.

(8) Failure to Discharge Duties of CCO and UDP

40. As Crystal Wealth's CCO, Smith had an obligation pursuant to section 5.2 of NI 31-103 to establish policies and procedures directed towards assessing compliance by Crystal Wealth with securities legislation and to monitor and assess compliance with securities legislation by Crystal Wealth and individuals acting on its behalf.

41. As Crystal Wealth's UDP, Smith had an obligation pursuant to section 5.1 of NI 31-103 to supervise the activities of Crystal Wealth that were directed towards ensuring compliance with securities legislation and to promote compliance with securities legislation by Crystal Wealth and the individuals acting on its behalf.

42. In light of the conduct that Smith and Crystal Wealth engaged in described in sections (2) to (7) above, Smith failed to fulfil his obligation as CCO and UDP of Crystal Wealth to ensure, promote and monitor compliance with securities legislation by Crystal Wealth and individuals acting on its behalf, contrary to sections 5.1 and 5.2 of NI 31-103.

(9) Misleading Enforcement Staff

43. Smith was examined under oath by Enforcement Staff on September 26 and 27, 2017 pursuant to subsection 13(1) of the Act. During this examination, Enforcement Staff asked questions about various entities Smith dealt with on behalf of the Mortgage Fund, including MBS Partners, the entity through which Smith and Crystal Wealth perpetrated a fraud as described in section (2), above. During the examination, Smith misled Enforcement Staff by:

    (a) falsely stating that neither he nor Crystal Wealth had an interest in MBS Partners, when in fact Smith beneficially owned 100% of the voting shares of MBS Partners, which was the business name that was registered for Smith's company, 115 Limited, and Smith was the director, officer and directing mind of 115 Limited; and

    (b) falsely stating that MBS Partners had no interest in Crystal Wealth, when in fact 115 Limited owned the majority of Crystal Wealth's outstanding shares throughout the Material Time.

44. Smith thereby breached subsection 122(1)(a) of the Act because he made statements that, in a material respect, and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

(a) the Respondent engaged in or participated in acts, practices and courses of conduct relating to securities that the Respondent knew or reasonably ought to have known perpetrated a fraud on the Mortgage and Media Funds and their investors, contrary to subsection 126.1(1)(b) of the Act;

(b) the Respondent did not deal fairly, honestly and in good faith with the Respondent's clients, contrary to subsection 2.1(2) of OSC Rule 31-505;

(c) the Respondent did not comply with the Respondent's obligations as the UDP and CCO of Crystal Wealth, contrary to sections 5.1 and 5.2 of NI 31-103;

(d) the Respondent made statements in evidence submitted to Enforcement Staff that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act;

(e) the Respondent, a director and officer of Crystal Wealth, CLJ Everest and 115 Limited, authorized, permitted or acquiesced in each company's non-compliance with Ontario securities law, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act; and

(f) as set out in subparagraphs (a) through (e) above, the Respondent engaged in conduct contrary to the public interest.

DATED this 8th day of June, 2018.

1.3.2 Royal Mutual Funds Inc. – ss. 127(1), 127.1

FILE NO.: 2018-31

IN THE MATTER OF
ROYAL MUTUAL FUNDS INC.

NOTICE OF HEARING
Subsection 127(1) and 127.1 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: June 13, 2018 at 4:00 p.m.

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

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated June 8, 2018, between Staff of the Commission and Royal Mutual Funds Inc. in respect of the Statement of Allegations filed by Staff of the Commission dated June 8, 2018.

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 8th day of June, 2018

"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.

IN THE MATTER OF
ROYAL MUTUAL FUNDS INC.

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of the
***Securities Act*, RSO 1990, c S.5)**

A. ORDER SOUGHT:

Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") requests that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to approve the settlement agreement dated June 8, 2018 between Enforcement Staff and Royal Mutual Funds Inc. ("**RMFI**").

B. FACTS:

Enforcement Staff makes the following allegations of fact:

1. The Respondent

1. RMFI is a member of the Mutual Fund Dealers Association of Canada ("**MFDA**") and is registered with the Commission as a mutual fund dealer. RMFI is wholly owned by the Royal Bank of Canada ("**RBC**").

2. RMFI is the principal distributor of RBC mutual funds, which include the RBC Portfolio Solutions suite of mutual funds (the "**RBC PS Funds**"). RMFI is also a participating dealer of non-proprietary mutual funds (the "**Third Party Funds**").

3. RMFI distributes mutual funds through representatives, including "Investment & Retirement Planning" financial planners ("**IRPs**").

2. Legislative Framework

4. Subsection 4.2(1) of National Instrument 81-105 *Mutual Fund Sales Practices* ("**NI 81-105**") states that a principal distributor of a mutual fund that is also a participating dealer of another mutual fund shall not provide an incentive for any of its representatives to recommend a mutual fund of which it is a principal distributor over a mutual fund of which it is a participating dealer.

5. Pursuant to section 1.1 of NI 81-105 and section 1.1 of National Instrument 81-102 *Investment Funds*, for the purpose of subsection 4.2(1) of NI 81-105:

   (a) a "principal distributor" includes a company through whom securities of a mutual fund are distributed under an arrangement with the mutual fund or its manager that provides (a) an exclusive right to distribute the securities of the mutual fund in a particular area, or (b) a feature that gives or is intended to give the company a material competitive advantage over others in the distribution of the securities of the mutual fund; and

   (b) a "participating dealer" means a dealer other than the principal distributor that distributes securities of a mutual fund.

6. Although subsection 4.2(2) of NI 81-105 provides an exception to the prohibition contained in subsection 4.2(1), that exception does not apply to the facts of this matter.

3. RMFI's Conduct

7. Between November 1, 2011 and October 27, 2016, RMFI contravened NI 81-105 by offering and paying to IRPs ten basis points more in commissions for the sale of units of its RBC PS Funds than for the sale of units of Third Party Funds.

8. In addition, during this same period, RMFI failed to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that it and each individual acting on its behalf complied with subsection 4.2(1) of NI 81-105.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST:

Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

1. RMFI contravened subsection 4.2(1) of NI 81-105 by providing to certain of its representatives an incentive to recommend mutual funds of which it is a principal distributor over mutual funds of which it is a participating dealer, during the period November 1, 2011 and October 27, 2016;

2. RMFI contravened subsection 32(2) of the Act and section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* by failing to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that it and each individual acting on its behalf complied with subsection 4.2(1) of NI 81-105 during the period November 1, 2011 and October 27, 2016; and

3. the conduct referred to above is also contrary to the public interest.

DATED this 8th day of June, 2018.

Ontario Securities Commission
20 Queen Street West
Suite 2200
Toronto, Ontario
M5H 3S8

Daniel Bernstein
Senior Litigation Counsel
Enforcement Branch
Tel: (416) 593-8213
Fax: (416) 593-8321

1.3.3 Peter Volk – ss. 127(1), 127.1

FILE NO.: 2018-27

IN THE MATTER OF
PETER VOLK

NOTICE OF HEARING
Subsection 127(1) and 127.1 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: June 13, 2018 at 10:00 a.m.

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

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated June 8, 2014, between Staff of the Commission and Peter Volk in respect of the Statement of Allegations filed by Staff of the Commission dated June 8, 2014.

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 11th day of June, 2018

"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.

IN THE MATTER OF
PETER VOLK

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of the
Securities Act, RSO 1990 c S.5)

A. ORDER SOUGHT

Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order pursuant to subsection 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990 c S.5 (the "**Act**") to approve the settlement agreement dated June 8, 2018 between Enforcement Staff and Peter Volk (the "**Respondent**").

B. FACTS

a. Overview

1. This matter concerns the trading in Pacific Rubiales Energy Corporation (currently named Frontera Energy Corporation and prior to that named Pacific Exploration and Production Corporation ("**Pacific**")) debentures by Pacific's general counsel, at a time when Pacific was involved in a due diligence process regarding its potential acquisition with two potential purchasers. As Pacific's general counsel, the Respondent was in a position of high responsibility and trust and was subject to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information related to Pacific.

b. The Respondent

2. The Respondent was the general counsel to Pacific and its predecessors and successors from 2004 to March 2018. Pacific is a Canadian oil and gas company with offices in Toronto, Calgary, Peru and Colombia. Pacific's common shares trade on the TSX. The Respondent has significant experience in capital markets transactions and has an unblemished regulatory reputation.

c. Background

Interest in acquiring Pacific (October 2014 – July 2015 (the "Material Time"))

3. On October 17, 2014, Pacific received a confidential, non-binding letter from ALFA S.A.B. de C.V. ("**ALFA**"), a Mexican conglomerate. Despite ALFA's interest, the period by which ALFA and Pacific were to execute a confidentiality agreement with respect to a potential transaction expired on October 31, 2014, in large part because Pacific's stock price had declined significantly, a decline that continued throughout the Material Time. As a result, ALFA did not commence any due diligence review of Pacific with regard to a potential transaction at this time.

4. On December 28, 2014, Harbour Energy Ltd. ("**Harbour**") delivered a due diligence request to Pacific in regard to the potential acquisition of Pacific. Harbour is an investment vehicle specializing in private investments in energy and energy-related infrastructure. The parties entered into a confidentiality agreement to allow Harbour to commence due diligence investigations in order to determine whether it wished to make a binding offer.

5. Although ALFA's original October 2014 proposal to acquire Pacific did not result in a confidentiality agreement being entered into, a few months later, in February 2015, ALFA and Pacific entered into a confidentiality agreement, which allowed ALFA to have access to non-public Pacific information for the purposes of conducting a due-diligence review for the potential acquisition of Pacific by ALFA.

6. Pacific's management participated in separate discussions regarding due diligence with ALFA and Harbour throughout the first few months of 2015.

7. In March 2015, ALFA and Harbour each advised Pacific that they were unwilling to propose a transaction with Pacific without a partner. Pacific then proceeded to introduce Harbour and ALFA and they discussed a possible joint offer. This led to ALFA and Harbour delivering a non-binding expression of interest to acquire Pacific on April 26, 2015. However, despite negotiations between all three parties that eventually led to a May 20, 2015 agreement for ALFA and Harbour to acquire Pacific, ultimately the bid was withdrawn in July 2015 and no acquisition of Pacific occurred.

Pacific's Insider Trading Policy

8. As per Pacific's insider trading policy (the "**IT Policy**") during the Material Time, all employees including the Respondent were required to sign documentation acknowledging that they were aware of the IT Policy and that they agreed to follow it. The IT Policy covered among other things, prohibitions on insider trading and tipping, insider reporting obligations, and trading during blackout periods. Under the IT Policy, blackout periods were imposed in relation to Pacific's financial disclosures, and in relation to the knowledge of material, generally-undisclosed information held by Pacific employees. The imposition of blackout periods, where not prescribed by the IT Policy, was at the Respondent's discretion.

9. The IT Policy directed that all Pacific insiders must give the Respondent (or alternatively, Pacific's Deputy General Counsel at the time) advance notification of any trading in Pacific securities so that the Respondent could confirm that the trade would be made at a time when there was no knowledge of material non-public information and/or any blackout period in place to prohibit the trade.

10. On February 13, 2015 (the "**Purchase Date**") the Respondent purchased USD $100,000 par value Pacific senior unsecured notes (the "**Notes**") for a total of $75,349.31. In making the purchase of the Notes the Respondent self-assessed (pursuant to the IT Policy) that he had no knowledge of any material, generally-undisclosed information.

11. On the Purchase Date, the Respondent had knowledge of a non-binding expression of interest received from Harbour on January 8, 2015, the ongoing Harbour due diligence process, and meetings between Harbour and Pacific related to the due diligence (the "**Harbour Facts**"). With respect to ALFA, the Respondent knew about a February 4, 2015 confidentiality agreement and ALFA having been granted access to confidential Pacific information to conduct due diligence with respect to a potential transaction, although ALFA had not yet commenced its due diligence investigations (the "**ALFA Facts**").

Pacific blackout periods imposed due to the existence of material, generally-undisclosed information during the Material Time

12. At the Purchase Date the Respondent had knowledge of the Harbour Facts and the ALFA Facts. No blackout period was in place on the Purchase Date. The Respondent subsequently imposed a blackout in March 2015, at which point Pacific was actively working to combine the two parties, who had made it clear that neither was interested in proceeding alone.

13. The Respondent had previously imposed a blackout on October 21, 2014, in relation to the preparation and filing of quarterly financial information. This blackout was lifted on November 7, 2014 upon filing of that information. No blackout was imposed specifically relating to ALFA's initial expression of interest. The Respondent imposed a separate blackout between December 2, 2014 and December 9, 2014 related to the entering into of a joint venture with ALFA on Mexican opportunities, unrelated to any interest ALFA may have had in acquiring Pacific. The Respondent imposed another blackout in March 2015. The March 2015 blackout was in response to the joint expression of interest by ALFA and Harbour to acquire Pacific. The March 2015 blackout was in effect from on or around March 9, 2015 to on or around May 15, 2015.

C. CONDUCT CONTRARY TO THE PUBLIC INTEREST

14. As Pacific's general counsel, the Respondent was in a position of high responsibility and trust and was subject to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information related to Pacific. The Respondent's conduct was contrary to the public interest as he failed to adhere to the high standard of conduct expected of him in the circumstances.

DATED this 8th day of June, 2018.

1.5 Notices from the Office of the Secretary

1.5.1 Issam El-Bouji

FOR IMMEDIATE RELEASE
June 6, 2018

ISSAM EL-BOUJI,
File No. 2018-28

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

A copy of the Order dated June 6, 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)

1.5.2 IPC Securities Corporation and IPC Investment Corporation

FOR IMMEDIATE RELEASE
June 7, 2018

IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION,
File No. 2018-32

TORONTO – The Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and the respondents in the above named matter.

A copy of the Order dated June 7, 2018, Settlement Agreement dated June 5, 2018 and Oral Reasons for Approval of a Settlement dated June 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 Clayton Smith

FOR IMMEDIATE RELEASE
June 8, 2018

CLAYTON SMITH,
File No. 2018-35

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and the respondent in the above named matter.

The hearing will be held on June 13, 2018 at 11:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 8, 2018 and Statement of Allegations dated June 8, 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)

1.5.4 Royal Mutual Funds Inc.

FOR IMMEDIATE RELEASE
June 8, 2018

ROYAL MUTUAL FUNDS INC.,
File No. 2018-31

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Royal Mutual Funds Inc. in the above named matter.

The hearing will be held on June 13, 2018 at 4:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 8, 2018 and Statement of Allegations dated June 8, 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 Donna Hutchinson et al.

FOR IMMEDIATE RELEASE
June 8, 2018

DONNA HUTCHINSON,
CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDERS and
PATRICK JELF CARUSO

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

A copy of the Order dated June 8, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.6 Peter Volk

FOR IMMEDIATE RELEASE
June 11, 2018

PETER VOLK,
File No. 2018-27

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and the respondent in the above named matter.

The hearing will be held on June 13, 2018 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 11, 2018 and Statement of Allegations dated June 8, 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)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 BMO Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Technical relief granted to mutual funds from Parts 9, 10 and 14 of National Instrument 81-102 Investment Funds to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – Relief permitting funds to treat exchange-traded series in a manner consistent with treatment of other ETF securities in continuous distribution in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – Relief permitting funds to treat mutual fund series in a manner consistent with treatment of other conventional mutual fund securities in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – National Instrument 81-102 Investment Funds – relief granted from certain mutual fund requirements and restrictions on borrowing from custodian and, if necessary, provision of a security interest to the custodian to fund distributions payable under the fund's distribution policy – Relief granted to allow mutual funds to invest in ETF series of mutual funds under common management or managed by an affiliate, and to allow top funds to pay brokerage commissions for the purchase and sale of the ETF series – Underlying ETF series are subject to NI 81-102, and underlying funds are not commodity pools under NI 81-104 – Relief subject to terms and conditions as set out in the decision document.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(e), 2.6(a), 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 14.1 and 19.1.

May 17, 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
BMO INVESTMENTS INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMO Investments Inc. (together with its affiliates, the **Filer**) on behalf of:

(a) the BMO mutual funds listed in Schedule A (collectively, the **Proposed ETF Funds**), each of which offers an exchange-traded series, and such other exchange-traded series mutual funds as are managed and may be managed by the Filer now or in the future and that are structured in the same manner as the Proposed ETF Funds (the **Other Funds**) and together with the Proposed ETF Funds, the **Funds** and each individually, a **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that:

a. permits each Fund to borrow cash from the custodian of the Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure

to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the Fund (the **Borrowing Requirement**); and

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

(collectively, the **ETF Exemptions**);

(b) existing mutual funds managed by the Filer (the **Existing Top Funds**) and additional mutual funds that may be managed by the Filer now or in the future (together with the Existing Top Funds, the **Top Funds**) for a decision under the Legislation that:

a. permits each Top Fund to purchase an ETF Security of, or enter into a specified derivatives transaction with respect to, a Fund, the ETF Securities of which are not “index participation unit” (**IPUs**), as such term is defined in NI 81-102 even though, immediately after the transaction, more than 10% of the net asset value of the Top Fund would be invested, directly or indirectly, in ETF Securities (the **Concentration Restriction**);

b. permits each Top Fund to purchase an ETF Security, the ETF Securities of which are not IPUs such that, after the purchase, the Top Fund would hold ETF Securities representing more than 10% of:

i. the votes attaching to the outstanding voting securities of the Fund; or

ii. the outstanding equity securities of the Fund (the **Control Restriction**); and

c. permits each Top Fund to pay brokerage commissions in relation to its purchase and sale on the TSX or another Marketplace (as defined below) of ETF Securities (the **Payment of Fees Restrictions**)

(collectively, the **Top Fund Exemptions**, and together with the ETF Exemptions, the **Exemption Sought**).

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

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

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

Interpretation

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

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

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

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

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

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

ETF Series means an exchange-traded series of a Fund.

Form 41-101F2 means Form 41-101F2 *Information Required in an Investment Fund Prospectus*.

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

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

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

NI 41-101 means National Instrument 41-101 *General Prospectus Requirements*.

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

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

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

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

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

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

TSX means the Toronto Stock Exchange.

Representations

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

The Filer

1. BMO Investments Inc. is a corporation governed by the laws of Canada with its head office in Toronto, Ontario.

2. BMO Investments Inc. is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and as a mutual fund dealer in each of the Jurisdictions.

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

4. Neither the Filer nor any of the existing Top Funds is in default of securities legislation in any of the Jurisdictions.

The Top Funds

5. The Top Funds are, or will be, open-ended mutual funds, including exchange-traded funds, organized and governed by the laws of a Jurisdiction or the laws of Canada.

6. The Top Funds are, or will be, governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

7. Each Top Fund distributes, or will distribute, some or all of its securities pursuant to a simplified prospectus prepared pursuant to NI 81-101 and Form 81-101F1 or a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2.

8. The Top Funds are, or will be, reporting issuers in each of the Jurisdictions in which their securities are distributed.

9. Each Top Fund wishes to have the ability to invest up to 100% of its net asset value in the ETF Securities of one or more Funds.

10. Each investment by a Top Fund in the ETF Securities will be made in accordance with the investment objectives of the Top Fund and will represent the business judgement of responsible persons uninfluenced by considerations other than the best interest of the Top Fund.

11. The Top Funds do not, and will not, sell short the ETF Securities.

The Funds

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

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

14. The Proposed ETF Funds currently offer one or more of Series A, Series F, Series D, Series I and Advisor Series securities. These Mutual Fund Securities and the ETF Securities of the Proposed ETF Funds are currently qualified for distribution under a simplified prospectus dated May 4, 2018.

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

The ETF Exemptions

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

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

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

19. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of a Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer.

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

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

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

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

Fund of Fund Investments

24. No Fund will hold more than 10% of its net asset value in securities of another investment fund unless the securities of the other investment fund are securities of a money market fund, as defined in NI 81-102, or are IPUs.

25. No Fund will pay management or incentive fees which to a reasonable person would duplicate a fee payable by the applicable Top Fund for the same service.

26. All brokerage costs related to trades in ETF Securities will be borne by the Top Funds in the same manner as any other portfolio transactions made on the exchange.

27. The ETF Securities are highly liquid, as the Designated Broker acts as an intermediary between investors and each Fund, standing in the market with bid and ask prices for such ETF Securities to maintain a liquid market for them.

28. Each Top Fund and each Fund is, or will be, subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) generally and in respect of conflicts of interest matters arising from trades of securities of a Top Fund or a Fund.

29. If a Top Fund makes a trade in ETF Securities with or through the Filer acting as dealer, the Filer will comply with its obligations under NI 81-107 in respect of any proposed related party transactions. All such related party transactions will be disclosed to securityholders of the relevant Top Fund in its management report of fund performance.

Borrowing Requirement

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

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

32. Amounts included in the calculation of net income and net realized capital gains of a Fund for a taxation year that must be distributed in accordance with the Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Fund from the issuers of securities held in the Fund's portfolio (**Issuers**).

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

34. The Filer is of the view that it is in the interests of a Fund to have the ability to borrow cash from the Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the

portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund from the Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction in the Fund's performance if the Fund had to hold cash instead of securities in order to fund the distribution.

Sales and Redemptions Requirements

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

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

Top Fund Exemptions

37. An investment in an ETF Series by a Top Fund is an efficient and cost effective alternative to administering one or more investment strategies similar to that of the ETF Series.

38. An investment in an ETF Series by a Top Fund should pose little investment risk to the Top Fund because each ETF Series will be subject to NI 81-102, subject to any exemption therefrom granted by the securities regulatory authorities.

39. As the ETF Securities are not IPUs and the purchase of the ETF Securities is not made in accordance with section 2.5 of NI 81-102, absent the Exemption Sought, an investment by a Top Fund in ETF Securities does not qualify for the exemptions set out in:

    (a) section 2.1(2)(c) of NI 81-102 from the Concentration Restriction;

    (b) section 2.1(2)(d) of NI 81-102 from the Concentration Restriction

    (c) section 2.2(1.1)(a) of NI 81-102 from the Control Restriction; and

    (d) section 2.2(1.1)(b) of NI 81-102 from the Control Restriction.

Concentration Restriction

40. The Exemption Sought will permit the Filer to invest more than 10% of its net asset value in a Fund the ETF Securities of which are not IPUs. The Exemption Sought will only grant each Top Fund relief from the Concentration Restriction in respect of the Top Fund's direct or indirect holdings of ETF Securities.

41. The Exemption Sought will not relieve a Top Fund from the obligation to comply with the Concentration Restriction in respect of the Top Fund's indirect holdings in ETF Securities held by the applicable Fund. Each Top Fund will comply with the Concentration Restriction in respect of the Top Fund's indirect holdings in ETF Securities held by any Fund in accordance with sections 2.1(3) and (4) of NI 81-102.

Control Restriction

42. Due to the potential size disparity between the Top Funds and the ETF Series of the Funds, it is possible that a relatively small investment, on a percentage of net asset value basis, by a relatively larger Top Fund in ETF Securities which are not IPUs could result in such Top Fund holding ETF Securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the applicable Fund; or (ii) the outstanding equity securities of that Fund, contrary to the Control Restriction.

Payment of Fees Restriction

43. It is anticipated that many of the trades in ETF Securities conducted by a Top Fund will not be of the size necessary for the Top Fund to be eligible to purchase or redeem a Prescribed Number of ETF Securities directly from or to, as the case may be, the Fund. As such, it is anticipated that many of the trades in ETF Securities by a Top Fund will be conducted in the secondary market through the TSX or another Marketplace.

44. The Exemption Sought will permit a Top Fund to pay any brokerage fees incurred in connection with such a trade when a Top Fund buys or sells ETF Securities on the TSX or another Marketplace.

Decision

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

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

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

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

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

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

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

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

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

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

3. The decision of the principal regulator under the Legislation is that the Exemption Sought in respect of the Top Fund Exemptions is granted, provided that the Filer will be in compliance with the following conditions:

    a. the investment by a Top Fund in ETF Securities is in accordance with the investment objectives of the Top Fund;

    b. a Top Fund does not short sell ETF Securities;

    c. no Fund is a commodity pool governed by National Instrument 81-104 *Commodity Pools*;

    d. other than exemptive relief granted in favour of a Fund, the Fund complies with the requirements of:

        i. section 2.3 of NI 81-102 regarding the purchase of physical commodities;

        ii. sections 2.7 and 2.8 of NI 81-102 regarding the purchase, sale or use of specified derivatives; and

        iii. subsections 2.6(a) and 2.6(b) of NI 81-102 with respect to the use of leverage;

    e. in connection with the Exemption Sought from the Concentration Restriction, each Top Fund shall, for each investment it makes in ETF Securities, apply, to the extent applicable, subsections 2.1(3), 2.1(4) and 2.1(5) of NI 81-102 as if those provisions applied to a Top Fund's investments in ETF Securities, and, accordingly, limit a Top Fund's indirect holdings in securities of an issuer held by one or more Funds as required by, and in accordance with sections 2.1(3), 2.1(4) and 2.1(5) of NI 81-102;

    f. the investment by a Top Fund in ETF Securities is made in accordance with section 2.5 of NI 81-102, with the exception of paragraph 2.5(2)(a) and, in respect only of brokerage fees incurred for the purchase and sale of ETF Securities by a Top Fund, paragraph 2.5(2)(e) of NI 81-102; and

g. the prospectus of each Top Fund discloses, or will disclose in the next renewal of its prospectus after the date of this decision, in the investment strategy section, the fact that the Top Fund has obtained the Exemption Sought to permit the relevant transactions on the terms described in this decision.

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

SCHEDULE A

PROPOSED ETF FUNDS

BMO Core Plus Bond Fund
BMO Global Multi-Sector Bond Fund
BMO Global Strategic Bond Fund
BMO Women in Leadership Fund

2.1.2 TD Waterhouse Private Investment Counsel Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions. Effective June 4, 2018 – Temporary relief from the requirement in paragraph 14.5.3(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (the Custodial Records Requirement) for registered firms to take reasonable steps to ensure that cash and securities of each client or investment fund are held by a qualified custodian using an account number or other designation in the records of the qualified custodian sufficient to show that the beneficial ownership of the cash or securities of the client or investment fund is vested in that client or investment fund – The registered firm will continue its historical relationship with a "Canadian custodian" who will hold client assets on an omnibus basis in accordance with section 14.6 of NI 31-103 as that provision reads on June 3, 2018 – Clients will receive relationship disclosure information outlining the risks and benefits of this custodial arrangement – this relief expires when the registered firm complies with the Custodial Records Requirement or in three years.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 14.2(2)(a.1), 14.2(2)(a.2), 14.5.2(5), 14.5.3(a), 14.6 and 15.1.

June 1, 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
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.
(the Filer)

DECISION

Background

On June 4, 2018, amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) will come into effect that will enhance the custody requirements applicable to registered advisers, dealers and investment fund managers that are not members of a self-regulatory organization (**SRO**) such as the Investment Industry Regulatory Organization of Canada or the Mutual Fund Dealers Association of Canada (the **Custody Amendments**). SRO member firms will comply with the custodial regimes of their respective SRO. The Custody Amendments address potential intermediary risks when registered firms that are not members of an SRO are involved in the custody of client assets; enhance the protection of client assets; and codify existing custodial best practices of registered firms that are not members of an SRO.

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the requirement in paragraph 14.5.3(a) of NI 31-103 that will come into effect on June 4, 2018 (the **Custodial Records Requirement**), pursuant to section 15.1 of NI 31-103, to permit the Filer's client accounts custodied with CIBC Mellon Trust Company (**CIBC Mellon**) to continue to be held as part of an omnibus custody arrangement between the Filer and CIBC Mellon (the **Omnibus Custody Arrangement**) for an interim period of time until the Filer can comply with the Custodial Records Requirement (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*. Its head office is located in Toronto, Ontario.

2. The Filer is registered as adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer in all provinces and territories of Canada.

3. The Filer provides high net worth clients with customized investment strategies through the exercise of discretionary investment authority that is granted to the Filer by such clients. The Filer invests its clients' assets in various securities and products (which could be prospectus-qualified or prospectus-exempt) including investment funds managed by its affiliate, TD Asset Management Inc. (**TDAM**). Certain portfolio management functions, including effecting portfolio transactions, are arranged by TDAM on behalf of the Filer.

4. As of the date of this decision, the Filer's business has approximately 45,000 client accounts representing approximately $28.5 billion in assets under management.

5. The vast majority of the Filer's client accounts (as of the date of this decision, approximately 98%) are part of the Omnibus Custody Arrangement. CIBC Mellon is a custodian that meets the definition of "Canadian custodian" in section 1.1 of NI 31-103 that will be in effect on June 4, 2018. The Omnibus Custody Arrangement complies with section 14.6 of NI 31-103 as this provision reads on June 3, 2018. In this regard, the records of CIBC Mellon reflect that the assets held by CIBC Mellon are held in the name of the Filer in trust for the clients of the Filer. Individual client accounts and holdings are not reflected in the custodial records maintained by CIBC Mellon for the Filer. The holdings of individual client accounts are fully reflected in the Filer's client account records.

6. The remaining client assets managed by the Filer (as of the date of this decision, approximately 2%) are custodied in accordance with the Custodial Records Requirement and those assets are held by The Canada Trust Company (**TCTC**), an affiliate of the Filer, and RBC Investor Services Trust (**RBC**). Accordingly, the Exemption Sought is not being requested in respect of assets held in the custody of TCTC or RBC.

7. On July 27, 2017 the Canadian securities administrators published amendments to NI 31-103 that enhance the custody requirements for registered advisers, dealers and investment fund managers that are not members of SROs. These amendments, including the Custodial Records Requirement, come into effect on June 4, 2018.

8. In the absence of the Exemption Sought, the Custodial Records Requirement would require the Filer to transition, effective June 4, 2018, the client accounts that are held as part of the Omnibus Custody Arrangement to a custodial arrangement where the beneficial ownership of each client account is fully-disclosed in the records of the qualified custodian holding those client assets (a **Fully-Disclosed Custody Arrangement**).

9. In particular, the Filer is in the process of taking reasonable steps to ensure that cash and securities of each client are held by a qualified custodian using an account number or other designation in the records of the qualified custodian sufficient to show that the beneficial ownership of the cash or securities of the client is vested in that client, as required by the Custodial Records Requirement. However, after careful consideration including analysis by a multi-disciplinary committee established by the Filer to study the implications of the Custodial Records Requirement, the Filer has determined that the conversion of its Omnibus Custodial Arrangement to a Fully-Disclosed Custody Arrangement that meets the Custodial Records Requirement cannot be achieved prior to June 4, 2018 without exposing client accounts to operational risk.

10. The Filer's current portfolio management system that supports the client accounts custodied at CIBC Mellon has been extensively customized and does not have the capability to integrate with a separate fully-disclosed client account custodial system. The existing technological system and set up with CIBC Mellon does not allow for the Omnibus

Custodial Arrangement to be "converted" to a Fully-Disclosed Custody Arrangement without significant changes to the system.

11. Given the current limitations of its portfolio management system, the Filer will design and implement a new portfolio management system that addresses connectivity issues with the custodian for functionality on trade execution and settlement process, performance reporting, account holding and transaction reporting.

12. During the interim period where the Omnibus Custodial Arrangement is utilized, the following client protection measures will be, or will remain, in place:

    (a) CIBC Mellon is the custodian for these client accounts and CIBC Mellon is a Canadian custodian as defined in section 1.1 of NI 31-103 as that provision reads on June 4, 2018;

    (b) except as permitted by this decision, the Filer complies with the Custody Amendments which includes delivering relationship disclosure information to the Filer's clients that describes the risks and benefits to the Filer's clients arising from their assets being held under the Omnibus Custodial Arrangement (a historical custodial arrangement that is not otherwise permitted by the Custody Amendments and which will only be continued on a temporary basis);

    (c) the Filer conducts daily reconciliations between its separate fully-disclosed client account records and the omnibus records of CIBC Mellon, and retains records of the results of these reconciliations;

    (d) the Filer completes a monthly review of its reconciliation process which includes an internal certification of account reconciliations, and retains records of the results of these reconciliations;

    (e) the Filer ensures that CIBC Mellon completes an annual internal control report in accordance with International Standards on Assurance Engagements (ISAE 3402) or similar standards, providing evidence of independent oversight and reassurance on the quality and controls of the Omnibus Custodial Arrangement; and

    (f) the Filer's clients continue to receive account statements detailing their individual holdings.

13. The Filer intends to change its principal custodian from CIBC Mellon to TD Waterhouse Canada Inc. (**TD Waterhouse**), an affiliate of the Filer and an investment dealer that is a dealer member of IIROC. TD Waterhouse meets, or expects to meet, the definition of "Canadian custodian" in section 1.1 of NI 31-103 that will be in effect on June 4, 2018.

14. Compared to the Filer, TD Waterhouse has in place more scalable technology systems and tools relating to, among other things, client statements and other reporting that the Filer can leverage, without duplication of efforts, if the Filer's clients also become clients of TD Waterhouse, acting as custodian.

15. In setting up the custodial relationship with TD Waterhouse as custodian, the Filer intends to organize its business and affairs so that it can follow the guidance provided by the Canadian securities administrators in CSA Staff Notice 31-347 *Guidance for Portfolio Managers for Servicing Arrangements with IIROC Dealer Members*, particularly the items set out under "Requirements and CSA staff's expectations for PMDSAs" in the Staff Notice. These items include the Filer maintaining its own records of its clients' investment positions and trades; entering into an agreement with TD Waterhouse that includes the key terms identified in this guidance (among others); providing necessary relationship disclosure information including key responsibilities under the agreement with TD Waterhouse; knowing how to satisfy the Filer's additional statement obligations to a client when following this staff guidance; and being aware of the circumstances when this staff guidance cannot be relied upon.

16. Although TD Waterhouse and the Filer are affiliates by virtue of being wholly owned subsidiaries of The Toronto-Dominion Bank, the Filer believes that TD Waterhouse is functionally independent from the Filer for purposes of NI 31-103 because:

    (a) each of the Filer and TD Waterhouse have different business lines supported by independent systems and controls;

    (b) each of the Filer and the division of TD Waterhouse that acts as custodian of client assets for the Filer have substantially different senior management teams and different boards, and a different UDP and CCO;

    (c) the custodial activities will be performed by personnel that are separate and independent from the Filer.

17. Due to the large and broad scale changes that the Filer will be implementing during the interim period of this decision, the Filer will provide a semi-annual progress report to the Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the **OSC Manager**) on the implementation of the Fully-Disclosed Custody Arrangement that will comply with the Custodial Records Requirement.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. Effective June 4, 2018, the decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(i) any cash and securities of a client or investment fund that is held in an account in the name of the Filer is held separate and apart from the Filer's own property and held by CIBC Mellon (a "Canadian custodian" as defined in section 1.1. of NI 31-103) in a designated trust account in trust for clients or investment funds of the Filer;

(ii) the Filer conducts daily reconciliations between its separate fully-disclosed client account records and the omnibus records of CIBC Mellon, and retains records of the results of these reconciliations;

(iii) the Filer completes a monthly review of its reconciliation process which includes an internal certification of account reconciliations, and retains records of the results of these reconciliations;

(iv) the Filer ensures that CIBC Mellon completes an annual internal control report in accordance with International Standards on Assurance Engagements (ISAE 3402) or similar standards, providing evidence of independent oversight and reassurance on the quality and controls of the Omnibus Custodial Arrangement;

(v) the Filer's clients continue to receive account statements detailing their individual holdings;

(vi) the Filer provides a semi-annual progress report to the OSC Manager on the implementation of the Fully-Disclosed Custody Arrangement that will comply with the Custodial Records Requirement; and

(vii) the Exemption Sought will no longer be available in any jurisdiction of Canada after the date that is the earlier of:

A. the date on which the Filer implements a Fully-Disclosed Custody Arrangement that complies with the Custodial Records Requirement; and

B. the date that is three years after the date of this decision.

"Felicia Tedesco"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.3 BMO Investments Inc.

Headnote

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

Applicable Legislative Provisions

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

May 11, 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
BMO INVESTMENTS INC.
(the Filer)

DECISION

Background

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

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

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

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

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

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

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

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

Interpretation

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

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

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

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

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

ETF Facts means a prescribed summary disclosure document required pursuant to National Instrument 41-101 *General Prospectus Requirements*, in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

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

ETF Series means an exchange-traded series of a Fund.

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

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

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

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

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

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

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

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

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

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

TSX means the Toronto Stock Exchange.

Representations

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

1. The Filer is a corporation governed by the laws of Canada with its head office in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and as a mutual fund dealer in each of the Jurisdictions.

3. The Filer or an affiliate of the Filer is, or will be, the investment fund manager of each Fund.

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

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

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

7. The Proposed ETF Funds, other than BMO Global Multi-Sector Bond Fund, currently offer one or more of Series A, Series F, Series D, Series I and Advisor Series securities. These Mutual Fund Securities are currently distributed under a simplified prospectus dated April 24, 2017, as amended.

8. On March 23, 2018, a preliminary and pro forma prospectus in respect of the Mutual Fund Securities and ETF Securities of the Proposed ETF Funds was filed with the securities regulatory authorities in each of the Jurisdictions.

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

10. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through registered dealers.

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

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

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

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

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

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

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

ETF Prospectus Form Requirement

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

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

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

Underwriter's Certificate Requirement

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

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

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

Prospectus Delivery Requirement

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

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

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

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

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

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

Take-over Bid Requirements

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

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

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

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

Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Philip Anisman"
Commissioner
Ontario Securities Commission

"Garnet Fenn"
Commissioner
Ontario Securities Commission

SCHEDULE A

PROPOSED ETF FUNDS

BMO Core Plus Bond Fund
BMO Global Multi-Sector Bond Fund
BMO Global Strategic Bond Fund
BMO Women in Leadership Fund

2.1.4 The Stars Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer requires relief from the requirement in Part 8 of National Instrument 51-102 Continuous Disclosure Obligations to file a business acquisition report – Acquisition is insignificant applying the asset and investment tests – Applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and from a practical, commercial and financial perspective – Issuer has provided additional measures that demonstrate the insignificance of the acquisition to the issuer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.3, 13.1.

June 6, 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
THE STARS GROUP INC.
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in the Jurisdiction (the **Decision Maker**) has received an application (the **Application**) from the Filer for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction (the **Legislation**) for relief from the requirement under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to file a business acquisition report (a **BAR**) in connection with the Acquisition (as defined below).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation existing under the *Business Corporations Act* (Ontario). The Filer's head and registered office is located at Royal Bank Plaza, South Tower, Suite No. 3205, 200 Bay Street, Toronto, Ontario, M5J 2J3.

2. The Filer is a reporting issuer (or the equivalent thereof) under the securities legislation of each of the provinces and territories of Canada. The Filer is not in default of securities legislation in any jurisdiction of Canada.

The Acquisition

3. On February 27, 2018, the Filer indirectly acquired a 62% equity interest in CrownBet Holdings Pty Limited (**CrownBet**) (the **First CrownBet Acquisition**).

4. On April 23, 2018, the Filer indirectly acquired an additional 18% equity interest in CrownBet (the **Second CrownBet Acquisition**).

5. The Second CrownBet Acquisition closed concurrently with the acquisition of William Hill Australia Holdings Pty Ltd. (WHA) by CrownBet (the **WHA Acquisition**).

Application of the Significance Tests

6. Under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed business acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3(2) of NI 51-102.

7. Under section 8.3(12) of NI 51-102, the Filer is required to evaluate the significance of the First CrownBet Acquisition, the Second CrownBet Acquisition and the WHA Acquisition (collectively, the **Acquisition**) on a combined basis, as they are considered an acquisition of related businesses.

8. The Acquisition is not a significant acquisition under the asset test in section 8.3(2)(a) of NI 51-102 as the Filer's proportionate share of the consolidated assets of CrownBet and WHA at the end of their respective most recently completed financial year represents approximately 3.8% of the Filer's consolidated assets as at December 31, 2017.

9. The Acquisition is not a significant acquisition under the investment test in section 8.3(2)(b) of NI 51-102 as the Filer's completed investments in, and advances to, CrownBet and WHA represent approximately 11.4% of the Filer's consolidated assets as at December 31, 2017.

10. The Acquisition would, however, be a significant acquisition under the profit or loss test in section 8.3(2)(c) of NI 51-102 as the Filer's proportionate share of the consolidated specified profit or loss of CrownBet and WHA for the most recently completed financial year of CrownBet and WHA represents approximately 85.9% of the consolidated specified profit or loss of the Filer for the twelve months ended December 31, 2017.

11. The application of the profit or loss test leads to an anomalous result in that the significance of the Acquisition is exaggerated out of proportion to its significance on an objective basis and in comparison to the results of the asset test and the investment test.

The Signification of the Acquisition from a Practical, Commercial and Financial Perspective

12. The Filer does not believe (nor did it believe at the time that it completed the Acquisition) that the Acquisition is a significant acquisition to it from a practical, commercial and financial perspective.

13. The Filer has provided the principal regulator with additional operating measures that demonstrate the non-significance of the Acquisition to the Filer. These operating measures included the number and dollar value of bets placed by customers of the Filer compared to those of CrownBet and WHA and the number of real-money active unique customers of the Filer compared to those of CrownBet and WHA. The results of those measures are generally consistent with the results of the asset test and the investment test.

14. The Filer is of the view that the asset test, the investment test and these alternative operating measures much more closely reflect the actual significance of the Acquisition to the Filer from a practical, commercial and financial perspective.

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.

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

2.1.5 Jarislowsky, Fraser Limited

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to pooled funds not subject to National Instrument 81-102, mutual funds and managed accounts to purchase securities of related entities over a stock exchange and to purchase non-exchange traded debt securities of related entities under primary offerings and in the secondary market – Relief also granted to portfolio manager to engage the funds it manages in principal trading of debt securities of third parties with a related dealer in the secondary market – relief conditional on IRC approval, compliance with pricing requirements, and limits on the amount of a primary offering of a related entity a fund may purchase.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.5(2)(a), 13.5(2)(b), 15.1.

TRANSLATION

DECISION: 2018-SACD-1020093

April 30, 2018

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

AND

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

AND

**IN THE MATTER OF
JARISLOWSKY, FRASER LIMITED
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer on behalf of the pooled funds established and/or advised by the Filer (the **Existing Pooled Funds**) and such other pooled funds that the Filer may establish and/or advise in the future (each a **Future Pooled Fund**, and together with the Existing Pooled Funds, the **Pooled Funds**, and individually, a **Pooled Fund**), to which *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**) does not apply, each mutual fund established and/or advised by the Filer (the **Existing Public Funds**) and such other mutual funds that the Filer may establish and/or advise in the future (each a **Future Public Fund**, and together with the Existing Public Funds, the **Public Funds**), to which Regulation 81-102 does apply, (the Pooled Funds and the Public Funds are collectively referred to as the **Funds**, and individually as a **Fund**) and the existing managed accounts of the Filer (each a **Managed Account**), for a decision of the Decision Makers under the securities legislation of the Jurisdictions (the **Legislation**) pursuant to section 15.1 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**) exempting the Filer from the requirements of sections 13.5(2)(a) and 13.5(2)(b)(i) and (ii) of Regulation 31-103 to allow a Fund and/or a Managed Account to:

(a) buy Equity Securities and/or Debt Securities (as such terms are defined below) of an issuer in which a Responsible Person (as such term is defined in Regulation 31-103), or an associate of a Responsible Person, is a partner, officer or director (a **Related Issuer**) unless the fact is disclosed to the client and the written consent of the client is obtained before the investment is made (the **Consent Relief**); and

(b) buy and/or sell Related Party Debt Securities and/or Other Debt Securities (as such terms are defined below) from or to an investment portfolio of a Responsible Person or an associate of a Responsible Person (the **Principal Trade Relief**)

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

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

(a) the Autorité des marchés financiers is the principal regulator for this application; and;

(b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in each other jurisdiction of Canada (except Ontario).

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and *Regulation 81-107 respecting Independent Review Committee for Investment Funds* (**Regulation 81-107**) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*, and its head office is in Montréal, Québec.

2. The Filer is registered as a portfolio manager in each jurisdiction of Canada and as an investment fund manager in Québec, Ontario, Newfoundland and Labrador, Alberta and British Columbia.

3. The Filer is not in default under the securities legislation of any jurisdiction of Canada.

The Funds

4. Each Fund is, or will be, a mutual fund governed by the *Civil Code* of Québec or the laws of Ontario.

5. The Filer is, or will be, the manager and/or adviser of each Fund.

6. The Pooled Funds are not, and will not be, reporting issuers in any jurisdiction of Canada.

7. The Public Funds are, and will be, reporting issuers in one or more jurisdictions of Canada.

8. Securities of the Pooled Funds are, or will be, offered for sale only on an exempt basis pursuant to available prospectus exemptions in one or more of the jurisdictions of Canada.

9. Securities of the Public Funds are, or will be, offered for sale by means of a simplified prospectus or prospectus.

10. No Fund is in default of any securities legislation of any jurisdiction of Canada.

The Managed Accounts

11. The Filer is the adviser and/or sub-adviser of each Managed Account.

12. Each Managed Account is managed by the Filer pursuant to a discretionary investment management agreement, which is executed by or on behalf of the applicable client who wishes to receive the portfolio management services of the Filer.

13. The Filer makes investment decisions for each Managed Account and has full discretionary authority to instruct dealers to trade securities for each Managed Account without obtaining the specific consent or instructions of the applicable client, provided the securities represent that client's investment objectives.

The Acquisition

14. Subject to obtaining all required regulatory approvals, The Bank of Nova Scotia (**BNS**) plans on directly, and indirectly through a wholly-owned subsidiary, acquiring all of the issued and outstanding shares of the Filer on or about May 1, 2018 (the **Effective Date**).

15. BNS is the ultimate parent company of Scotia Capital Inc. (**SCI**), an investment dealer in each of the jurisdictions of Canada. SCI is also a principal dealer in the Canadian debt securities market.

16. The Filer currently uses SCI from time to time to execute trade orders on behalf of the Funds and/or the Managed Accounts in accordance with its best execution obligations. Accordingly, SCI may buy and/or sell securities that may be owned by SCI as principal (a **Principal Trade**).

17. After the Effective Date, BNS will be the ultimate parent company of the Filer. At that time, as an affiliate of BNS, the Filer will be deemed pursuant to the Legislation to beneficially own the securities owned by BNS, including SCI. As BNS beneficially owns more than 10% of the voting shares of SCI, SCI may be considered to be an associate of the Filer under the Legislation (a **Related Party**).

18. BNS and/or SCI may each also be a Responsible Person of the Filer after the Effective Date as they may have access to the investment decisions of the Filer before they are implemented (e.g., if the Filer submits trade orders to SCI for execution on behalf of a Fund and/or a Managed Account). Accordingly, a director or officer of BNS and/or SCI may also, depending on the positions they hold, be a partner, director or officer of a Related Issuer.

Consent Relief

19. The Filer is seeking the Consent Relief in order to allow each of the Funds and, for a period of approximately 12 months from the Effective Date, each of the Managed Accounts to have the ability to buy securities of a Related Issuer, which may include:

    a. equity securities (e.g., common shares and preferred shares) (collectively, **Equity Securities**) of the Related Issuer (e.g., BNS); and/or

    b. money market instruments, commercial paper, bankers acceptances, bearer deposit notes, debentures, and/or other debt securities (collectively, **Debt Securities**) of the Related Issuer.

20. A Fund's and/or a Managed Account's purchase of Equity Securities and/or Debt Securities of a Related Issuer is prohibited under the Legislation (each a **Restricted Related Issuer Transaction**).

21. The investment objective and investment strategies of each Fund and/or each Managed Account that will rely on the Consent Relief will permit that Fund and/or that Managed Account to buy Equity Securities and Debt Securities of a Related Issuer.

22. A Fund and/or a Managed Account will only buy Equity Securities and/or Debt Securities of a Related Issuer if such purchase is consistent with, or is necessary, to meet the investment objective of that Fund and/or that Managed Account, as applicable.

23. All purchases of Equity Securities and/or Debt Securities of a Related Issuer by a Fund and/or a Managed Account, to the extent possible, will be executed on a recognised marketplace at prevailing market prices.

24. The Filer considers granting the Consent Relief to not be prejudicial to the public interest, given that the decision to buy Equity Securities and/or Debt Securities of a Related Issuer will be made in the best interests of the Funds and the Managed Accounts and free from the influence of the person that is a partner, director or officer of that Related Issuer.

25. The Filer also considers that a Fund and/or a Managed Account would be prejudiced if it had to refrain from entering into a Restricted Related Issuer Transaction, where to do so is consistent with the investment objective of the Fund and/or the Managed Account, as applicable.

26. The Filer submits that securities of BNS are widely held across the Managed Accounts and that it would not be possible to make any normal course rebalancing adjustments in Managed Accounts involving BNS securities without the Consent Relief, as it would take quite some time to obtain the required client consents.

Principal Trade Relief

27. The Filer is seeking the Principal Trade Relief in order to allow each of the Funds and/or the Managed Accounts to purchase from, and/or sell to, the investment portfolio of a Responsible Person or an associate of a Responsible Person, Debt Securities of the Related Party (collectively, **Related Party Debt Securities**, and individually, a **Related Party Debt Security**), and/or debt securities that are not Related Party Debt Securities (collectively, **Other Debt Securities**, and individually, **Other Debt Securities**).

28. Certain Related Party Debt Securities and Other Debt Securities are not listed and are not exchange-traded.

29. The Filer is seeking the Principal Trade Relief in order to allow each Fund and each Managed Account to have the ability to buy and/or sell Related Party Debt Securities and/or Other Debt Securities, including pursuant to a Principal Trade with SCI.

30. A Fund's and/or a Managed Account's purchase or sale of securities from or to the investment portfolio of a Responsible Person or an associate of a Responsible Person (e.g., SCI, which may be a Responsible Person and a Related Party) is prohibited under the securities legislation (each a **Restricted Related Party Transaction**).

31. The investment objective and investment strategies of each Fund and/or each Managed Account that will rely on the Principal Trade Relief will permit that Fund and/or that Managed Account to buy and/or sell Related Party Debt Securities and/or Other Debt Securities.

32. There may be a limited supply of Related Party Debt Securities and Other Debt Securities available to a Fund and/or a Managed Account, and frequently the only source of such securities for the Fund and/or the Managed Account may be from a Related Party such as SCI.

33. If a Related Party Debt Security is purchased by a Fund and/or a Managed Account in a primary distribution or treasury offering (a **Primary Offering**) pursuant to the Exemption Sought:

    a. the Related Party Debt Security that is a long term debt security (i.e. debt securities have a term to maturity of 365 days or more) will have a designated rating by a designated rating organization (as such terms are defined in *Regulation 44-101 respecting Short Form Prospectus Distributions*); and

    b. the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as set out in a prospectus, offering or information memorandum, press release or other public document.

34. If a Related Party Debt Security is purchased by a Fund and/or a Managed Account in the secondary market pursuant to the Exemption Sought it will have a designated rating by a designated rating organization.

35. The Filer considers that the Funds and the Managed Accounts should have access to Related Party Debt Securities and Other Debt Securities from or to an investment portfolio of a Responsible Person or an associate of a Responsible Person for the following reasons:

    a. there is a limited supply of these types of securities;

    b. diversification is reduced to the extent that a Fund and/or a Managed Account is limited with respect to investment opportunities; and

    c. to the extent a Fund and/or a Managed Account seeks to track or outperform a benchmark, it is important for the Fund and/or Managed Account to be able to purchase securities included in the benchmark. These securities are often included in Canadian indices.

36. The Filer considers granting the Principal Trade Relief to not be prejudicial to the public interest, given that the decision to transact securities purchases and sales with a Related Party, that may also be a Responsible Person, will be made in the best interests of the Funds and the Managed Accounts and free from the influence of that Related Party.

37. The Filer also considers that a Fund and/or a Managed Account would be prejudiced if they had to refrain from entering into a Restricted Related Party Transaction, where to do so is consistent with the investment objective of the Fund and/or the Managed Account, as applicable.

General

38. The Filer is a well-established, independent portfolio management firm in Canada with a strong fiduciary culture and a disciplined, time-tested investment philosophy based on fundamental research and bottom-up security analysis. The Filer's Investment Strategy Committee (**ISC**) serves as the Filer's central investment oversight body. All investments for inclusion in a Fund and/or a Managed Account must be approved by the ISC following extensive due diligence and research analysis on each issuer company.

39. The Filer has in place best execution committees for fixed income, North American equities and International equities, and has implemented policies and procedures that are reasonably designed to ensure compliance with its best execution obligations.

40. No Related Party will be able to influence the business judgment of the Filer in connection with the determination of the suitability of investments for a Fund and/or a Managed Account, and influence barriers will be put in place by the ISC and the Filer's Chief Compliance Officer after the Effective Date with respect to Restricted Related Issuer Transactions and Restricted Related Party Transactions. Decisions made by the Filer as to which investments a Fund and/or a Managed Account may hold are based on the best interests of that Fund and/or that Managed Account, without any consideration given to the interests of the party with whom a purchase or sale is transacted, and is embedded in the Filer's policies, procedures and protocols.

41. Moreover, the independent review committee (**IRC**) of BNS' wholly-owned subsidiary, 1832 Asset Management L.P., which currently functions as the IRC of certain investment funds that are subject to Regulation 81-102, and certain pooled funds where required by the conditions of certain exemptive relief orders, will also function as the IRC for the Pooled Funds under a new tailored mandate which, among other things, will with respect to the Exemption Sought comply with the applicable provisions of Regulation 81-107, including the standard of care set out in section 3.9 of Regulation 81-107.

42. The Public Funds also have, or will have, an IRC that is, or will be, responsible for reviewing any conflicts of interest that might arise including dealing with Restricted Related Issuer Transactions and Restricted Related Party Transactions.

43. For greater certainty, the purchase of securities of a Related Issuer by a Fund will be referred to the IRC of the Fund.

44. Each client of the Filer will also be appropriately advised in that client's statements and investment performance reports about any securities held in that client's account.

Decision

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

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

1. the purchase or sale of the security is consistent with, or is necessary to meet, the investment objective of the applicable Fund and/or applicable Managed Account;

2. at the time of purchase or sale of a security by a Fund, the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of Regulation 81-107;

3. the Filer complies with section 5.1 of Regulation 81-107, and the Filer and the IRC of the applicable Fund complies with section 5.4 of Regulation 81-107 for any standing instructions the IRC provides in connection with the transaction;

4. at the time of purchase or sale of a security by a Managed Account, the Filer and the ISC has approved the transaction as set out in this decision;

5. in the case of the purchase of a Related Party Debt Security by a Fund and/or a Managed Account during a Primary Offering:

    a. the security has been given, and continues to have, at the time of purchase, a designated rating by a designated rating organization;

    b. the size of the Primary Offering is at least $100 million;

c. at least two purchasers who are independent, arm's length purchasers, which may include "independent underwriters" with the meaning of *Regulation 33-105 respecting Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;

d. no Fund and/or Managed Account shall participate in the Primary Offering if following its purchase the Fund and/or the Managed Account would have more than five percent (5%) of its net assets invested in that security;

e. no Fund and/or Managed Account shall participate in the Primary Offering if following the purchase the Funds and/or the Managed Accounts together hold more than 20% of the long term debt securities issued in the Primary Offering;

f. the price paid for the long term debt securities by a Fund and/or a Managed Account in a Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;

6. in the case of the purchase or sale of a Related Party Debt Security by a Fund and/or a Managed Account in the secondary market:

   a. the security has been given, and continues to have, at the time of purchase a designated rating by a designated rating organization;

   b. the price payable for the security is not more than the ask price of the security;

   c. the ask price of the security is determined as follows:

      (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of the marketplace; or

      (ii) if the purchase does not occur on a marketplace:

         (A) the Fund and/or the Managed Account may pay the price for the security at which an independent arm's length seller is willing to sell the security; or

         (B) if the Fund and/or the Managed Account does not purchase the security from an independent, arm's length seller, the Fund and/or the Managed Account may pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote; and

   d. the transaction complies with any applicable "market integrity requirements" as defined in Regulation 81-107;

7. in the case of the purchase or sale of an Equity Security of a Related Issuer:

   a. the purchase is made in the secondary market on an exchange on which the Equity Security is listed and traded; and

   b. the transaction complies with any applicable "market integrity requirements" as defined in Regulation 81-107;

8. in the case of the purchase or sale of an Other Debt Security, from a Responsible Person or an associate of a Responsible Person, which may include SCI:

   a. the bid and ask price of the security is readily available as contemplated by section 6.1(2)(c) of Regulation 81-107;

   b. a purchase is not executed at a price that is higher than the available ask price and a sale of an Other Debt Security is not executed at a price which is lower than the available bid price; and

   c. the transaction complies with any applicable "market integrity requirements" as defined in Regulation 81-107;

9. the applicable Fund and/or Managed Account keeps written records of the transactions referred to above as required by section 6.1(2)(g) of Regulation 81-107; and

10. the Consent Relief allowing a Managed Account to purchase securities of a Related Issuer ceases to have effect on May 1st, 2019.

"Frédéric Pérodeau"
Superintendant,
Client Services and Distribution Oversight

2.1.6 GoldPoint Partners Select Manager Canada Fund IV, LP and Newbury Equity Partners IV L.P.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirements applicable to take-over bids in Part 2 of NI 62-104 in connection with purchases made by an arm's length third party pursuant to a liquidity option offered to security holders at the time of subscription – there is no published market for the securities and the issuer is not a reporting issuer but there is no restriction on the number of security holders so the liquidity provider may not be able to rely on the statutory non-reporting issuer exemption – the terms of the liquidity option are fully disclosed to all potential investors in the private placement memorandum of the issuer – all potential investors will receive equal treatment in terms of their ability to participate in the liquidity option – the liquidity provider will not have any board or management representation in respect of the issuer – issuer is a limited partnership and operational control will remain with its general partner, irrespective of the number of securities acquired by the liquidity provider – requested relief granted, subject to conditions.

Applicable Legislative Provisions

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

June 6, 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
GOLDPOINT PARTNERS SELECT MANAGER CANADA FUND IV, LP
(the Fund)

AND

NEWBURY EQUITY PARTNERS IV L.P.
(NEP, and together with the Fund, the Filers)

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**) exempting NEP from the requirements applicable to take-over bids in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**, and such requirements, the **Take-Over Bid Requirements**) in connection with purchases of limited partnership units of the Fund (the **Units**) by NEP pursuant to the proposed Liquidity Option (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission is the principal regulator for this passport 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, the Northwest Territories, the Yukon and Nunavut.

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. The Fund is a limited partnership existing under the laws of the Province of Ontario, and is an "investment fund" for the purposes of the *Securities Act* (Ontario) (the **Act**). The Fund's head office is located in the State of New York, United States of America (**U.S.**).

2. The Fund is not, and does not anticipate becoming, a reporting issuer in any jurisdiction.

3. The general partner of the Fund, GoldPoint Partners Canada IV GenPar Inc. (the **GP**), is a corporation existing under the *Business Corporations Act* (New Brunswick). The GP's head office is located in the State of New York, U.S.

4. The investment fund manager functions of the Fund have been delegated by the GP to its affiliate, GoldPoint Partners Canada GenPar Inc. (the **Fund Manager**), pursuant to a management agreement between the GP and the Fund Manager. The Fund Manager directs all of the business, operations and affairs of the Fund. The Fund Manager is a corporation existing under the laws of the Province of New Brunswick, and is a registered "investment fund manager" in Ontario, Québec, and Newfoundland and Labrador. The head office of the Fund Manager is located in the State of New York, U.S.

5. The investment objective of the Fund is to invest, directly or indirectly, as a limited partner in GoldPoint Partners Select Manager Fund IV, L.P. (the **Bottom Fund**), a foreign-based private equity fund of funds.

6. The Fund is authorized to issue, *inter alia*, an unlimited number of Units. The Fund will be offering Units pursuant to one or more private placements to "accredited investors" (as such term is defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)) across Canada. There will be no published market for the Units.

7. Each Unit issued will represent a capital commitment of U.S.$1,000 in the Fund. Each holder of Units (each, a **Limited Partner**) is required to make a minimum capital commitment to the Fund of U.S.$250,000 (or 250 Units), which full amount is to be paid as and when called for by the GP, as the general partner of the Fund.

8. As an added benefit for Limited Partners, whose Units will otherwise be highly illiquid long-term investments and subject to transfer restrictions, Limited Partners will be provided with a liquidity option (the **Liquidity Option**), the terms of which are set out in a definitive purchase and sale agreement among the applicable Participating Limited Partner (as defined below) and NEP (such agreement, the **Liquidity Sale Agreement**). The form of Liquidity Sale Agreement has been approved by the Fund and NEP and is attached as an exhibit to the subscription agreement in respect of the Units. Pursuant to the terms of the Liquidity Sale Agreement, NEP agrees to purchase all, but not less than all, of the Units of a Participating Limited Partner during the term of the Liquidity Option (as described in paragraphs 13 (d) and (e) below).

9. NEP and GoldPoint Partners LLC (**GoldPoint**), an affiliate of the GP and the Fund Manager and the investment fund manager of the Bottom Fund, entered into a liquidity governing agreement (the **Liquidity Governing Agreement**) in respect of the Liquidity Option on February 7, 2018. The terms of the Liquidity Option (as described in paragraph 13 below) and the Liquidity Sale Agreement are set out in the Liquidity Governing Agreement. The Liquidity Governing Agreement also sets out the agreement of the Fund to collect the Liquidity Fees (as defined below) from all Participating Limited Partners and to remit all such fees to NEP.

10. NEP is a limited partnership existing under the laws of Delaware and has its head office in the State of Connecticut, U.S. NEP acquires, primarily through secondary transactions, limited partnership interests in established leveraged buyout, venture capital and mezzanine funds. NEP will be able to acquire Units pursuant to the Liquidity Option without being subject to the dealer registration requirements in the Legislation. NEP is at arm's length to the Fund, the GP, the Fund Manager, the Bottom Fund and GoldPoint, and is not an "insider", an "associate" of an "insider", or an "associate" or "affiliate" of any of them, as such terms are defined in the Act.

11. The existence and terms of the Liquidity Option will be set out in the private placement memorandum of the Fund (the **PPM**) provided to potential investors in the Fund.

12. All potential investors in the Fund will receive equal treatment in terms of their ability to participate in the Liquidity Option and the percentage of Units accepted thereunder, until such time that the aggregate number of Units subject to the Liquidity Option equals U.S.$50 million in Limited Partner Commitments (as defined below). Limited Partners wishing to have the benefit of the Liquidity Option will be required to "opt in" to the Liquidity Option by checking the appropriate box in their subscription agreement (such Limited Partners so electing and whose participation is accepted, the **Participating Limited Partners**) and paying the Liquidity Fee. Any Limited Partner that does not elect to participate in the Liquidity Option at the time of the closing at which such Limited Partner is subscribing for Units will not have the opportunity thereafter to so participate without obtaining the consent of each of the parties to the Liquidity Governing Agreement.

13. The principal terms of the Liquidity Option are as follows:

Fee:

(a) In consideration for providing the Liquidity Option, each Participating Limited Partner will be required to pay to the Fund an annual fee (the **Liquidity Fee**) equal to the product of:

(i) such Participating Limited Partner's aggregate capital commitment to the Fund (such amount, the **Limited Partner Commitment**); and

(ii) 0.10%, subject to reduction on the fifth anniversary of the Final Closing, by (A) 10%, and (B) on each anniversary thereafter, up to and including the eleventh anniversary of the Final Closing, and additional 10%.

Once a Participating Limited Partner sells its Units to NEP, Liquidity Fees will cease to be payable by that Participating Limited Partner.

(b) The Liquidity Fee will be payable commencing on the date the Participating Limited Partner becomes a Limited Partner, and shall be calculated and payable on such date and each one-year anniversary thereafter.

(c) Any Participating Limited Partner that fails to timely pay the Liquidity Fee when due will automatically lose its right to sell its Units to NEP pursuant to the Liquidity Option and will surrender any amounts already paid by it with respect to the Liquidity Fee.

Term:

(d) A Participating Limited Partner may require NEP to purchase its Units at any time commencing on the later of (i) the date of the Final Closing, which is expected to occur in fall 2019, and (ii) any such time when the Purchase Price (as defined below) is greater than zero.

(e) The obligation of NEP to purchase Units from Participating Limited Partners will terminate on the earlier of (i) the twelfth anniversary of the Final Closing, and (ii) May 1, 2031, with such term subject to extension upon the agreement of NEP, GoldPoint and the GP, as the general partner of the Fund.

Purchase Price:

(f) At the request of any Participating Limited Partner, NEP will provide a written offer to purchase such Participating Limited Partner's Units at a U.S. dollar price equal to the net asset value (**NAV**) of the Participating Limited Partner's Units multiplied by a total of the Discount Factor multiplied by the Participating Limited Partner's Exposure, less the Participating Limited Partners' Remaining Commitment, all divided by the NAV of the Participating Limited Partner's Units (the **Purchase Price**). **"Discount Factor"** means, for the first through fifth years following the date of the Final Closing, 90%, and, for the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth years following the date of the Final Closing, 87.5%, 85%, 82.5%, 80%, 77.5%, 75% and 70%, respectively. **"Exposure"** means, in respect of a Unit, the NAV of the Unit plus such Participating Limited Partner's Remaining Commitment. **"Remaining Commitment"** means the Participating Limited Partner's Limited Partner Commitment less capital contributions drawn down by the Fund. The Purchase Price will be adjusted upward on a dollar-for-dollar basis to account for any capital contributions made by the selling Participating Limited Partner between the signing of the Liquidity Sale Agreement and the closing of the sale, and reduced downward on a dollar-for-dollar basis for any distributions made by the Fund to the selling Participating Limited Partner between the signing of the Liquidity Sale Agreement and the closing of the sale.

Obligation to Purchase:

(g) NEP's obligation to purchase Units pursuant to the Liquidity Option will be capped at U.S.$50 million in Limited Partner Commitments. To reduce the likelihood that the Units subject to the Liquidity Option will exceed NEP's obligation to purchase Units, the Fund will not accept elections to participate in the Liquidity Option for more than an aggregate number of Units equal to U.S.$50 million in Limited Partner Commitments.

(h) If the Limited Partners who elect to participate in the Liquidity Option represent, in the aggregate, more than U.S.$50 million in Limited Partner Commitments, the Units of each such Limited Partner will be accepted on a *pro rata* basis such that the aggregate number of Units subject to the Liquidity Option will equal U.S.$50 million in Limited Partner Commitments.

(i) If, at the initial closing of the Fund, the Limited Partners who elect to participate in the Liquidity Option represent, in the aggregate, less than U.S.$50 million in Limited Partner Commitments and one or more subsequent closings of the Fund occurs, Limited Partners who subscribe for Units at a subsequent closing of the Fund will be offered the opportunity to participate in the Liquidity Option. The then-remaining availability of the Liquidity Option, being the difference between U.S.$50 million in Limited Partner Commitments and the aggregate Limited Partner Commitments of Limited Partners whose participation in the Liquidity Option was accepted at a prior closing of the Fund (such amount, the **Remaining Liquidity Option Availability**), will be offered to all potential investors in the Fund. The Units of Limited Partners electing to participate in the Liquidity Option at a particular subsequent closing will be accepted on a *pro rata* basis in respect of the Remaining Liquidity Option Availability as among those Units issued at such subsequent closing.

(j) The Fund will notify NEP if Limited Partners representing more than U.S.$50 million in Limited Partner Commitments elect to participate in the Liquidity Option with a view to the possibility of the Liquidity Option being extended by NEP to include such excess Limited Partner Commitments. NEP may, but is under no obligation to, extend the Liquidity Option beyond U.S.$50 million in Limited Partner Commitments.

Timing:

(k) A Participating Limited Partner wishing to require NEP to purchase its Units will sign and deliver a copy of the Liquidity Sale Agreement to NEP.

(l) The closing of the sale of Units on the exercise of the Liquidity Option will not occur until NAV is finally determined, which could be as long as 190 days following the execution of the Liquidity Sale Agreement, and requires, among other things, the consent of the GP to the transfer of such Units to NEP and the admission of NEP as a Limited Partner, which consent the Participating Limited Partner and NEP have agreed to use commercially reasonable efforts to take all necessary actions to obtain.

14. When the Remaining Liquidity Option Availability first becomes equal to or less than US$12.5 million (or 25% of such greater extended aggregate purchase amount in Limited Partner Commitments) in Limited Partner Commitments, the GP will deliver a notice to each Participating Limited Partner setting out the number of Units that are subject to the Liquidity Option and the Remaining Liquidity Option Availability.

15. In the event there is more than one closing of the Fund, potential investors in the Fund will be provided with written notice of the number of Units that are subject to the Liquidity Option and the Remaining Liquidity Option Availability as at the time of each subsequent closing. In addition, in the event of more than one closing of the Fund, the PPM will be supplemented with disclosure outlining the availability of the Remaining Liquidity Option Availability as at the latest practicable date prior to the distribution of the PPM to potential investors in the Fund.

16. NEP intends to hold any Units purchased pursuant to the Liquidity Option until the dissolution of the Fund. Following such acquisitions, NEP will have obligations and rights as a Limited Partner in respect of such purchased Units.

17. NEP does not and will not have any board or management representation in respect of the Fund.

18. The terms of the Liquidity Option reflect arm's length negotiations between GoldPoint and NEP, and *bona fide* terms and conditions.

19. The exercise of the Liquidity Option by a number of Participating Limited Partners could result in NEP acquiring 20% or more of the outstanding Units and, as a result, the operation of the Liquidity Option would be a take-over bid for the purposes of the Take-Over Bid Requirements.

20. The Legislation provides an exemption from the Take-Over Bid Requirements with respect to non-reporting issuers if (the **Non-Reporting Issuer Exemption**):

    (a) the offeree issuer is not a reporting issuer;

    (b) there is not a published market for the securities that are the subject of the bid; and

    (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who (i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or (ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.

21. Although the Fund will not be a reporting issuer and there will be no published market for the Units, as there is no restriction on the number of Limited Partners that the Fund may have, there can be no assurances that the Fund will have fewer than 50 Limited Partners and NEP may not be able to rely on the Non-Reporting Issuer Exemption in respect of acquisitions made pursuant to the Liquidity Option.

22. The Filers are not in default of securities legislation in any jurisdiction.

Decision

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

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

(a) a summary of the principal terms of the Liquidity Option is set out in the PPM, and such terms are not amended or extended other than in accordance with the terms of the Liquidity Sale Agreement, as disclosed;

(b) a copy of the Liquidity Sale Agreement is provided to potential investors, as part of, or together with, the PPM;

(c) there is no published market for the Units;

(d) the Fund is not a reporting issuer;

(e) at the time that a person becomes a Limited Partner, it is an “accredited investor” (as defined in NI 45-106); and

(f) neither NEP nor any of its joint actors

    (i) has, or has had within the relevant preceding 12 month period, any board or management representation in respect of the Fund, or

    (ii) has knowledge of any material information concerning the Fund or the Units that has not been generally disclosed.

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

2.1.7 Canoe Financial LP and the Canoe Mutual Funds listed in Schedule A

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus for 60 days – Lapse date extended to permit time for approval of prior exemptive relief application– Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus.

Applicable Legislative Provisions

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

Citation: *Re Canoe Financial LP*, 2018 ABASC 91

June 4, 2018

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

AND

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

AND

**IN THE MATTER OF
CANOE FINANCIAL LP
(the Filer)**

AND

**IN THE MATTER OF
CANOE MUTUAL FUNDS LISTED IN SCHEDULE A
(each a Fund)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to extend the respective time limits for the filing of: (i) the *pro forma* prospectus, *pro forma* annual information form and *pro forma* fund facts document; and (ii) the final simplified prospectus, annual information form and fund facts document of the Funds to the time periods that would be applicable if the lapse date for the distribution of the securities of the Funds (the **Securities**) were August 18, 2018 (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each jurisdiction of Canada, other than Ontario; and

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

Interpretation

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

Representations

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

1. The Filer is a limited partnership established under the laws of Alberta. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in Alberta and certain other jurisdictions of Canada.

2. The Filer is the manager and trustee of each Fund and is the portfolio manager of certain of the Funds.

3. Each of the Funds is a reporting issuer in each jurisdiction of Canada and neither the Filer nor any of the Funds are in default of securities legislation in any jurisdiction of Canada.

4. The Securities are currently distributed to the public in each jurisdiction of Canada pursuant to a simplified prospectus, annual information form and fund facts document, each dated June 19, 2017 (the **Current Offering Documents**).

5. Pursuant to section 2.5 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, the lapse date for the distribution of Securities under the Current Offering Documents is June 19, 2018 (the **Lapse Date**).

6. The Filer filed an application on behalf of the Funds on October 31, 2017 to obtain relief to facilitate the restructuring of the operations of the Funds and is still in the process of obtaining the desired relief from the Decision Makers (the **Initial Relief**).

7. The Filer will file a *pro forma* simplified prospectus, *pro forma* annual information form and *pro forma* fund facts document for the Funds as soon as practicable after the Initial Relief is granted.

8. If the Exemption Sought is not granted, the Funds will cease distribution of the Securities on the Lapse Date.

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

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

11. The Exemption Sought will not affect the general accuracy of the information contained in the Current Offering Documents and therefore will not be prejudicial to the public interest.

Decision

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

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

"Tom Graham"
Director
Corporate Finance

Schedule A

Canoe Bond Advantage Fund
Canoe Bond Advantage Class*
Canoe Canadian Corporate Bond Fund
Canoe Floating Rate Income Fund
Canoe Global Income Fund
Canoe Global Income Class*
Canoe Enhanced Income Fund
Canoe Enhanced Income Class*
Canoe Strategic High Yield Fund
Canoe Strategic High Yield Class*
Canoe Canadian Monthly Income Class*
Canoe North American Monthly Income Class*
Canoe Canadian Asset Allocation Class*
Canoe Equity Income Class*
Canoe Premium Income Fund
Canoe U.S. Equity Income Class*
Canoe Global All-Cap Class
Canoe Equity Class*
Canoe Energy Income Class*
Canoe Energy Class*

* each a class of Canoe ‘GO CANADA!’ Fund Corp.

2.1.8 CWB Wealth Management Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the self-dealing provision in s.4.2(1) of National Instrument 81-102 Investment Funds to permit inter-fund trades in debt securities among investment funds and managed accounts managed by the same manager – inter-fund trades will comply with the conditions in subsection 6.1(2) of NI 81-107 Independent Review Committee for Investment Funds, including the requirement for independent review committee approval.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from subparagraphs 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit inter-fund trades among investment funds and managed accounts managed by the same manager – inter-fund trades subject to conditions, including independent review committee approval and pricing requirements – trades involving exchange-traded securities permitted to occur at last sale price as defined in the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5, 15.1.
National Instrument 81-102 Investment Funds, ss. 4.2(1), 4.3(1), 4.3(2), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.1(2).

Citation: *Re CWB Wealth Management Ltd.*, 2018 ABASC 87

June 1, 2018

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

AND

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

AND

IN THE MATTER OF
CWB WEALTH MANAGEMENT LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for the following exemptions (collectively, the **Exemption Sought**):

(a) an exemption (**Subsection 4.2(1) Relief**) from the prohibition in subsection 4.2(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Public Fund (as defined below) to purchase debt securities from, or sell debt securities to, a Pooled Fund (as defined below);

(b) an exemption (the **Inter-Fund Trading Relief**) from the prohibitions in subparagraphs 13.5(2)(b)(ii) and (iii) (the **Trading Prohibitions**) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) against a registered adviser knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an associate of a responsible person, or from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit:

i. a Fund or a Managed Account (both as defined below) to purchase securities from or sell securities to a Fund or a Managed Account (an **Inter-Fund Trade**); and

ii. an Inter-Fund Trade of an Exchange-Traded Security (as defined below) to be executed at the Last Sale Price (as defined below) prior to the execution of the trade, in lieu of the closing sale price on the day of the transaction (the **Closing Sale Price**) contemplated by the definition of "current market price of the security" in subparagraph 6.1(1)(a)(i) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer in each of the provinces and territories of Canada other than Ontario; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 31-103, NI 81-102 or

NI 81-107 have the same meaning if used in this decision, unless otherwise defined herein. The following terms have the following meanings:

Exchange-Traded Security means a security of a class that is listed for trading on an exchange in Canada or a foreign jurisdiction.

Fund means each Public Fund or Pooled Fund, and Funds means all the Funds.

Last Sale Price means the “last sale price” as defined in the Universal Market Integrity Rules of the IIROC.

Managed Account means an existing or future account for which the Filer makes the investment decisions, having been granted the discretion to trade in securities for the account without requiring the client’s express written consent to a transaction.

Public Fund means each existing or future investment fund that is a reporting issuer and subject to NI 81-102 and 81-107, for which the Filer acts, or may act, as investment fund manager, portfolio adviser or both.

Pooled Fund means each existing or future investment fund that is not a reporting issuer, for which the Filer acts, or may act, as investment fund manager, portfolio adviser or both.

Representations

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

The Filer

1. The Filer is a corporation established under the laws of Alberta with its head office in Edmonton, Alberta.

2. The Filer is registered as a portfolio manager and exempt market dealer in Alberta, Ontario, British Columbia, Manitoba and Saskatchewan, and as an investment fund manager in Alberta and Ontario.

3. The Filer is the portfolio manager and investment fund manager of each Fund.

4. The Filer is the portfolio manager of each Managed Account.

5. The Filer is not in default of securities legislation of any province or territory of Canada.

The Funds

6. Each of the Funds is, or will be, an investment fund established as a trust, partnership or corporation under the laws of Canada or a province or territory of Canada, or a jurisdiction outside of Canada.

7. The securities of each Public Fund are, or will be, qualified for distribution under a prospectus, and each Public Fund is, or will be, a reporting issuer under the securities legislation of one or more jurisdictions in Canada.

8. The securities of each Pooled Fund are, or will be, distributed pursuant to one or more available exemptions from the prospectus requirement of applicable securities legislation. None of the Pooled Funds are, or are expected to be, reporting issuers in any province or territory of Canada or other jurisdiction and none are, or are expected to be, subject to NI 81-102 or NI 81-107 (except to the extent applicable pursuant to the Exemption Sought).

9. Each Fund's reliance on the Exemption Sought will be compatible with its investment objectives and strategies.

10. The Filer acts, or will act, as the trustee of each Public Fund. Canadian Western Trust, a registered trust corporation and an affiliate of the Filer, acts, or will act, as the trustee of each Pooled Fund.

11. None of the existing Funds are in default of securities legislation of any province or territory of Canada.

Managed Accounts

12. Each Managed Account is, or will be, managed pursuant to an investment management agreement or other document which is, or will be, executed by each client who wishes to receive the portfolio management services of the Filer and which provides the Filer full discretionary authority to trade securities for the Managed Account without obtaining the specific consent of the client to execute the trade.

13. The investment management agreement or other document in respect of each Managed Account contains, or will contain, authorization from the client for the Filer to make Inter-Fund Trades.

Independent Review Committee

14. Each Public Fund has, or will have, an independent review committee (**IRC**) in accordance with the requirements of NI 81-107. Each Inter-Fund Trade by a Public Fund with a Pooled Fund or a Managed Account will be authorized by the IRC of the Public Fund in accordance with section 5.2 of NI 81-107, and the Filer will comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with such Inter-Fund Trades.

15. Though the Pooled Funds are not, and will not be, subject to the requirements of NI 81-107, each Pooled Fund will have an IRC at the time the Pooled Fund makes an Inter-Fund Trade. The mandate of the IRC of each Pooled Fund will comply with the following provisions of NI 81-107 as if the Pooled Fund was a reporting issuer: (a) composition of the IRC as set out in section 3.7, and (b) the standard of care set out in section 3.9. The IRC of a Pooled Fund will not approve an Inter-Fund Trade involving a Pooled Fund unless it has made the determination set out in subsection 5.2(2) of NI 81-107.

16. If the IRC of a Fund becomes aware of an instance where the Filer did not comply with the terms of this decision or a condition imposed by securities legislation or the IRC in its approval, the IRC will, as soon as practicable, notify in writing the Decision Makers.

Inter-Fund Trades

17. At the time of an Inter-Fund Trade, the Filer will have policies and procedures in place to enable the applicable Funds and Managed Accounts to engage in Inter-Fund Trades. The following procedures will be applied:

    (a) in respect of a purchase or a sale of a security by a Fund or Managed Account, as applicable (Portfolio A), the portfolio manager of the Filer will either place the trade directly or will deliver the trade instructions to a trader on a trading desk of the Filer;

    (b) in respect of a purchase or sale of a security by another Fund or Managed Account, as applicable (Portfolio B), the portfolio manager of the Filer will either place the trade directly or will deliver the trade instructions to a trader on a trading desk of the Filer;

(c) each portfolio manager of the Filer will request the approval of the chief compliance officer of the Filer (or his or her designated alternate during periods when it is not practicable for the chief compliance officer to address the matter) (the **CO**) to execute the trade as an Inter-Fund Trade;

(d) once the portfolio manager or trader on the trading desk has confirmed the approval of the CO, the portfolio manager or the trader on the trading desk will have the discretion to execute the trade as an Inter-Fund Trade between Portfolio A and Portfolio B in accordance with the requirements of paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107, except that for purposes of paragraph (e) of subsection 6.1(2) in respect of Exchange-Traded Securities, the trade may be executed at the Last Sale Price;

(e) the policies applicable to the portfolio manager and the trading desk of the Filer will require that all Inter-Fund Trade orders are to be executed on a timely basis and will remain open no longer than 30 days; and

(f) the portfolio manager or the trader on a trading desk will advise the Filer of the price at which the Inter-Fund Trade occurred.

Reasons for Exemption Sought

18. Since the Filer is, or will be, the trustee of each Public Fund, each Public Fund is, or will be, an associate of the Filer. Where the Filer is, or will be, the adviser to a Fund, the Filer is, or will be, a responsible person of the Fund. The Filer is, or will be, a responsible person of each Managed Account. Accordingly, each Public Fund is, or will be, an associate of a responsible person of another Fund or Managed Account.

19. Pursuant to the Legislation, a Fund or a Managed Account, as applicable, may be restricted from making Inter-Fund Trades with another Fund or Managed Account if:

    (a) the second Fund is an associate of a responsible person of the first Fund or of the Managed Account, as applicable, which will be the case on each occasion that the second Fund is a Public Fund; or

    (b) a responsible person of the first Fund or the Managed Account, as applicable, is an adviser to the second Fund, which is expected to be the case for each second Fund.

20. Absent the Exemption Sought, the Trading Prohibitions prohibit the Filer from engaging in Inter-Fund Trades. Specifically:

    (a) as the adviser to a Pooled Fund or Managed Account, the Filer cannot rely upon the exemption from the Trading Prohibitions codified in subsection 6.1(4) of NI 81-107 because such codified relief is not available in the context of the Pooled Funds and Managed Accounts; and

    (b) although the Trading Prohibitions are similar to the restrictions applicable to Public Funds contained in subsection 4.2(1) of NI 81-102, there is no codified relief from the Trading Prohibitions equivalent to subsection 4.3(1) of NI 81-102 for purchases and sales of securities with available public quotations. Subsection 6.1(4) of NI 81-107 provides relief from the Trading Prohibitions only if, among other conditions:

        i. the trade involves two investment funds to which NI 81-107 applies (which is not the case when a Managed Account or Pooled Fund is one of the parties to the Inter-Fund Trade); and

        ii. the Inter-Fund Trade occurs at the current market price of the security which, in the case of Exchange-Traded Securities, does not include the Last Sale Price.

Decision

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

The decision of the Decision Makers under the Legislation is that:

(a) the Subsection 4.2(1) Relief is granted in respect of the Inter-Fund Trade of debt securities provided that, whether or not the Fund is a reporting issuer, the following conditions are satisfied:

    i. the Inter-Fund Trade is consistent with the investment objective of each of the Funds involved in the trade;

ii. the IRC of each Fund involved in the trade has approved the Inter-Fund Trade in accordance with the terms of section 5.2 of NI 81-107; and

iii. the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107; and

(b) the Inter-Fund Trading Relief is granted in respect of an Inter-Fund Trade provided that, whether or not the Fund is a reporting issuer, the following conditions are satisfied:

i. the Inter-Fund Trade is consistent with the investment objective of each Fund and Managed Account, as applicable;

ii. the Inter-Fund Trade has been referred by the Filer, as manager of each Fund, to the IRC of that Fund in the manner contemplated by section 5.1 of NI 81-107 and the Filer and the IRC of the Fund have complied with section 5.4 of NI 81-107 in respect of any standing instructions the IRC has provided in connection with the Inter-Fund Trade;

iii. the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;

iv. if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account contains or will contain the authorization of the client to engage in Inter-Fund Trades and such authorization has not been revoked; and

v. the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 in respect of Exchange-Traded Securities, the Last Sale Price may be used in lieu of the Closing Sale Price.

"Tom Graham"
Director
Corporate Finance

2.1.9 Lysander Funds Limited

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), 19.1.

June 5, 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
LYSANDER FUNDS LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of existing mutual funds and future mutual funds of which the Filer is, or in the future will be, the investment fund manager (or which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in paragraphs 15.3(4)(c) (in respect of the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards and Lipper Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

2. the rating or ranking is to the same calendar month end that is:

   (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

   (b) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

The Filer and the Funds

1. The Filer is a corporation established under the laws of the Province of Ontario with its head office located at 100 York Blvd, Suite 501, Richmond Hill, Ontario.

2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, and as an exempt market dealer in Ontario.

3. The Filer manages the Funds, which are retail mutual funds, the securities of which are, or will be, qualified for distribution to investors in each of the Jurisdictions pursuant to one or more prospectuses or simplified prospectuses, as the same may be amended or renewed from time to time.

4. Each of the Funds is, or will be, a reporting issuer in each of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

5. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Jurisdictions.

FundGrade Ratings and FundGrade A+ Awards

6. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.

7. Fundata Canada Inc. (**Fundata**) is a “mutual fund rating entity” as that term is defined in NI 81-102. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

8. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

9. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

10. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a fund must show consistently high scores for all ratios across all time periods.

11. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

12. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

13. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Lipper Leader Ratings and Lipper Awards

14. The Filer also wishes to include in sales communications of the Funds references to Lipper Leader Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Ratings for Consistent Return, Lipper Ratings for Total Return, Lipper Ratings for Preservation and the Lipper Ratings for Expense, which are described below) and Lipper Awards (as described below) where such Funds have been awarded a Lipper Award.

15. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

16. One of Lipper's programs is the Thomson Reuters Lipper Fund Awards program (the **Lipper Awards**). This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper Awards take place in approximately 23 countries.

17. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

18. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

19. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

20. In Canada, the Lipper Leader Rating System includes Lipper Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), Lipper Ratings for Total Return (reflecting funds' historical total return performance relative to funds in the same classification), Lipper Ratings for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification) and Lipper Ratings for Expense (reflecting funds' expense minimization relative to funds with similar load structures). In each case, the categories for fund classification used by Lipper for the Lipper Leader Ratings are those maintained by CIFSC (or a successor to CIFSC). Lipper Leader Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an unweighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

21. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

Sales Communication Disclosure

22. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings", given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

23. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e. for one, three, five and ten year periods, as applicable).

24. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

25. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore also, required in order for the Funds to reference the FundGrade A+ Awards in sales communications.

26. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

27. Because the evaluation of funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

28. The Lipper Leader Ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leader Ratings as described above. Therefore, references to Lipper Leader Ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

29. In Canada and elsewhere, Lipper Leader Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader Rating cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader Ratings in sales communications.

30. In addition, a sales communication referencing the overall Lipper Leader Ratings and the Lipper Awards, which are based on the Lipper Leader Ratings, must disclose the corresponding Lipper Leader Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader Ratings, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.

31. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader Ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) of NI 81-102 is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the overall Lipper

Leader Ratings or Lipper Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying Lipper Leader Ratings are not available for the one year period, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for the Funds to reference overall Lipper Leader Ratings and the Lipper Awards in sales communications.

32. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The paragraph provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

33. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

34. The Exemption Sought is required in order for the FundGrade Ratings, FundGrade A+ Awards, Lipper Leader Ratings, and Lipper Awards to be referenced in sales communications relating to the Funds.

35. The Filer submits that the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. These awards and ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of FundGrade or Lipper, as applicable, in fund analysis that alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings to be referenced in sales communications relating to a Fund, provided that

1. the sales communication complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of mutual funds in the category for the applicable period;

   (c) the name of the ranking entity, i.e., Fundata or Lipper;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award, FundGrade Rating, Lipper Award or Lipper Leader Rating is based;

   (e) a statement that FundGrade Ratings or Lipper Leader Ratings are subject to change every month;

   (f) in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Award, as applicable;

   (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award) or a Lipper Leader Rating (other than Lipper Leader Ratings referenced in connection with a Lipper Award), a brief overview of the FundGrade Rating or Lipper Leader Rating, as applicable;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader Rating is referenced, the Lipper Leader Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

(j) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category) or Lipper Leader Ratings from 1 to 5 (e.g., rating of 5 indicates a fund is in the top 20% of its category), as applicable; and

(k) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Fundata or Lipper, as applicable;

2. the FundGrade A+ Awards and Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Stephen Paglia"
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.10 PIMCO Canada Corp. and RBC Dominion Securities Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Consolidated Jurisdictions – Relief granted from the requirement in s.3.2(2), NI 81-101 to deliver a fund facts document to investors for purchases of mutual fund securities of certain series under automatic switching programs – Automatic switches between introductory retail series and series offering a lower management fee, based on the size of a fund investment – Investment fund manager initiating automatic switches in and out of high net worth series on behalf of investors when their investments satisfy or cease to meet eligibility requirements of the high net worth series – Automatic switches between series of a fund triggering a distribution of securities which requires delivery of a fund facts document – Relief granted from the requirement to deliver a fund facts document to investors for purchases of series securities made under automatic switching programs subject to compliance with certain notification and disclosure requirements in the simplified prospectus and fund facts document – Relief granted from the requirement to prepare a fund facts document for each series of securities of a mutual fund in accordance with the form requirements in Form 81-101F3 and the requirement that the fund facts document contain only information that is specifically required or permitted to be in Form 81-101F3 so that the fund facts document delivered to investors in the automatic switching program will provide disclosure relating to the automatic switching program and all series in the automatic switching program, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01, 4.1(3)(a) and (d), 6.1.

June 5, 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
PIMCO CANADA CORP.
(the Filer)**

AND

**IN THE MATTER OF
RBC DOMINION SECURITIES INC.
(the Representative Dealer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each existing mutual fund it manages (each, an **Existing Fund** and collectively, the **Existing Funds**) and any mutual fund for which the Filer may act as investment fund manager in the future (each, a **Future Fund** and collectively, the Future Funds and together with the Existing Funds, the **Funds** and each, a **Fund**) and the Representative Dealer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting:

(a) each dealer who trades in securities of the Funds (a **Dealer**) from the requirement in the Legislation for a dealer to deliver or send the most recently-filed fund facts document, which may include a Multiple Fund Facts Document, as defined below (a **Fund Facts**), in the manner as required under the Legislation (the **Pre-Sale Fund Facts Delivery Requirement**) in respect of the purchases of High Net Worth Series (as defined below) securities of the Funds that are made pursuant to Lower Fee Switches (as defined below) and in respect of

the purchases of Retail Series (as defined below) securities of the Funds that are made pursuant to Higher Fee Switches (as defined below) (the **Fund Facts Delivery Relief**); and

(b) the Funds from the requirement in section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) to prepare a Fund Facts in the form of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), to permit the Funds to deviate from certain requirements in Form 81-101F3 in order to prepare a Multiple Fund Facts Document (as defined below) that includes the Program Disclosure (as defined below) (the **Multiple Fund Facts Relief**, and together with the Fund Facts Delivery Relief, the **Exemption Sought**).

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

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

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

Interpretation

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

"Book Value" is the book value of record maintained by the Filer's recordkeeping agent for each position in each series of each Fund held in each account, which is based on the historic transaction activity on record. Book Value is not guaranteed to be equal to the investor's "adjusted cost base" for tax reporting purposes but is provided by the recordkeeping agent and used in connection with determining the High Net Worth Criteria. External book value figures will not be taken into account in connection with determining the High Net Worth Criteria. Investors may confirm the current Book Value for their holdings by contacting the Filer.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Nova Scotia with its head office in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, a portfolio manager and an exempt market dealer in each of the provinces of Canada, a commodity trading manager in Ontario and an adviser in Manitoba.

3. The Filer is the investment fund manager of the Existing Funds and will be the investment fund manager of Future Funds.

4. The Filer and the Existing Funds are not in default of securities legislation in any of the Jurisdictions.

The Representative Dealer

5. Securities of the Funds are, or will be, distributed through Dealers that include the Representative Dealer.

6. The Representative Dealer is a member of the Investment Industry Regulatory Organization of Canada and is registered in the category of investment dealer in the Jurisdictions.

7. Each Dealer is, or will be, registered as a dealer in one or more of the provinces and territories of Canada. The Dealers are, or will be, members of either the Investment Industry Regulatory Organization of Canada or the Mutual Fund Dealers Association of Canada.

8. The Representative Dealer is not in default of securities legislation in any of the Jurisdictions.

The Funds

9. Each Fund is, or will be, an open-end mutual fund trust created under the laws of one of the Jurisdictions or an open-end mutual fund that is a class of shares of a mutual fund corporation.

10. Each Fund is, or will be, a reporting issuer under the laws of the Jurisdictions and subject to National Instrument 81-102 *Investment Funds*. The securities of the Funds are, or will be, qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that have been, or will be, prepared and filed in accordance with NI 81-101.

11. The Existing Funds currently offer up to 12 series – Series A, A(US$), F, F(US$), I, I(US$), M, M(US$), O, O(US$), H and ETF Series. The Filer may offer additional series in the future.

12. Series O, O(US$), M, M(US$) and any future applicable high net worth series securities of the Funds (the **High Net Worth Series**) have, or will have, lower management fees than the corresponding Series A, A(US$), F, F(US$) and any future applicable retail series securities (the **Retail Series**) and are, or will be, only available to investors who meet the High Net Worth Criteria (as defined below).

13. The securities of the Existing Funds are currently offered under a simplified prospectus, Fund Facts and annual information form dated July 27, 2017, as amended and restated as of August 29, 2017.

14. If the Exemption Sought is granted, the Filer will file an amended and restated simplified prospectus and annual information form and Fund Facts to announce the Fee Alignment Program (as defined below).

15. The Existing Funds are not in default of securities legislation in any of the Jurisdictions.

Fee Alignment Switches

16. Subject to receiving the Exemption Sought, the Filer may implement a program (the **Fee Alignment Program**), effective on or about June 29, 2018 (the **Implementation Date**), whereby investors holding Retail Series securities will be switched into the corresponding High Net Worth Series securities (each of Series A and O, Series A(US$) and O(US$), Series F and M, and Series F(US$) and M(US$) is a Program Set and together are the Program Sets) if they meet the following criteria (the **High Net Worth Criteria**):

To switch from Series A to Series O	If an investor holds, on the last business day of a quarter, a minimum of $100,000* of Series A units of a single Fund, based on the higher of market value or Book Value, all of that investor's Series A units** will be switched into Series O units, if the Fund offers Series O units and the switch would not trigger a redemption fee.
To switch from Series A(US$) to Series O(US$)	If an investor holds, on the last business day of a quarter, a minimum of $100,000* of Series A(US$) units of a single Fund, based on the higher of market value or Book Value, all of that investor's Series A(US$) units** will be switched into Series O(US$) units, if the Fund offers Series O(US$) units and the switch would not trigger a redemption fee.
To switch from Series F to Series M	If an investor holds, on the last business day of a quarter, a minimum of $100,000* of Series F units of a single Fund, based on the higher of market value or Book Value, all of that investor's Series F units** will be switched into Series M units, if the Fund offers Series M units.
To switch from Series F(US$) to Series M(US$)	If an investor holds, on the last business day of a quarter, a minimum of $100,000* of Series F(US$) units of a single Fund, based on the higher of market value or Book Value, all of that investor's Series F(US$) units** will be switched into Series M(US$) units, if the Fund offers Series M(US$) units.
To switch from Series O to Series A	If an investor holds, on the last business day of a quarter, less than $100,000* of Series O units of a single Fund, based on the higher of market value or Book Value***, that investor's series O units will be switched to Series A units, if the Fund offers Series A units.

To switch from Series O(US$) to Series A(US$)	If an investor holds, on the last business day of a quarter, less than $100,000* of Series O(US$) units of a single Fund, based on the higher of market value or Book Value***, that investor's series O(US$) units will be switched to Series A(US$) units, if the Fund offers Series A(US$) units.
To switch from Series M to Series F	If an investor holds, on the last business day of a quarter, less than $100,000* of Series M units of a single Fund, based on the higher of market value or Book Value***, that investor's series M units will be switched to Series F units, if the Fund offers Series F.
To switch from Series M(US$) to Series F(US$)	If an investor holds, on the last business day of a quarter, less than $100,000* of series M(US$) units of a single Fund, based on the higher of market value or Book Value***, that investor's Series M(US$) units will be switched to Series F(US$) units, if the Fund offers Series F(US$).

* Future series may have a minimum amount that may be more or less than $100,000.

** No partial account switches will be permitted.

*** The switches may occur because of redemptions that decrease the amount of total investment in a Fund. Market value declines alone will not lead to a switch.

17. The Filer may switch these Retail Series investors into the High Net Worth Series (the **Lower Fee Switches**) without the Dealer or investor initiating the trade. If an investor holding High Net Worth Series securities ceases to meet the High Net Worth Criteria, the Filer will switch the High Net Worth Series securities into the applicable Retail Series securities without the Dealer or investor initiating the trade (the **Higher Fee Switches**, and together with the Lower Fee Switches, the **Fee Alignment Switches**). Eligibility for a Fee Alignment Switch is determined on the last business day of a quarter. The Fee Alignment Switches will be processed on or about the first business day of the next quarter.

18. The Filer may not initiate a Fee Alignment Switch or may cancel a Fee Alignment Switch if, between the day on which the High Net Worth Criteria is evaluated and the day on which a Fee Alignment Switch is processed, the investor switches its securities to another Fund.

19. In a situation where fund performance reduces an investor's total investments in a Fund below the minimum amounts set out in the High Net Worth Criteria, which were previously met by the investor, the investor's account would not be subject to a Higher Fee Switch and will continue to enjoy the benefit of the lower management fees associated with the High Net Worth Series.

20. Investors may access High Net Worth Series securities by: (a) initially investing in High Net Worth Series securities if they meet the High Net Worth Criteria; or (b) initially investing in Retail Series securities and then, upon meeting the High Net Worth Criteria, having those Retail Series securities switched into High Net Worth Series securities by way of a Lower Fee Switch.

21. Investors may access Retail Series securities by: (a) initially investing in Retail Series securities; or (b) initially investing in High Net Worth Series securities and then, upon not meeting the High Net Worth Criteria, having those High Net Worth Series securities switched into Retail Series securities by way of a Higher Fee Switch.

22. The trailing commissions for the High Net Worth Series and the Retail Series securities, eligible for the Fee Alignment Program, of each Fund, as applicable, are, or will be, identical.

23. Further to each Lower Fee Switch, an investor's account would continue to hold securities in the same Fund(s) as before the Lower Fee Switch, with the only material difference to the investor being that the management fee charged for the High Net Worth Series securities would be lower than that charged for Retail Series securities.

24. In no event will an investor who meets the High Net Worth Criteria and is switched into the High Net Worth Series as part of a Fee Alignment Switch be subject to a management fee higher than that of the Retail Series for which the investor initially subscribed.

25. Further to each Higher Fee Switch, an investor's account would continue to hold securities in the same Fund(s) as before the Higher Fee Switch, with the only material difference to the investor being that the management fee charged for the Retail Series securities would be higher than that charged for High Net Worth Series securities.

26. There are no sales charges, switch fees, short term trading fees or other fees payable by the investor upon a Fee Alignment Switch. Redemption fees will not be waived, so a Fee Alignment Switch will not take place if it would trigger a redemption fee (i.e. a low load fee).

27. Implementation of the Fee Alignment Program will have no adverse tax consequences on investors under Canadian tax legislation.

Multiple Fund Facts Document Relief

28. The Filer proposes to prepare, for each of their Funds, a consolidated Fund Facts for each Program Set (the **Multiple Fund Facts Document**), which Multiple Fund Facts Document will be delivered to securityholders in satisfaction of the Pre-Sale Fund Facts Delivery Requirement in connection with initial purchases of Retail Series or High Net Worth Series securities following the Implementation Date.

29. Each Multiple Fund Facts Document will include the information required by Form 81-101F3 for each of the series in the applicable Program Set, except for the past performance section, which will only disclose past performance data of the applicable Retail Series, as the case may be, as further described in representations 30(h) and (i) below.

30. Specifically, for each Multiple Fund Facts Document, the Filer proposes to deviate from the following requirements in Form 81-101F3:

    a. General Instructions (10) and (16), to permit the Multiple Fund Facts Document to be the Fund Facts for, and disclose information relating to, each of the series in the applicable Program Set, except as further described below;

    b. Item 1 (c.1) of Part I, to permit the Multiple Fund Facts Document to name each of the series in the applicable Program Set in the heading;

    c. Instruction (0.1) of Item 2 of Part I, to permit the Multiple Fund Facts Document to identify the fund codes of each of the series in the applicable Program Set;

    d. Instruction (1) of Item 2 of Part I, to permit the Multiple Fund Facts Document to list the date that each of the series in the applicable Program Set first became available to the public;

    e. Instruction (3) of Item 2 of Part I, to permit the Multiple Fund Facts Document to disclose the management expense ratio (the **MER**) of each of the series in the applicable Program Set;

    f. Instruction (6) of Item 2 of Part I, to permit the Multiple Fund Facts Document to specify the minimum investment amount and the additional investment amount for each of the series in the applicable Program Set;

    g. General Instruction (8), to permit the Multiple Fund Facts Document to include a footnote under the "Quick Facts" table that:

        i. states that the Fund Facts pertains to each of the series in the applicable Program Set; and

        ii. cross-references the "How much does it cost?" section of the Fund Facts for further details about the Fee Alignment Program;

    h. Item 5(1) of Part I, to permit the Multiple Fund Facts Document to:

        i. reference only the applicable Retail Series in the introduction under the heading "How has the fund performed?"; and

        ii. include, as a part of the introduction, disclosure explaining that the performance for each of the applicable High Net Worth Series in the Program Set would be similar to the performance of the corresponding Retail Series, but would vary as a result of the difference in fees compared to the corresponding Retail Series;

    i. Instruction (4) of Item 5 of Part I, to permit a Multiple Funds Facts Document to show the required performance data under the sub-headings "Year-by-year returns," "Best and worst 3-month returns," and "Average return" relating only to the applicable Retail Series;

j. Item 1(1.1) of Part II, to permit a Multiple Fund Facts Document to:

i. refer to each of the series in the applicable Program Set in the introductory statement under the heading "How much does it cost?"; and

ii. include, as a part of the introductory statement, a summary of the Fee Alignment Program, consisting of:

1. a statement explaining that the High Net Worth Series charges lower management fees than the corresponding Retail Series;

2. a statement explaining the scenarios in which the Fee Alignment Switches will be due to the investor not meeting the eligibility requirements for a particular High Net Worth Series;

3. a statement explaining that a Fee Alignment Switch will not take place if it would trigger a redemption fee (i.e. a low load fee);

4. a cross-reference to specific sections of the simplified prospectus of the Funds for more details about the Fee Alignment Program; and

5. a statement disclosing that investors should speak to their representative for more details about the Fee Alignment Program;

k. Instruction (1) of Item 1 of Part II, to permit a Multiple Fund Facts Document to refer to each of the series in the applicable Program Set in the introduction under the sub-heading "Sales charges", if applicable;

l. Item 1(1.3)(2) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is not new, to:

i. disclose the MER, trading expense ratio and fund expenses of each of the series in the applicable Program Set, and where certain information is not available for a particular series, to state "not available" in the corresponding part of the table; and

ii. disclose the management fee of each series in the applicable Program Set in a new row at the bottom of the table;

m. Item 1(1.3)(3) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is not new, to provide the required disclosure for each series in the applicable Program Set; and

n. Item 1(1.3)(4) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is new, to provide the required disclosure for each series in the applicable Program Set;

(collectively, the **Program Disclosure**)

31. The Filer submits that, given that each of the series in a Program Set are part of the Fee Alignment Program, and an investor in these series would make one investment decision at the outset by purchasing the series, a Multiple Fund Facts Document containing the Program Disclosure will provide investors with a more comprehensive disclosure about the Fee Alignment Program and each of the series into which it can be switched as part of the Fee Alignment Program compared to disclosure in separate Fund Facts for each of the series in the applicable Program Set.

32. Since, if the Fund Facts Delivery Relief described below is granted, the Fund Facts for the Retail Series or High Net Worth Series, as applicable, would not be delivered in connection with a Fee Alignment Switch, the Filer submits that there is little benefit to preparing separate Fund Facts for each of the series in the applicable Program Set. The Filer submits that the Multiple Fund Facts Document containing the Program Disclosure, which would be delivered to investors before their initial investment of Retail Series or High Net Worth Series securities of a Fund, as applicable, provides investors with better disclosure than if investors received the Fund Facts pertaining only to the applicable Retail Series or High Net Worth Series under the Fee Alignment Program.

Fund Facts Delivery Requirement

33. Each Fee Alignment Switch will entail a redemption of the Retail Series or High Net Worth Series securities, as applicable, immediately followed by a purchase of the corresponding High Net Worth Series or Retail Series securities, as applicable, and will be a "distribution" under the Legislation, which triggers the Pre-Sale Fund Facts Delivery Requirement.

34. Pursuant to the Pre-Sale Fund Facts Delivery Requirement, a dealer is required to deliver the Fund Facts of a series of a fund to an investor before the dealer accepts an instruction from the investor for the purchase of securities of that series of the fund.

35. While the Filer will initiate each trade done as part of a Fee Alignment Switch, the Filer does not propose to deliver the Fund Facts to investors in connection with the purchase of securities made pursuant to a Fee Alignment Switch for the following reasons:

    a. since Retail Series investors would have received the Fund Facts disclosing the higher level of fees which applied to the Retail Series for which they initially subscribed, the investor would derive little benefit from receiving a further Fund Facts document for each Lower Fee Switch; and

    b. since a Multiple Fund Facts Document containing the Program Disclosure will provide investors with a more comprehensive disclosure about the Fee Alignment Program and each of the series into which it can be switched as part of the Fee Alignment Program compared to disclosure in separate Fund Facts for each of the series in the applicable Program Set.

36. The Filer or the Dealer will deliver or will arrange for the delivery of trade confirmations to investors in connection with each trade done further to a Fee Alignment Switch. Furthermore, details of the changes in series of securities held will be reflected in the account statements sent to investors for the quarter in which the change occurred.

37. The Filer will communicate with Dealers about the Fee Alignment Switches so that Dealers will be well prepared to appropriately communicate with existing Retail Series investors about the changes applying to their investments and will appropriately advise new Retail Series investors about the Fee Alignment Switches.

38. In the absence of the Exemption Sought, the Filer may not carry out the Fee Alignment Switches without compliance with the Pre-Sale Fund Facts Delivery Requirement.

Decision

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

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

1. the Multiple Fund Facts Relief is granted provided that each Multiple Fund Facts Document contains the Program Disclosure; and

2. the Fund Facts Delivery Relief is granted provided that:

    a. For investors invested in Retail Series or the High Net Worth Series prior to the Implementation Date, the Filer will liaise with the relevant Dealers to devise and implement a notification plan for such investors regarding the Fee Alignment Switches to communicate the following:

        i. that their investment may be automatically switched to a High Net Worth Series with lower management fees upon meeting the High Net Worth Criteria;

        ii. that their investment may be switched to a Retail Series with higher fees upon ceasing to meet the High Net Worth Criteria;

        iii. that other than a difference in management fees there will be no other material difference between the Retail Series and the High Net Worth Series; and

        iv. that they will not receive the Fund Facts in connection with a Fee Alignment Switch, but that:

            1. they may request the Fund Facts for the relevant series (which will be the Multiple Fund Facts) by calling a specified toll-free number or by sending a request via email to a specified address;

            2. the Fund Facts will be sent or delivered to them at no cost, if requested;

            3. the Fund Facts may be found either on the SEDAR website or on the Filer's website; and

4. they will not have the right to withdraw from an agreement of purchase and sale (a **Withdrawal Right**) in connection with a Fee Alignment Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts;

b. The Filer has incorporated, or will incorporate, disclosure in the simplified prospectus for the High Net Worth Series and Retail Series that sets out the following:

   i. the High Net Worth Criteria;

   ii. the fees applicable to investments in the High Net Worth Series and Retail Series;

   iii. that in the event a High Net Worth Series investor ceases to meet the High Net Worth Criteria, their investment will be switched into the corresponding Retail Series, with a higher management fee; and

   iv. that a Fee Alignment Switch will not take place if it would trigger a redemption fee (i.e. a low load fee).

c. The Multiple Fund Facts Document containing the Program Disclosure is delivered to investors prior to the time of first purchase of High Net Worth Series and Retail Series securities, as applicable, in accordance with the Pre-Sale Fund Facts Delivery Requirement; and

d. For Retail Series and High Net Worth Series investors, the Filer will send these investors an annual reminder notice advising that they will not receive the Fund Facts in connection with a Fee Alignment Switch, but that:

   i. they may request the Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

   ii. the Fund Facts will be sent or delivered to them at no cost;

   iii. the Fund Facts may be found either on the SEDAR website or on the Filer's website; and

   iv. they will not have a Withdrawal Right in respect of the securities they receive in connection with a Fee Alignment Switch, but they will have a right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

e. The Filer provides to the principal regulator, on an annual basis, beginning 60 days after the date upon which the Fund Facts Delivery Relief is first relied upon by a Dealer, either:

   i. a current list of all such Dealers that are relying on the Fund Facts Delivery Relief; or

   ii. an update to the list of such Dealers or confirmation that there has been no change to such list;

"Stephen Paglia"
Manager
Investment Funds & Structured Products Branch
Ontario Securities Commission

2.1.11 Veolia Environnement S.A.

Headnote

Dual application for Exemptive Relief Applications – Application for relief from the prospectus and registration requirements, including in Ontario and Manitoba, for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are *de minimis* – Relief granted, subject to conditions – 5 year sunset clause.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 25(1), 53(1), 74(1).
National Instrument 45-106 Prospectus Exemptions, ss. 2.14, 2.24.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.

June 1, 2018

TRANSLATION

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

AND

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

AND

IN THE MATTER OF
VEOLIA ENVIRONNEMENT S.A.
(the Filer)

DECISION

Background

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

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:

   a) trades of:

      i) units (the **Principal Classic Units**) of Sequoia Classique International (the **Principal Classic Fund**), a *fonds commun de placement d'entreprise* or "**FCPE**", a form of collective shareholding vehicle commonly used in France for the conservation or custodianship of shares held by employee-investors;

      ii) units (the **2018 Classic Units**) of a temporary FCPE named Sequoia Relais 2018 (the **2018 Classic Fund**);

      iii) units (together with the 2018 Classic Units, the **Temporary Classic Units**, and together with the 2018 Classic Units and the Principal Classic Units, the **Classic Units**) of future temporary FCPEs organized in the same manner as the 2018 Classic Fund (together with the 2018 Classic Fund, the

Temporary Classic Funds (the term **"Classic Fund"** used herein means, prior to the Merger (as defined below), the Temporary Classic Fund and following the Merger, the Principal Classic Fund);

iv) units (the **2018 Guaranteed Units**) of an FCPE named Sequoia Plus 2018 (the **2018 Guaranteed Fund**); and

v) units (together with the 2018 Guaranteed Units, the **Guaranteed Units**, and together with the Classic Units, the **Units**) of future FCPEs organized in the same manner as the 2018 Guaranteed Fund (together with the 2018 Guaranteed Fund, the **Guaranteed Funds**, and together with the Principal Classic Fund and the Temporary Classic Funds, the **Funds**),

made pursuant to an Employee Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions (as defined below) (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Units, the **Canadian Participants**);

b) trades of ordinary shares of the Filer (the **Shares**) by the Funds to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants; and

c) trades of Principal Classic Units made pursuant to an Employee Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the relevant Guaranteed Fund to the Principal Classic Fund at the end of the applicable Lock-Up Period (as defined below); and

2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Funds and Ostrum Asset Management (formerly Natixis Asset Management) (the **Management Company**) in respect of the following:

a) trades in Units made pursuant to an Employee Offering to or with Canadian Employees;

b) trades in Shares by the Funds to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants; and

c) trades in Principal Classic Units made pursuant to an Employee Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the relevant Guaranteed Fund to the Principal Classic Fund at the end of the applicable Lock-Up Period.

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

a) the Autorité des marchés financiers is the principal regulator for this application;

b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in British Columbia, Manitoba and New Brunswick (together with the Filing Jurisdictions, the **Jurisdictions**); and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* (Chapter V-1.1, r.3), Regulation 11-102 and *Regulation 45-106 respecting Prospectus Exemptions* (chapter V-1.1, r.21) (**Regulation 45-106**) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris. The Filer is not in default of securities legislation of any jurisdiction of Canada.

2. The Filer carries on business in Canada through certain related entities and has established a global employee share offering (the **2018 Employee Offering**) and expects to establish subsequent global employee share offerings following 2018 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2018 Employee Offering, the **Employee Offerings**) for Qualifying Employees and its participating related entities, including related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **Veolia Group**). Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada.

3. As of the date hereof, “Local Related Entities” include V269 - Merritt Operations Services LP, Greater Moncton Water Limited, Veolia Water Canada Inc., VWNA Winnipeg, Inc., Fort St-James Operations LP, Fort St-James Fuelco, Veolia Energy Projects Canada, Veolia Infrastructure Services, Veolia Health Op Services Montreal, Veolia Energy Canada Inc., Veolia Services Drummondville SEC, Veolia ES Canada Industrial Services, Veolia ES Canada Inc., Impérial Traitement Industriel Inc., Global Récupération Inc. and Sade Canada Inc. For any Subsequent Employee Offering, the list of “Local Related Entities” may change.

4. Each Employee Offering will be made under the terms as set out herein and for greater certainty, all of the representations will be true for each Employee Offering other than paragraphs 3, 22 and 25, which may change (save for references to the 2018 Classic Fund, the 2018 Guaranteed Fund and the 2018 Employee Offering, which will be varied such that they are read as references to the relevant Temporary Classic Fund, the relevant Guaranteed Fund and Subsequent Employee Offering, respectively).

5. As of the date hereof and after giving effect to any Employee Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the relevant Funds on behalf of Canadian Participants) more than 10% of the Shares issued and outstanding, and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Filer.

6. Each Employee Offering is comprised of two subscription options:

   a) an offering of Shares to be subscribed through the relevant Temporary Classic Fund, which will be merged with the Principal Classic Fund following completion of the Employee Offering (the **Classic Plan**); and

   b) an offering of Shares to be subscribed through the relevant Guaranteed Fund (the **Guaranteed Plan**).

7. Only persons who are employees of an entity forming part of the Veolia Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.

8. The 2018 Classic Fund and the 2018 Guaranteed Fund were established for the purpose of implementing the 2018 Employee Offering. The Principal Classic Fund was established for the purpose of implementing the Employee Offering generally. There is no current intention for any of the 2018 Classic Fund, the 2018 Guaranteed Fund or the Principal Classic Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any Temporary Classic Fund or future Guaranteed Fund that will be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

9. The 2018 Classic Fund, the 2018 Guaranteed Fund and the Principal Classic Fund have been registered with, and approved by, the *Autorité des marchés financiers* in France (the **French AMF**). It is expected that each Temporary Classic Fund and Guaranteed Fund established for Subsequent Employee Offerings will be registered with, and approved by, the French AMF.

10. All Units by Canadian Participants will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions prescribed by French law and adopted under the offering in Canada (such as death, disability or termination of employment).

11. Under the Classic Plan, each Employee Offering will be made as follows:

    a) Canadian Participants will subscribe for the relevant Temporary Classic Units, and the relevant Temporary Classic Fund will then subscribe for Shares using the Canadian Participants’ contributions at a subscription price that is the Canadian dollar equivalent of the average opening price of the Shares (expressed in Euros) on Euronext Paris for the 20 consecutive trading days preceding the date of fixing of the subscription price (the **Reference Price**) by the chief executive officer, less a specified discount to the Reference Price.

b) Initially, the Shares subscribed for will be held in the relevant Temporary Classic Fund and the Canadian Participants will receive the relevant Temporary Classic Units.

c) Following the completion of an Employee Offering, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the decision of the supervisory board of the FCPE and the approval of the French AMF). The Temporary Classic Units held by Canadian Participants will be exchanged for Principal Classic Units on a *pro rata* basis and the Shares subscribed for under the Employee Offering will be held in the Principal Classic Fund (such transaction, the **Merger**). The Filer is relying on the exemption from the prospectus requirement pursuant to section 2.11 of Regulation 45-106 in respect of the issuance of Principal Classic Units to Canadian Participants in connection with the Merger.

d) Any dividends paid on the Shares held in the Classic Fund will be reinvested into the Classic Fund and used to purchase additional Shares. To reflect this reinvestment, the net asset value of the Units will be increased. No new Classic Units (or fractions thereof) will be issued to Canadian Participants.

e) At the end of the relevant Lock-Up Period, the Canadian Participant may:

i) request to have his or her Classic Units redeemed in consideration for the underlying Shares or a cash payment equal to the then market value of the underlying Shares; or

ii) continue to hold Classic Units in the Classic Fund and request to have those Classic Units redeemed at a later date.

f) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period (**Early Redemption**), the Canadian Participant may request the redemption of his or her Units in the Classic Fund in consideration for a cash payment equal to the then market value of the underlying Shares.

12. Under the Guaranteed Plan, each Employee Offering will be made as follows:

a) Canadian Participants will contribute up to the Canadian dollar equivalent of €500 to the relevant Guaranteed Fund (the **Employee Contribution**), and the Local Related Entities that employ the Canadian Participants will make a matching contribution on behalf of such Canadian Participants to the relevant Guaranteed Fund, up to the Canadian dollar equivalent of €500 gross (the **Employer Contribution**, and together with the Employee Contribution, the **Total Contribution**). For clarity, the maximum Total Contribution per Canadian Participant in an Employee Offering is the Canadian dollar equivalent of €1,000.

b) The relevant Guaranteed Fund will apply the cash received from the Total Contribution to subscribe for Shares at a subscription price that is equal to the Reference Price, less a specified discount to the Reference Price.

c) The Shares subscribed for will be held in the relevant Guaranteed Fund and the Canadian Participants will receive the relevant Guaranteed Units.

d) The relevant Guaranteed Fund will enter into a swap agreement (the **Swap Agreement**) with Société Générale (the **Bank**), which bank is governed by the laws of France. For any Subsequent Employee Offering, the "Bank" may change. In the event of such a change, the successor to the Bank will remain a large French commercial bank subject to French banking legislation.

e) Each Canadian Participant will have a guaranteed return equal to the sum of: (i) 100% of the Total Contribution; and (ii) a multiple of the Average Increase (as defined below) in the price of the Shares subscribed for on his or her behalf.

f) Under the terms of the Swap Agreement, the relevant Guaranteed Fund will remit to the Bank an amount equal to the net amount of any dividends paid on the Shares held in such Guaranteed Fund.

g) At the end of the applicable Lock-Up Period, the relevant Guaranteed Fund will owe to the Bank an amount equal to A - [B+C], where:

i) "A" is the market value of all the Shares held in the relevant Guaranteed Fund at the end of the applicable Lock-Up Period (as determined pursuant to the terms of the Swap Agreement),

ii) "B" is the aggregate amount of all Total Contributions,

iii) "C" is an amount (the **Appreciation Amount**) equal to

a) a multiple of the Average Increase, if any, of the Shares above the Reference Price (where the "**Average Increase**" is the average price of the Shares based on the average closing price of the Shares in the last 44 days of the Lock-Up Period),

and further multiplied by

b) the number of Shares held in the relevant Guaranteed Fund.

In the event the Average Increase is lower than the Reference Price, the Reference Price will be used instead.

h) If, at the end of the Lock-Up Period, the market value of the Shares held in the relevant Guaranteed Fund is less than sum of 100% of the Total Contributions and the Appreciation Amount, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the relevant Guaranteed Fund to make up such shortfall.

i) At the end of the relevant Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:

i) the Canadian Participant's Total Contribution; and

ii) the Canadian Participant's portion of the Appreciation Amount, if any

(the **Redemption Formula**).

j) If a Canadian Participant does not request the redemption of his or her Guaranteed Units at the end of the applicable Lock-Up Period, his or her investment will be transferred to the Principal Classic Fund (subject to the decision of the supervisory board of the FCPE and the approval of the French AMF). New Principal Classic Units will be issued to such Canadian Participants in recognition of the assets transferred to the Principal Classic Fund. Canadian Participants may request the redemption of the new Principal Classic Units whenever they wish. However, following a transfer to the Principal Classic Fund, Canadian Participants will not benefit from any guarantee on their investment.

k) Pursuant to the terms and conditions of guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Total Contribution, as well as his or her portion of the Appreciation Amount (if any), at the end of the applicable Lock-Up Period or in the event of an Early Redemption. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in limited circumstances where it is in the best interests of the unitholders. The Management Company is required to act in the best interests of the unitholders of a Fund under French law. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the unitholders, then such unitholders would have a right of action under French law against the Management Company.

l) In the event of an Early Redemption, the Canadian Participant may request the redemption of Guaranteed Units using the Redemption Formula. The value of the Units will be calculated in accordance with the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the Early Redemption instead.

m) Under no circumstances will a Canadian Participant be liable to any of the Guaranteed Fund, the Bank or the Filer for any amounts in excess of his or her Total Contribution under the Guaranteed Plan.

n) For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Employer Contribution at the time such dividends are paid to the relevant Guaranteed Fund, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.

o) The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

p) At the time the obligations of a Guaranteed Fund under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) to the extent that amounts received by the relevant Guaranteed Fund, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Guaranteed Fund, on behalf of the Canadian Participant, to the Bank (including any dividend amounts paid to the Bank under the Swap Agreement). Capital losses (gains) realized by a Canadian Participant under the Swap Agreement may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the Income Tax Act (Canada) or comparable provincial legislation (as applicable).

q) The subscription price for an Employee Offering will not be known to Canadian Employees until after the end of the applicable subscription period. However, this information will be provided to Canadian Employees prior to the start of the revocation period, during which Canadian Participants may choose to revoke all (but not part) of their subscription under the Guaranteed Plan and thereby not participate in the relevant Employee Offering.

13. The portfolio of the Classic Fund will consist almost entirely of Shares and may also include cash in respect of dividends paid on the Shares which will be reinvested in Shares as discussed above. The portfolio of the Guaranteed Fund will primarily consist of Shares and as well as the rights and associated obligations under the Swap Agreement. The Funds may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

14. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depositary (as defined below), for any violation of the rules and regulations governing FCPEs, any violations of the rules of the Fund, or for any self-dealing or negligence. The Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. For any Subsequent Employee Offering, the "Management Company" may change. In the event of such a change, the successor to the Management Company will comply with the terms and conditions described in this paragraph.

15. The Management Company's portfolio management activities in connection with an Employee Offering and the Funds are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement.

16. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents. The Management Company's activities will not affect the value of the Shares.

17. None of the entities forming part of the Veolia Group, the Funds or the Management Company or any of their directors, officers, employees, agents or representatives will provide investment advice to Canadian Employees with respect to an investment in Shares or Units.

18. None of the entities forming part of the Veolia Group, the Funds or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.

19. Shares issued under an Employee Offering will be deposited in the relevant Fund's accounts with CACEIS Bank (the **Depositary**), a large French commercial bank subject to French banking legislation. For any Subsequent Employee Offering, the "Depositary" may change. In the event of such a change, the successor to the Depositary will remain a large French commercial bank subject to French banking legislation.

20. Participation in an Employee Offering is voluntary, and Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

21. The total amount that may be invested by a Canadian Participant in an Employee Offering under both the Classic Plan and the Guaranteed Plan cannot exceed 25% of his or her estimated gross annual compensation for the relevant year. In addition, the total amount that may be invested by a Canadian Participant in an Employee Offering under the Guaranteed Plan cannot exceed the Canadian dollar equivalent of €500. The Employer Contribution will not be factored into the above maximum amounts that a Canadian Participant may contribute.

22. For the 2018 Employee Offering, annual compensation includes the employee's gross base salary, bonus and/or overtime paid between January 1, 2018 and December 31, 2018.

23. The Shares and Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or Units so listed. As there is no market for the Shares or Units in Canada, and as none is expected to develop, any first trades of Shares or Units by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of Euronext Paris.

24. Canadian Participants will receive an information package in the French or English language according to their preference, which will include a summary of the terms of the relevant Employee Offering and a description of Canadian income tax consequences of subscribing for and holding the Units and requesting the redemption of such Units at the end of the applicable Lock-Up Period. The information package for Canadian Participants in the Guaranteed Plan will also include a risk statement which will describe certain risks associated with an investment in Guaranteed Units. Canadian Employees will have access to the Filer's *Document de Référence* (in French and English) filed with the French AMF in respect of the Shares and a copy of the regulations of the relevant Fund. The Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares. Canadian Participants will receive an initial statement of their holdings under the Classic Plan and/or the Guaranteed Plan, as applicable, together with an updated statement at least once per year.

25. For the 2018 Employee Offering, there are approximately 1,177 Canadian Employees, with the greatest number residing in Québec (815), and the remainder in the provinces of British Columbia, Manitoba, Ontario and New Brunswick, who represent in the aggregate less than 1% of the number of Qualifying Employees of the Veolia Group worldwide.

Decision

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

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

1. with respect to the 2018 Employee Offering, the prospectus requirement will apply to the first trade in any Shares or Units acquired by Canadian Participants pursuant to this decision unless the following conditions are met:

    a) the issuer of the security:

        i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

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

    b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada:

        i) did not own, directly or indirectly, more than 10% of the outstanding securities of the class or series, and

        ii) did not represent in number more than 10% of the total number of owners, directly or indirectly, of securities of the class or series; and

    c) the first trade is made:

        i) through an exchange, or a market, outside of Canada, or

        ii) to a person outside of Canada;

2. with respect to any Subsequent Employee Offering under this decision completed within five years from the date of this decision, the following conditions are met:

    a) the representations other than those in paragraphs 3, 22 and 25 remain true and correct with the necessary adaptations in respect of that Subsequent Employee Offering; and

    b) the conditions set out in paragraph 1 apply, with the necessary adaptations, to any such Subsequent Employee Offering.

"Lucie J. Roy"
Directrice principale du financement des sociétés

2.2 Orders

2.2.1 CanniMed Therapeutics Inc.

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

Applicable Legislative Provisions

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

May 31, 2018

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

AND

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

AND

**IN THE MATTER OF
CANNIMED THERAPEUTICS INC.
(the Filer)**

ORDER

Background

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

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

(a) the Financial and Consumer Affairs Authority (Saskatchewan) is the principal regulator for this application;

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Dean Murrison"
Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan

2.2.2 Jarislowsky, Fraser Limited

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to pooled funds not subject to NI 81-102 to purchase securities of related entities over a stock exchange – relief granted to pooled funds and public funds subject to NI 81-102 to purchase non-exchange traded debt securities of related entities under primary offerings and in the secondary market – relief conditional on IRC approval, compliance with pricing requirements, and limits on the amount of a primary offering of a related entity a fund may purchase.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(4), 113.

April 27, 2018

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

AND

**IN THE MATTER OF
JARISLOWSKY, FRASER LIMITED
(the Filer)**

ORDER

Background

The regulator in the Jurisdiction has received an application from the Filer on behalf of the pooled funds established and/or advised by the Filer set out in Schedule A (the **Existing Pooled Funds**) and such other pooled funds that the Filer may establish and/or advise in the future (each a **Future Pooled Fund**, and together with the Existing Pooled Funds, the **Pooled Funds**, and individually, a **Pooled Fund**), to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) does not apply, and each mutual fund established and/or advised by the Filer set out in Schedule A (the **Existing Public Funds**) and such other mutual funds that the Filer may establish and/or advise in the future (each a **Future Public Fund**, and together with the Existing Public Funds, the **Public Funds**), to which NI 81-102 does apply, (the Pooled Funds and the Public Funds are collectively referred to as the **Funds**, and individually as a **Fund**), for an order under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Funds from:

(a) the prohibitions in the Legislation (the **Related Shareholder Relief**) that prohibit a Fund from making or holding an investment in any person or company who is a substantial security holder of the Fund, its management company, or distribution company (each, a **Related Shareholder**); and

(b) the prohibitions in the Legislation (the **Related Party Relief**) that prohibit a Fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (each, a **Related Party**)

to enable the Funds to invest in non-exchange-traded debt securities of a Related Shareholder or Related Party in a Primary Offering (as defined below) and in the secondary market having a "designated rating" within the meaning of that term in NI 44-101 (as defined below), to enable the Pooled Funds to invest in exchange-traded securities of a Related Shareholder or a Related Party in the secondary market, and to enable the Existing Pooled Funds and Existing Public Funds to continue to hold any securities of a Related Shareholder or a Related Party purchased prior to the Effective Date (as defined below) (collectively, the **Exemption Sought**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning if used in this order, unless otherwise defined.

In this order, the term **Related Person** refers to a Related Shareholder and a Related Party depending on the provision in the Legislation that is being considered.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*, and its head office is in Montréal, Québec.

2. The Filer is registered as a portfolio manager in each Canadian province and territory (each, a **Canadian Jurisdiction**), and is registered as an investment fund manager in Québec, Ontario, Newfoundland and Labrador, Alberta and British Columbia.

3. The Filer is not in default of any securities legislation in any Canadian Jurisdiction.

The Funds

4. Each Fund is, or will be, a mutual fund trust governed by the laws of Ontario.

5. The Filer is, or will be, the manager and/or adviser of each Fund.

6. The Pooled Funds are not, and will not be, reporting issuers in any Canadian Jurisdiction.

7. The Public Funds are, and will be, reporting issuers in one or more Canadian Jurisdictions.

8. Securities of the Pooled Funds are, or will be, offered for sale only on an exempt basis pursuant to available registration and prospectus exemptions in one or more of the Canadian Jurisdictions.

9. Securities of the Public Funds are, or will be, offered for sale by means of a simplified prospectus or prospectus.

10. No Fund is in default of any securities legislation of any Canadian Jurisdiction.

The Acquisition

11. Subject to obtaining all required regulatory approvals, The Bank of Nova Scotia (**BNS**) plans on directly, and indirectly through a wholly-owned subsidiary, acquiring all of the issued and outstanding shares of the Filer on or about May 1, 2018 (the **Effective Date**).

12. After the Effective Date, BNS will be the ultimate parent company of the Filer.

Conflict of Interest Transactions

13. The Filer is seeking the Exemption Sought in order to allow a Fund to buy and hold securities of a Related Shareholder, or to buy and hold securities in which a Related Shareholder has a significant interest (collectively, the **Related Person Securities**, and individually, a **Related Person Security**).

14. The investment objective and investment strategies of each Fund that relies on the Exemption Sought will permit that Fund to buy Related Person Securities.

15. A Fund will only buy Related Person Securities if such purchase is consistent with, or is necessary to meet, the investment objective of that Fund.

16. All purchases of Related Person Securities by a Fund, to the extent possible, will be executed on a recognised marketplace at prevailing market prices.

17. Section 6.2 of NI 81-107 provides an exemption for exchange-traded securities, such as common shares, that have been approved for purchase by the applicable independent review committee (**IRC**). It does not permit a Fund, or the Filer on behalf of a Fund, to purchase Related Person Securities that are not traded on an exchange. Certain Related Person Securities, such as debt securities of BNS, are not listed and are not exchange-traded.

18. Only a Related Person Security that is a long term debt security will be purchased by a Fund in a primary distribution or treasury offering (a **Primary Offering**) pursuant to the Exemption Sought:

a. the Related Person Security that is a long term debt security will have a designated rating by a designated rating organization (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**)) with a term to maturity of 365 days or more and it will not be an asset backed security; and

b. the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as set out in a prospectus, offering or information memorandum, press release or other public document.

19. The Filer considers that the Funds should have access to Related Person Securities that are long term debt securities for the following reasons:

a. there is a limited supply of these types of securities;

b. diversification is reduced to the extent that a Fund is limited with respect to investment opportunities; and

c. to the extent a Fund seeks to track or outperform a benchmark, it is important for the Fund to be able to purchase securities included in the benchmark. These securities are often included in Canadian indices.

20. The Filer considers granting the Exemption Sought to not be prejudicial to the public interest, given that the decision to buy Related Person Securities will be made in the best interests of the Funds and free from the influence of any Related Person.

21. The Filer also considers that a Fund would be prejudiced if it had to refrain from buying Related Person Securities, where to do so is consistent with the investment objective of the Fund.

General

22. The Filer is a well-established, independent portfolio management firm in Canada with a strong fiduciary culture and a disciplined, time-tested investment philosophy based on fundamental research and bottom-up security analysis. The Filer's Investment Strategy Committee (**ISC**) serves as the Filer's central investment oversight body. All investments for inclusion in a Fund must be approved by the ISC following extensive due diligence and research analysis on each issuer company.

23. The Filer has in place best execution committees for fixed income, North American equities and International equities, and has implemented policies and procedures that are reasonably designed to ensure compliance with its best execution obligations.

24. No Related Person will be able to influence the business judgment of the Filer in connection with the determination of the suitability of investments for a Fund, and influence barriers will be put in place by the ISC and the Filer's Chief Compliance Officer after the Effective Date with respect to transactions involving a Related Person. Decisions made by the Filer as to which investments a Fund may hold are based on the best interests of that Fund, without any consideration given to the interests of the party with whom a purchase or sale is transacted, and is embedded in the Filer's policies, procedures and protocols.

25. Moreover, the IRC of BNS' wholly-owned subsidiary, 1832 Asset Management L.P., which currently functions as the IRC of certain investment funds that are subject to NI 81-102, and certain pooled funds where required by the conditions of certain exemptive relief orders, will also function as the IRC for the Pooled Funds under a new tailored mandate which, among other things, will with respect to the Exemption Sought comply with the applicable provisions of NI 81-107, including the standard of care set out in section 3.9 of NI 81-107.

26. The Public Funds also have, or will have, an IRC that is, or will be, responsible for reviewing any conflicts of interest that might arise including dealing with the Related Shareholder Relief and the Related Party Relief.

27. For greater certainty, the purchase of Related Person Securities by a Fund will be referred to the IRC of the Fund.

Order

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

The order of the regulator under the Legislation is that the Exemption Sought is granted to permit the Filer to purchase and hold Related Person Securities on behalf of the Funds provided that:

1. the purchase of a Related Person Security is consistent with, and necessary to meet, the investment objective of the applicable Fund;

2. at the time of purchase of the Related Person Security by a Fund, the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;

3. the Filer will have complied with section 5.1 of NI 81-107, and the Filer and the IRC of the applicable Fund will have complied with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transaction;

4. in the case of the purchase of a Related Person Security by a Fund that is a long term debt security that is not exchange-traded during a Primary Offering:

    a. the Related Person Security has been given, and continues to have, at the time of purchase a designated rating by a designated rating organization;

    b. the size of the Primary Offering is at least $100 million;

    c. at least two purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;

    d. no Fund will participate in the Primary Offering if following its purchase the Fund would have more than five percent (5%) of its net assets invested in that Related Person Security;

    e. no Fund will participate in the Primary Offering if following the purchase the Funds together hold more than 20% of the Related Person Securities issued in the Primary Offering; and

    f. the price paid for the Related Person Security by a Fund shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;

5. in the case of the purchase of a Related Person Security that is a debt security by a Fund that is not exchange-traded in the secondary market:

    a. the Related Person Security has been given, and continues to have, at the time of purchase a designated rating by a designated rating organization;

    b. the price payable for the Related Person Security is not more than the ask price of the Related Person Security;

    c. the ask price of the Related Person Security is determined as follows:

        (A) if the purchase occurs on a marketplace, the price payable for the Related Person Security is determined in accordance with the requirements of the marketplace; or

        (B) if the purchase does not occur on a marketplace:

            (I) the Fund may pay the price for the Related Person Security at which an independent arm's length seller is willing to sell the security; or

            (II) if the Fund does not purchase the Related Person Security from an independent, arm's length seller, the Fund may pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote; and

    d. the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

6. in the case of the purchase or sale of a Related Person Security by a Pooled Fund that is exchange-traded in the secondary market:

    a. the purchase is made in the secondary market on an exchange on which the Related Person Security is listed and traded; and

    b. the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

7. no later than the 90th day after each financial year-end of each Fund, the Filer files with the regulator in the Jurisdiction the particulars of any investments made by that Fund in reliance on this order.

"Peter Currie"
Commissioner

"Philip Anisman"
Commissioner

Schedule A

Funds

Existing Pooled Funds

Le Fonds de Croissance Select
Manion Wilkins & Assoc. Ltd. Short Term Investment Fund

Existing Public Funds

First Asset Global Dividend Fund
Marquis Enhanced Canadian Equity Pool
Meritas Monthly Dividend & Income Fund
NBI Jarislowsky Fraser Select Canadian Equity Fund
NBI Jarislowsky Fraser Select Balanced Fund
NBI Jarislowsky Fraser Select Income Fund
NBI US Dividend Fund
NBI Canadian Equity Fund
Scotia Private Fundamental Canadian Equity Pool

2.2.3 Issam El-Bouji

FILE NO.: 2018-28

IN THE MATTER OF
ISSAM EL-BOUJI

Robert P. Hutchison, Commissioner and Chair of the Panel

June 6, 2018

ORDER

WHEREAS on June 6, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission and for Respondent, Issam El-Bouji, including that on June 6, 2018 Staff disclosed to the Respondent all relevant, non-privileged documents and things in the possession or control of Staff (**Staff's Disclosure**);

IT IS ORDERED THAT:

1. The Respondent shall serve and file a motion, if any, regarding Staff's Disclosure or seeking disclosure of additional documents by no later than September 7, 2018;

2. Staff shall file and serve a witness list, and serve a summary of each witnesses' anticipated evidence on the Respondent, and indicate any intention to call an expert witness by no later than September 10, 2018; and

3. The Second Attendance in this matter is scheduled for September 17, 2018 at 4:00 p.m., or on such other date and time as may be agreed by the parties and set by the Office of the Secretary.

"Robert P. Hutchison"

2.2.4 Wellington Management Canada ULC and Wellington Management Company LLP – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirement of paragraph 22(1)(b) of the CFA granted to a sub-adviser headquartered in a foreign jurisdiction in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 8.26.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations made under the Securities Act (Ontario) – Relief is subject to a sunset clause.

June 8, 2018

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

AND

IN THE MATTER OF
WELLINGTON MANAGEMENT CANADA ULC AND
WELLINGTON MANAGEMENT COMPANY LLP

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Wellington Management Company LLP (the **Sub-Adviser**) and Wellington Management Canada ULC (the **Principal Adviser**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 80 of the CFA, that the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services (as defined below) (the **Representatives**) be exempt, for a specified period of time, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser for the benefit of the Clients (as defined below) regarding commodity futures contracts and commodity futures options (collectively, the **Contracts**) traded on commodity futures exchanges and cleared through clearing corporations;

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

AND UPON the Principal Adviser and the Sub-Adviser having represented to the Commission that:

1. The Principal Adviser is an unlimited liability company continued under the *Business Corporations Act* (British Columbia) with its head office located in Toronto, Ontario.

2. The Principal Adviser is registered as:

   (a) an adviser in the category of portfolio manager and a dealer in the category of exempt market dealer under the *Securities Act* (Ontario) (the **OSA**) and under the respective securities legislation of each of the remaining provinces of Canada; and

   (b) an adviser in the category of commodity trading manager under the CFA.

3. The Sub-Adviser is a limited liability partnership organized under the laws of the State of Delaware, with its principal place of business located in Boston, Massachusetts in the United States. The Sub-Adviser is registered with the Securities and Exchange Commission of the United States of America as an investment adviser and as a commodity trading adviser and swap firm with the United States Commodity Futures Trading Commission (**CFTC**). The Sub-Adviser is a member firm of the National Futures Association in the United States. The Sub-Adviser is also registered as a Foreign Portfolio Investor with the Securities Board of India. The Sub-Adviser's permitted activities pursuant to its registration with the CFTC include, among other things, advising on Contracts.

4. The Sub-Adviser is not resident in any province or territory of Canada.

5. The Sub-Adviser and the Principal Adviser are affiliates, as defined in the OSA.

6. The Sub-Adviser is registered in a category of registration, or operates under an exemption from registration, under the commodity futures or other applicable legislation of the jurisdiction in which its head office is located that permits it to carry on the activities in that jurisdiction that registration as an adviser under the CFA would permit it to carry on in Ontario. As such, the Sub-Adviser is authorized and permitted to carry on the Sub-Advisory Services (as defined below) in the jurisdiction in which its head office is located.

7. The Sub-Adviser engages in the business of an adviser in respect of Contracts in its principal jurisdiction.

8. The Sub-Adviser is not registered in any capacity under the CFA or under the securities legislation of any province or territory of Canada. However, the Sub-Adviser is currently availing itself, or will avail itself, of the sub-adviser registration exemption in section 8.26.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

9. The Principal Adviser and the Sub-Adviser are not in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction of Canada. The Sub-Adviser is in compliance in all material respects with the securities laws, commodity futures laws and derivatives laws in the jurisdiction in which its head office or principal place of business is located.

10. The Principal Adviser provides, or may provide, discretionary and/or non-discretionary portfolio management services in Ontario to (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada (**Retail Funds**); (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and certain other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus Exemptions* (**Pooled Funds**); (iii) managed accounts of clients who have entered into investment management agreements with the Principal Adviser (**Managed Accounts**); and (iv) other Retail Funds, Pooled Funds and Managed Accounts that may be established in the future in respect of which the Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Clients**) (each of the Retail Funds, Pooled Funds, Managed Accounts and Future Clients being referred to individually as a **Client** and collectively as the **Clients**).

11. Clients may, as part of their investment program, invest in Contracts. The Principal Adviser acts, or will act, as a commodity trading manager in respect of such Clients.

12. In connection with the Principal Adviser acting as an adviser to a Client in respect of the purchase or sale of Contracts, the Principal Adviser has retained, or will retain, the Sub-Adviser, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, to act as a sub-adviser to the Principal Adviser in respect of Contracts in which the Sub-Adviser has experience and expertise by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of the assets of the investment portfolio of the respective Client, which may include discretionary authority to buy or sell Contracts for the Client (the **Sub-Advisory Services**), provided that:

    (a) in each case, the Contracts are cleared through an "acceptable clearing corporation" (as defined in National Instrument 81-102 *Investment Funds*, or any successor thereto (**NI 81-102**)) or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A of NI 81-102; and

    (b) such investments are consistent with the investment objectives and strategies of the applicable Client.

13. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of such registered adviser.

14. By providing the Sub-Advisory Services, the Sub-Adviser and its Representatives will be engaging in, or holding themselves out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

15. There is presently no rule or regulation under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA that is similar to the exemption from the adviser registration requirement in subsection 25(3) of the OSA which is provided under section 8.26.1 of NI 31-103.

16. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

17. The relationship among the Principal Adviser, the Sub-Adviser and a Client is, or will be, consistent with the requirements of section 8.26.1 of NI 31-103, namely that:

(a) the obligations and duties of the Sub-Adviser are, or will be, set out in a written agreement with the Principal Adviser;

(b) the Principal Adviser has entered into, or will enter into, a written contract with each Client, agreeing to be responsible for any loss that arises out of the failure of the Sub-Adviser:

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and each Client; or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**).

18. The written agreement between the Principal Adviser and the Sub-Adviser sets out, or will set out, the obligations and duties of each party in connection with the Sub-Advisory Services and permits, or will permit, the Principal Adviser to exercise the degree of supervision and control it is required to exercise over the Sub-Adviser in respect of the Sub-Advisory Services.

19. The Principal Adviser will deliver to the Clients all required reports and statements under applicable securities, commodity futures and derivatives legislation.

20. The prospectus or other offering document (in either case, the **Offering Document**) of each Client that is a Retail Fund or a Pooled Fund and for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services includes, or will include, the following disclosure (the **Required Disclosure**):

(a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

21. Prior to purchasing any securities of one or more of the Clients that are Retail Funds or Pooled Funds directly from the Principal Adviser, all investors in these Retail Funds or Pooled Funds who are Ontario residents will receive the Required Disclosure in writing (which may be in the form of an Offering Document).

22. Each Client that is a Managed Account for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services will receive the Required Disclosure in writing prior to the purchasing of any Contracts for such Client.

AND UPON the Commission being of the opinion that to do so would not be prejudicial to the public interest:

IT IS ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser and its Representatives are exempt from the adviser registration requirements in paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services provided that at the time that such activities are engaged in:

(a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

(b) the Sub-Adviser's head office or principal place of business is in a jurisdiction outside of Canada;

(c) the Sub-Adviser is registered in a category of registration, or operates under an exemption from registration, under the commodity futures or other applicable legislation of the jurisdiction outside of Canada in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser under the CFA would permit it to carry on in Ontario;

(d) the Sub-Adviser engages in the business of an adviser in respect of Contracts in the jurisdiction outside of Canada in which its head office or principal place of business is located;

(e) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser;

(f) the Principal Adviser has entered into a written agreement with each Client, agreeing to be responsible for any loss that arises out of any failure of the Sub-Adviser to meet the Assumed Obligations;

(g) the Offering Document of each Client that is a Retail Fund or Pooled Fund and for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services includes the Required Disclosure;

(h) prior to purchasing any securities of a Client that is a Retail Fund or a Pooled Fund directly from the Principal Adviser, each investor in any of these Retail Funds or Pooled Funds who is an Ontario resident has received the Required Disclosure in writing (which may be in the form of an Offering Document); and

(i) each Client that is a Managed Account for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services has received the Required Disclosure in writing prior to the purchasing of any Contracts for such Client; and

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

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

(b) 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 ability of the Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services; and

(c) five years after the date of this Order.

Dated at Toronto, Ontario, this 8th of June, 2018

"Janet Leiper"
Commissioner
Ontario Securities Commission

"William Furlong"
Commissioner
Ontario Securities Commission

2.2.5 Donna Hutchinson et al.

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

Mark J. Sandler, Commissioner and Chair of the Panel

June 8, 2018

ORDER

WHEREAS on June 8, 2018, the Ontario Securities Commission held a hearing in writing to address scheduling;

ON READING the correspondence of each of Staff of the Commission, David Paul George Sidders and Patrick Jelf Caruso, no one responding for Cameron Edward Cornish and no one responding for Donna Hutchinson, having settled the allegations against her in respect of this proceeding;

IT IS ORDERED THAT:

1. The June 11, 2018 hearing date is vacated;

2. Sidders' motion with respect to severance and any other interlocutory motions that the parties agree to be heard on that date as well, shall be heard on July 17, 2018 at 10:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary; and

3. The third attendance shall continue following the conclusion of the motion hearing on July 17, 2018.

"Mark J. Sandler"

2.3 Orders with Related Settlement Agreements

2.3.1 IPC Securities Corporation and IPC Investment Corporation – s. 127(1)

FILE NO.: 2018-32

IN THE MATTER OF
IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION

AnneMarie Ryan, Commissioner and Chair of the Panel
Frances Kordyback, Commissioner

June 7, 2018

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

WHEREAS on June 7, 2018, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider an Application made jointly by Staff of the Commission (**Staff**) and IPC Securities Corporation and IPC Investment Corporation (the **IPC Dealers**) for approval of a settlement agreement dated June 5, 2018 (the **Settlement Agreement**);

ON READING the Statement of Allegations dated June 5, 2018 and the Joint Request for a Settlement Hearing dated June 5, 2018, including the Settlement Agreement, and on hearing the submissions of counsel for the IPC Dealers and Staff;

IT IS ORDERED THAT:

1. pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved; and

2. pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

    a. in respect of inadequacies in the IPC Dealers' systems of controls and supervision which formed part of their compliance systems (the **Control and Supervision Inadequacies**), within 90 days of receiving comments from Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies (the **Enhanced Control and Supervision Procedures**), the IPC Dealers shall, for each of the IPC Dealers, provide to a manager or deputy director in the Compliance and Registrant Regulation Branch (the **OSC Manager**), revised written policies and procedures (the **Revised Policies and Procedures**) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff with regard to the IPC Dealers' policies and procedures to establish the Enhanced Control and Supervision Procedures (the **Remaining Issues**);

    b. thereafter, the IPC Dealers shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

    c. within eight months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Staff (the **Confirmation Date**), the IPC Dealers shall submit a letter (the **Attestation Letter**), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the IPC Dealers, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the IPC Dealer for the six month period commencing from the Confirmation Date;

    d. the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

    e. the IPC Dealers shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (2)(c) above is valid;

    f. any of the IPC Dealers or Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (2)(a) to (e) above;

g. the IPC Dealers shall comply with their undertaking in the Settlement Agreement to:

   i. pay compensation to eligible clients and former clients and report to the OSC Manager in accordance with a plan submitted by them to Staff (the **Compensation Plan**),

   ii. make a voluntary payment of $30,000 to reimburse the Commission for costs incurred or to be incurred by it, and

   iii. make a further voluntary payment of $460,000 to be designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act; and

h. the voluntary payment referred to in paragraph (g)(iii) above is designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act.

“AnneMarie Ryan”

“Frances Kordyback”

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

AND

IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION and
IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION

PART I – INTRODUCTION

1. The parties will file a joint request for a public hearing in accordance with Rule 33, to consider whether, pursuant to subsections 127(1) and 127(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest for the Ontario Securities Commission (the “Commission”) to make certain orders in respect of IPC Securities Corporation (“IPCSC”) and IPC Investment Corporation (“IPCIC”) (together, the “IPC Dealers”).

2. IPCSC is a corporation incorporated pursuant to the laws of Ontario. IPCSC is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is registered with the Commission as an investment dealer.

3. IPCIC is a corporation incorporated pursuant to the laws of Ontario. IPCIC is a member of the Mutual Fund Dealers Association of Canada (“MFDA”) and is registered with the Commission as a mutual fund dealer and an exempt market dealer. Each of the IPC Dealers is a subsidiary of Investment Planning Counsel Inc., which is a subsidiary of IGM Financial Inc. Counsel Portfolio Services Inc. (“Counsel”) is also a subsidiary of Investment Planning Counsel Inc. and is the manager of the Counsel mutual funds (“Counsel Funds”).

4. In March 2015, IPCSC self-reported to IIROC staff and IPCIC self-reported to MFDA staff, certain of the matters described in Part III below. In May 2015 and thereafter, the IPC Dealers met with Staff of the Commission (“Commission Staff”) to discuss these matters which resulted in the identification and reporting of the additional matters also described in Part III below. During Commission Staff’s investigation of these matters, the IPC Dealers provided prompt, detailed and candid co-operation to Commission Staff.

5. As summarized at paragraph 8 below and more fully described in Part III below, it is Commission Staff’s position that there were inadequacies in the IPC Dealers’ systems of controls and supervision (the “Control and Supervision Inadequacies”) which formed part of their compliance systems which resulted in certain clients paying, directly or indirectly, excess fees that were not detected or corrected by the IPC Dealers in a timely manner.

PART II – JOINT SETTLEMENT RECOMMENDATION

6. Commission Staff and the IPC Dealers have agreed to a settlement of the proceeding to be initiated in respect of the IPC Dealers by a Notice of Hearing (the “Proceeding”) based on the terms and conditions set out in this settlement agreement (the “Settlement Agreement”). Commission Staff have consulted with IIROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.

7. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.

8. It is Commission Staff's position that:

    a. the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the IPC Dealers, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and

    b. it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:

        (i) Commission Staff’s allegations are that the IPC Dealers failed to establish, maintain and apply procedures to establish controls and supervision:

            A. sufficient to provide reasonable assurance that the IPC Dealers, and each individual acting on behalf of the IPC Dealers, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

B. that were reasonably likely to identify the non-compliance described in A. above at an early stage and that would have allowed the IPC Dealers to correct the non-compliant conduct in a timely manner;

(ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by any of the IPC Dealers;

(iii) the IPC Dealers discovered and promptly self-reported certain of the Control and Supervision Inadequacies to IIROC and MFDA staff and thereafter met with Commission Staff to discuss these matters which resulted in the identification and reporting of all of the Control and Supervision Inadequacies referred to herein;

(iv) during the investigation of the Control and Supervision Inadequacies by Commission Staff following the self-reporting by the IPC Dealers, the IPC Dealers provided prompt, detailed and candid cooperation to Commission Staff;

(v) the IPC Dealers had formulated an intention to pay appropriate compensation to eligible clients and former clients when they met with Commission Staff regarding the Control and Supervision Inadequacies and, thereafter, the IPC Dealers co-operated with Commission Staff with a view to providing appropriate compensation to eligible clients and former clients who were harmed by any of the matters in Part III below, including the Control and Supervision Inadequacies (the "Affected Clients");

(vi) as part of this Settlement Agreement, the IPC Dealers have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the IPC Dealers to Commission Staff and presented to the Commission (the "Compensation Plan"). As at the date of this Settlement Agreement, the IPC Dealers anticipate paying compensation to Affected Clients of approximately $10,970,518 in the aggregate in respect of the Control and Supervision Inadequacies;

(vii) the Compensation Plan prescribes, among other things:

A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including an amount representing the time value of money in respect of the compensation to be paid by the IPC Dealers to the Affected Clients;

B. the approach to be taken with regard to contacting and making payments to the Affected Clients;

C. the timing to complete the various steps included in the Compensation Plan;

D. a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $9,042 as compared to $10,970,518 in compensation to be paid) which aggregate *de minimis* amount will be donated to the CPA Financial Literacy Program;

E. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the IPC Dealers are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each IPC Dealer will use reasonable efforts to locate any Affected Clients who are eligible to receive payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the IPC Dealer determines that an Affected Client is deceased but does not know the identity of the personal representative of the Affected Client's estate, and the estate is eligible to receive more than $400, the IPC Dealer shall make reasonable efforts to identify the personal representative of the deceased Affected Client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients by June 30, 2020 will be donated to the CPA Financial Literacy Program;

F. the resolution of Affected Client inquiries through an escalation process; and

G. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission ("OSC Manager") detailing the IPC Dealers' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of Affected Client inquiries;

(viii) at the request of Commission Staff, each of the IPC Dealers conducted an extensive review of their securities related businesses in Canada to identify whether there were any other instances of inadequacy in their systems of controls and supervision leading to eligible clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by Counsel, an affiliate of the IPC Dealers. Based on this review, the IPC Dealers have advised Commission Staff that there are no other instances other than those instances of Control and Supervision Inadequacies described herein;

(ix) the IPC Dealers have taken and are taking corrective action including enhancing the existing controls and supervision to address the Control and Supervision Inadequacies by establishing and implementing enhanced procedures and controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures") and, as part of this Settlement Agreement, the IPC Dealers are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures;

(x) the IPC Dealers have agreed to make a voluntary payment of $460,000 to the Commission to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;

(xi) the IPC Dealers have agreed to make a further voluntary payment of $30,000 to reimburse the Commission for costs incurred or to be incurred;

(xii) the total agreed voluntary payments of $490,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and

(xiii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the IPC Dealers will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:

A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

9. The IPC Dealers neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.

10. The IPC Dealers agree to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

PART III – COMMISSION STAFF'S STATEMENT OF FACTS AND CONCLUSIONS

A. Overview

11. In March 2015, IPCSC self-reported to IIROC staff and IPCIC self-reported to MFDA staff, certain of the Control and Supervision Inadequacies described below relating to the Trailer-Paying Assets and the MER Differential Funds (each defined below). In May 2015 and thereafter, the IPC Dealers met with Commission Staff to discuss these matters which commenced a process which resulted in the identification and reporting of the Control and Supervision Inadequacy relating to Product Fee Assets (defined below). The IPC Dealers took steps to correct the Control and Supervision Inadequacies beginning in 2016, as further described in paragraphs 18(c), 22(c) and 31 below.

12. Some clients of the IPC Dealers have fee-based accounts and are charged a fee for investment services received in respect of assets held in the account (the "Fee-Based Accounts"). The investment services fee is either a flat fee or based on the client's assets under management (the "Account Fee").

13. The Control and Supervision Inadequacies are summarized as follows:

a. for some clients of the IPC Dealers with Fee-Based Accounts, assets held in their Fee-Based Accounts included certain mutual funds, exchange traded funds, and structured products with embedded trailer fees (collectively "Trailer-Paying Assets") and/or certain Counsel Funds with negotiable advisory fees ("Product

Fee Assets"), resulting in some clients paying excess fees because the IPC Dealers received: trailer fees during the period (i) January 1, 2009 to September 30, 2016 for IPCSC clients and (ii) January 1, 2009 to March 31, 2017 for IPCIC clients; and, negotiable advisory fees during the period January 1, 2009 to December 31, 2017 for clients of the IPC Dealers; in addition to the Account Fee;

b. for some clients of the IPC Dealers with Fee-Based Accounts under programs which classify assets for fee-billing purposes, assets held in their Fee-Based Accounts included certain Trailer-Paying Assets which were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees for the period (i) July 1, 2013 to April 30, 2016 for IPCSC clients and (ii) May 1, 2015 to April 30, 2018 for IPCIC clients;

c. some clients of the IPC Dealers were not advised that they qualified for a lower Management Expense Ratio ("MER") series of an MER Differential Fund (as defined below) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period November 1, 2009 to October 31, 2016.

14. These Control and Supervision Inadequacies continued undetected for an extended period of time. The IPC Dealers discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant IPC Dealers.

15. As set out in greater detail below in the section entitled Mitigating Factors, since 2016, the IPC Dealers have taken and are taking several remedial steps in order to correct the Control and Supervision Inadequacies.

16. The IPC Dealers engaged an independent third party to assist them in identifying, calculating, and validating the amounts to be paid to Affected Clients.

B. The Control and Supervision Inadequacies

(a) Excess Trailer Fees and/or Negotiable Advisory Fees in Some Fee-Based Accounts

17. For some clients of the IPC Dealers with Fee-Based Accounts, assets held in the Fee-Based Account included certain Product Fee Assets and/or Trailer-Paying Assets that were subject to an Account Fee, thereby resulting in some clients indirectly paying excess fees when the IPC Dealers received negotiable advisory fees or trailer fees in addition to the Account Fee.

18. As part of their review, the IPC Dealers identified instances in which clients had purchased or held Product Fee Assets and/or Trailer-Paying Assets in these Fee-Based Accounts during the period from January 1, 2009 to December 31, 2017. Specifically,

a. it was determined that the IPC Dealers did not have adequate systems of internal controls and supervision in place to ensure that clients were not subject to trailer fees on Trailer-Paying Assets or negotiable advisory fees on Product Fee Assets if those assets were also subject to an Account Fee;

b. it was determined that the IPC Dealers' internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

c. in September 2016 and March 2017, the IPC Dealers implemented steps to ensure that when clients purchase Trailer-Paying Assets in Fee-Based Accounts those assets are excluded from the calculation of Account Fees, and in 2018, implemented and are implementing steps to ensure that clients do not pay both a negotiable advisory fee and an Account Fee on Product Fee Assets in Fee-Based Accounts.

19. Upon identification of the issues described above, the IPC Dealers took steps to determine the extent of the problem and how to compensate Affected Clients. The IPC Dealers have determined that, as a result of this Control and Supervision Inadequacy, approximately 2346 client accounts were affected in respect of trailer fees during the periods (i) January 1, 2009 to September 30, 2016 for IPCSC clients and (ii) January 1, 2009 to March 31, 2017 for IPCIC clients, and approximately 644 client accounts of the IPC Dealers were affected in respect of negotiable advisory fees during the period January 1, 2009 to December 31, 2017.

20. The IPC Dealers have agreed to compensate the Affected Clients who held these Trailer-Paying Assets and Product Fee Assets in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that the IPC Dealers pay to these Affected Clients:

a. an amount representing the trailer fee or the negotiable advisory fee received; and

b. an amount representing the forgone opportunity cost in respect of the trailer or negotiable advisory fee from the time the fee was received to June 30, 2018, based on a simple interest rate of 5% per annum calculated monthly or quarterly (the "Embedded Fee Opportunity Cost").

21. As at the date of this Settlement Agreement, the IPC Dealers have determined that the total amount to be paid to these Affected Clients in relation to trailer fees and/or negotiable advisory fees pursuant to the Compensation Plan, inclusive of the Embedded Fee Opportunity Cost, is approximately $1,974,069.

(b) Excess Account Fees in Some Fee-Based Accounts

22. For some clients of the IPC Dealers who have Fee-Based Accounts under programs which classify assets for fee-billing purposes, the IPC Dealers discovered that a number of Trailer-Paying Assets had been incorrectly classified for those purposes and incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts during the periods (i) July 1, 2013 to April 30, 2016 for IPCSC clients and (ii) May 1, 2015 to April 30, 2018 for IPCIC clients, and, as a result, those clients were charged excess Account Fees. Specifically,

    a. it was determined that the IPC Dealers did not have adequate systems of internal controls and supervision in place to ensure that Trailer-Paying Assets were classified correctly and excluded consistently from the calculation of the Account Fee;

    b. it was determined that the IPC Dealers' internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and

    c. in April 2016 and following, the IPC Dealers took immediate steps to ensure that incorrectly classified Trailer-Paying Assets were classified correctly and implemented and are implementing steps to ensure that Trailer-Paying Assets are excluded consistently from the calculation of the Account Fee on a going forward basis.

23. Upon identification of the issues described above, the IPC Dealers took steps to determine the extent of the problem and how to compensate Affected Clients. The IPC Dealers have determined that, as a result of this Control and Supervision Inadequacy, approximately 431 client accounts were charged excess Account Fees during the periods (i) July 1, 2013 to April 30, 2016 for IPCSC clients and (ii) May 1, 2015 to April 30, 2018 for IPCIC clients.

24. The IPC Dealers have agreed to compensate the Affected Clients who held these securities in their Fee-Based Accounts during the relevant time period in accordance with the Compensation Plan, which requires that the IPC Dealers pay to these Affected Clients:

    a. an amount representing the excess Account Fees;

    b. an amount representing the applicable sales tax charged on the excess Account Fees; and

    c. an amount representing the time value of money in respect of the excess Account Fees from the time the excess Account Fees were charged to June 30, 2018, based on a simple interest rate of 5% per annum calculated monthly (the "Account Fees Opportunity Cost").

25. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges also will not otherwise be charged to Affected Clients or any other clients.

26. As at the date of this Settlement Agreement, the IPC Dealers have determined that the total amount to be paid to these Affected Clients in relation to Account Fees pursuant to the Compensation Plan, inclusive of the Account Fees Opportunity Cost is approximately $38,506.

(c) Excess Indirect Fees paid by some Clients Invested in MER Differential Funds

27. Counsel, an affiliate of the IPC Dealers, manages the Counsel Funds, some of which are available in different series. For certain of these Counsel Funds, there were two series of the same mutual fund which differed solely in that the MER of one series, which had a higher minimum investment threshold, was lower (the "Premium Series") than the MER of the other series (the "Non-Premium Series") (the "MER Differential Funds").

28. The MER Differential Funds identified with instances of the Control and Supervision Inadequacies were Counsel Funds with Non-Premium Series A, Series B or Series T and Premium Series E, EB and ET, respectively, where the MER differential between the Premium Series and the Non-Premium Series varied from 8 to 67 basis points.

29. The applicable threshold for the Premium Series of the MER Differential Funds was $75,000 invested in Counsel Funds in the client's account, or together with certain eligible family members at the client's election.

30. The IPC Dealers conducted a review of the MER Differential Funds to cover the period from November 1, 2009 to October 31, 2016 and determined that certain client accounts invested in an MER Differential Fund that appeared to qualify for the Premium Series of an MER Differential Fund were not invested in that series and therefore the holders of those client accounts did not benefit from its lower MER. Specifically,

a. it was determined that the IPC Dealers did not have adequate systems of internal controls and supervision in place to ensure that when a purchase or transfer-in of securities in an MER Differential Fund, alone or combined with existing holdings of Counsel Funds, exceeded the minimum investment threshold required to qualify for the Premium Series of the same mutual fund, the client was advised consistently that the Premium Series of the same mutual fund was available to the client; and

b. it was determined that the IPC Dealers' internal controls failed to identify this Control and Supervision Inadequacy in a timely manner.

31. Upon identification of the issues above, the IPC Dealers and Counsel took steps to determine the extent of the problem, mechanisms to prevent its recurrence, and how to compensate Affected Clients. The mechanisms adopted include certain pricing changes implemented by Counsel on October 28, 2016 to the Non-Premium Series to reduce the management fees and/or the fixed administration fees and thereafter, on November 4, 2016, to re-designate most Premium Series to the corresponding Non-Premium Series. Premium Series which were not so re-designated were closed to future purchases on October 28, 2016.

32. The IPC Dealers have determined that there are approximately 7140 client accounts that ought to have been invested in the Premium Series of the same MER Differential Fund but were not from November 1, 2009 to October 31, 2016.

33. In accordance with the Compensation Plan, in respect of those client accounts, the IPC Dealers will pay Affected Clients:

a. an amount representing the difference in the return that the Affected Client would have received on any security held by the client of an MER Differential Fund had the client been invested in the Premium Series securities of that fund in a timely manner upon being eligible to invest in the Premium Series held in that mutual fund for the entire period in which the Affected Client qualified for an available Premium Series ("Difference in Return"); and

b. an amount representing the time value of money in respect of the Difference in Return from the earlier of October 31, 2016, or the date of any sale, conversion, redemption, transfer or disposition of Counsel Fund securities resulting in the Affected Client's account balance being below the threshold, to June 30, 2018 based on a simple interest rate of 5% per annum (the "MER Opportunity Cost").

34. The IPC Dealers are also taking steps to compensate and migrate the securities of eligible Affected Clients who held securities as of October 31, 2016 in a Non-Premium Series with a corresponding closed Premium Series (the "Closed Series Clients") to the closed Premium Series. The migration of the Closed Series Clients' securities are one-time changes which the IPC Dealers will describe in their communication to those Clients, and which are for the sole purpose of resolving the Control and Supervision Inadequacy related to the MER Differential Funds. Other than a difference in the fees, there are no material differences between closed Premium Series securities and Non-Premium Series securities of the same MER Differential Fund. The migration process will result in Closed Series Clients receiving a trade confirmation after the migration. Further, in accordance with the Compensation Plan, in addition to the compensation set out at paragraph 33 above, the IPC Dealers will pay Closed Series Clients:

a. the Difference in Return in respect of the applicable closed Premium Series from November 1, 2016 for the entire period in which the Closed Series Client held securities in the Non-Premium Series of an applicable Counsel Fund with a closed Premium Series; and

b. the MER Opportunity Cost in respect of the above Difference in Return from the date of any sale, conversion, redemption, transfer or disposition of all of the securities in the Non-Premium Series of an applicable Counsel Fund with a closed Premium Series to June 30, 2018.

35. On this basis, the IPC Dealers have determined that the total compensation to be paid to Affected Clients as a result of this Control and Supervision Inadequacy is approximately $8,957,942, inclusive of the MER Opportunity Cost where applicable.

C. Breaches of Ontario Securities Law

36. With respect to the Control and Supervision Inadequacies, the IPC Dealers failed to establish, maintain and apply procedures to establish controls and supervision:

a. sufficient to provide reasonable assurance that the IPC Dealers, and each individual acting on behalf of the IPC Dealers, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

b. that were reasonably likely to identify the non-compliance described in a. above at an early stage and that would have allowed the IPC Dealers to correct the non-compliant conduct in a timely manner.

37. As a result, these instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"). In addition, the failures in the IPC Dealers' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

D. Mitigating Factors

38. Commission Staff do not allege, and have found no evidence of dishonest conduct by any of the IPC Dealers or their employees.

39. The IPC Dealers discovered and promptly self-reported certain of the Control and Supervision Inadequacies to IIROC and MFDA staff and thereafter met with Commission Staff to discuss these matters which resulted in the identification and reporting of all of the Control and Supervision Inadequacies referred to herein.

40. During the investigation of the Control and Supervision Inadequacies by Commission Staff following the self-reporting by the IPC Dealers, the IPC Dealers provided prompt, detailed and candid cooperation to Commission Staff.

41. The IPC Dealers had formulated an intention to pay appropriate compensation to Affected Clients when they met with Commission Staff regarding the Control and Supervision Inadequacies and, thereafter, the IPC Dealers co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients who were harmed by any of the Control and Supervision Inadequacies.

42. As part of this Settlement Agreement, the IPC Dealers have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the IPC Dealers anticipate paying compensation to Affected Clients of approximately $10,970,518 in the aggregate in respect of the Control and Supervision Inadequacies.

43. The Compensation Plan prescribes, among other things:

    a. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including an amount representing the time value of money in respect of the compensation to be paid by the IPC Dealers to the Affected Clients;

    b. the approach to be taken with regard to contacting and making payments to the Affected Clients;

    c. the timing to complete the various steps included in the Compensation Plan;

    d. a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $9,042 as compared to $10,970,518 in compensation to be paid), which aggregate *de minimis* amount will be donated to the CPA Financial Literacy Program;

    e. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the IPC Dealers are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each IPC Dealer will use reasonable efforts to locate any Affected Clients who are eligible to receive payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the IPC Dealer determines that an Affected Client is deceased but does not know the identity of the personal representative of the Affected Client's estate, and the estate is eligible to receive more than $400, the IPC Dealer shall make reasonable efforts to identify the personal representative of the deceased Affected Client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients on June 30, 2020 will be donated to the CPA Financial Literacy Program;

    f. the resolution of Affected Client inquiries through an escalation process; and

    g. regular reporting to the OSC Manager detailing the IPC Dealers' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of Affected Client inquiries.

44. At the request of Commission Staff, each of the IPC Dealers conducted an extensive review of their securities related businesses in Canada to identify whether there were any other instances of inadequacy in their systems of controls and supervision leading to eligible clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by Counsel. Based on this review, the IPC Dealers have advised Commission Staff that there are no instances of Control and Supervision Inadequacies other than those described herein.

45. The IPC Dealers have taken and are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement Agreement, the IPC Dealers are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.

46. The IPC Dealers have agreed to make voluntary payments totalling $490,000 as described in paragraphs 8(b)(x) and (xi) above.

47. The IPC Dealers will pay the total agreed voluntary payment amount of $490,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.

48. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the IPC Dealers will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:

    a. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

    b. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

E. The IPC Dealers' Undertaking

49. By signing this Settlement Agreement, the IPC Dealers undertake to:

    a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan; and

    b. make the voluntary payments referred to in paragraphs 8(b)(x) and (xi) above (the "Undertaking").

PART IV – TERMS OF SETTLEMENT

50. The IPC Dealers agree to the terms of settlement listed below and consent to the Order in substantially the form attached hereto, that provides that, pursuant to section 127 of the Act:

    a. pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

    b. pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

        i. within 90 days of receiving comments from Staff regarding the Enhanced Control and Supervision Procedures, the IPC Dealers shall provide to the OSC Manager, revised written policies and procedures (the "Revised Policies and Procedures") for each of the IPC Dealers that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the IPC Dealers' policies and procedures to establish the Enhanced Control and Supervision Procedures (the "Remaining Issues");

        ii. thereafter, the IPC Dealers shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

        iii. within eight months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the "Confirmation Date"), the IPC Dealers shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the IPC Dealers, to the OSC Manager, expressing their opinion on whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the IPC Dealer for the six month period commencing from the Confirmation Date;

        iv. the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

        v. the IPC Dealers shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

        vi. any of the IPC Dealers or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and

vii. the IPC Dealers shall comply with the Undertaking.

51. The IPC Dealers agree to make the voluntary payments described in paragraphs 8(b)(x) and (xi) by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

PART V – COMMISSION STAFF COMMITMENT

52. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 53 below and except with respect to paragraph 44 above, and nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the IPC Dealers in relation to any control and supervision inadequacies leading to clients paying excess fees other than the Control and Supervision Inadequacies described herein.

53. If the Commission approves this Settlement Agreement and either of the IPC Dealers fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the applicable IPC Dealer. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT

54. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for June 7, 2018, or on another date agreed to by Commission Staff and the IPC Dealers, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

55. Commission Staff and the IPC Dealers agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the IPC Dealers' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.

56. If the Commission approves this Settlement Agreement, the IPC Dealers agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

57. If the Commission approves this Settlement Agreement, the IPC Dealers will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the IPC Dealers agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the IPC Dealers' testimonial obligations or the right to take legal or factual positions in other investigations or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its staff is not a party ("Other Proceedings") or to make public statements in connection with Other Proceedings.

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

PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT

59. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

a. this Settlement Agreement and all discussions and negotiations between Commission Staff and the IPC Dealers before the settlement hearing takes place will be without prejudice to Commission Staff and the IPC Dealers; and

b. Commission Staff and the IPC Dealers will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

60. The parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the IPC Dealers otherwise agree or if required by law.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

61. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

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

Dated this 5th day of June, 2018

IPC SECURITIES CORPORATION

Per: *"John Novachis"*
John Novachis
President and Ultimate Designated Person

Per: *"Darryl Fernandez"*
Darryl Fernandez
Chief Financial Officer

IPC INVESTMENT CORPORATION

Per: *"John Novachis"*
John Novachis
President and Ultimate Designated Person

Per: *"Darryl Fernandez"*
Darryl Fernandez
Chief Financial Officer

COMMISSION STAFF

"Jeff Kehoe"
Jeff Kehoe
Director, Enforcement Branch
Ontario Securities Commission

SCHEDULE "A"

FILE NO: ______

IN THE MATTER OF
IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION

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

WHEREAS on June 7, 2018, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider an Application made jointly by Staff of the Commission (**Staff**) and IPC Securities Corporation and IPC Investment Corporation (the **IPC Dealers**) for approval of a settlement agreement dated June 5, 2018 (the **Settlement Agreement**);

ON READING the Statement of Allegations dated June 5, 2018 and the Joint Application Record for a Settlement Hearing dated June 5, 2018, including the Settlement Agreement and on hearing the submissions of counsel for the IPC Dealers and Staff;

IT IS HEREBY ORDERED THAT:

(a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved; and

(b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

(i) in respect of inadequacies in the IPC Dealers' systems of controls and supervision which formed part of their compliance systems (the **Control and Supervision Inadequacies**), within 90 days of receiving comments from Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies (the **Enhanced Control and Supervision Procedures**), the IPC Dealers shall, for each of the IPC Dealers, provide to a manager or deputy director in the Compliance and Registrant Regulation Branch (the **OSC Manager**), revised written policies and procedures (the **Revised Policies and Procedures**) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff with regard to the IPC Dealers' policies and procedures to establish the Enhanced Control and Supervision Procedures (the **Remaining Issues**);

(ii) thereafter, the IPC Dealers shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

(iii) within eight months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Staff (the **Confirmation Date**), the IPC Dealers shall submit a letter (the **Attestation Letter**), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the IPC Dealers, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the IPC Dealer for the six month period commencing from the Confirmation Date;

(iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

(v) the IPC Dealers shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

(vi) any of the IPC Dealers or Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above;

(vii) the IPC Dealers shall comply with their undertaking in the Settlement Agreement to:

a. pay compensation to eligible clients and former clients and report to the OSC Manager in accordance with a plan submitted by them to Staff (the **Compensation Plan**);

b. make a voluntary payment of $30,000 to reimburse the Commission for costs incurred or to be incurred by it; and

c. make a further voluntary payment of $460,000 to be designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act; and

(viii) the voluntary payment referred to in paragraph (vii)(c) above is designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act.

DATED at Toronto, Ontario this ____ day of June, 2018

____

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 IPC Securities Corporation and IPC Investment Corporation – ss. 127, 127.1

IN THE MATTER OF
IPC SECURITIES CORPORATION and
IPC INVESTMENT CORPORATION

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Citation: *IPC Securities Corporation (Re)*, 2018 ONSEC 29
Date: 2018-06-07
File No.: 2018-32

Hearing:	June 7, 2018	
Decision:	June 7, 2018	
Panel:	AnneMarie Ryan Frances Kordyback	Commissioner and Chair of the Panel Commissioner
Appearances:	Michelle Vaillancourt	For Staff of the Commission
	Erin Hoult	For IPC Securities Corporation and IPC Investment Corporation

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

[1] Staff of the Commission has made allegations against IPC Securities Corporation and IPC Investment Corporation, referred to collectively as the "**IPC Dealers**". Staff's allegations relate to matters that were reported by the IPC Dealers to their respective self-regulatory organizations in March 2015.

[2] Staff and the IPC Dealers have entered into a settlement agreement, in which the IPC Dealers neither admit nor deny the truth of Staff's allegations. The parties submit jointly that it is in the public interest for us to approve this settlement. We agree and we reach that conclusion for the following reasons.

[3] Staff alleges that certain IPC Dealers' clients paid excess fees, because both firms failed to establish, maintain and apply procedures to establish sufficient controls and supervision. Staff also alleges that these excess fees were not detected or corrected by the IPC Dealers in a timely manner.

[4] Staff alleges that the excess fees fell into three categories.

a. First, some clients had fee-based accounts containing various products in respect of which the IPC Dealers received trailer fees and/or negotiable advisory fees, in addition to the account fee that the client was already paying.

b. Second, some clients had fee-based accounts where the fee was incorrectly calculated, because certain assets that paid trailer fees were included in the calculation when they should not have been included.

c. Third, some clients who had invested in a particular series of a fund were not advised that they qualified for a different series of the same fund which had a lower Management Expense Ratio, or "**MER**", than the series in which they had invested.

[5] Had Staff's allegations been proven at a contested hearing, the inadequacies referred to would have constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. That section requires registered firms, such as the IPC Dealers, to establish, maintain and apply policies and procedures that establish a sufficient system of controls and supervision.

[6] While the terms of the settlement have been agreed to by the parties, we must decide whether the agreement should be approved. In making that decision, we recognize that the agreement is the product of negotiation between Staff and the IPC Dealers, all ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. Our role is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it is in the public interest to order the agreed-upon terms. In particular, we must be satisfied that it is in the public interest to approve this "no-contest" settlement.

[7] It is important to our decision, in that regard, that after the IPC Dealers first discovered some of the alleged inadequacies, they promptly self-reported those inadequacies to their respective self-regulatory organizations, and soon afterwards began discussions with Commission Staff. Those discussions led to further reviews, and to the discovery of additional inadequacies.

[8] It is also noted that, once the inadequacies were identified, the IPC Dealers did begin to address the underlying causes of the alleged inadequacies promptly. In particular, they addressed the alleged MER-differential inadequacy, which represented approximately two-thirds of the affected accounts, by the fall of 2016. Additional inadequacies which affected approximately 26% of the affected accounts were addressed in late 2016 and early 2017. The issues affecting the remaining 6% were addressed more recently.

[9] Throughout the process, the IPC Dealers provided prompt, detailed and candid co-operation to Staff. Further, there is no allegation or evidence of dishonest conduct on the part of the IPC Dealers.

[10] The IPC Dealers will be accountable for paying compensation totalling approximately $11 million to the affected clients, on the basis set out in the settlement agreement, subject to oversight by Commission Staff. The IPC Dealers have also committed to take corrective action, including implementing enhanced procedures, controls, and monitoring systems designed to prevent a recurrence of the alleged inadequacies. These revised procedures will be subject to review and approval by Staff.

[11] Finally, the IPC Dealers have made a voluntary payment of $460,000 to the Commission for allocation or use by the Commission under subsection 3.4(2) of the *Securities Act*, and an additional voluntary payment of $30,000 to reimburse the Commission for costs.

[12] As with all settlements, this settlement resolves this matter in a timely and efficient way that saves the substantial costs and delay that would be incurred as a result of a contested hearing. The affected clients and others benefit from a timely resolution of this matter.

[13] No-contest settlements arise less frequently. It is difficult to secure the Commission's approval of a settlement in which the respondents do not admit the truth of Staff's allegations. However, in this matter, we have taken into account the IPC Dealers' self-identification, prompt self-reporting, measures to adopt new policies and controls, payment of compensation to affected clients, significant additional payments, and prompt, detailed and candid co-operation with Staff. We have considered these actions with reference to the factors identified in the *Revised Credit for Co-operation Program*, sections 16 and 17 of OSC Staff Notice 15-702, and in our view, it is appropriate to approve a no-contest settlement in this case.

[14] We recognize that compliance inadequacies do occur from time to time. When such inadequacies are identified, it is critical that registrants respond in a responsible manner as the IPC Dealers have done. The *Credit for Co-operation Program* was designed for cases such as this, and the IPC Dealers have earned the benefit of the credit called for by that program.

[15] This settlement should make it clear that registered firms must have in place robust and effective compliance systems, a principal purpose of which is to provide reasonable assurance that investors are protected and that they are treated fairly.

[16] For all of the above reasons, we approve the settlement agreement as requested and we conclude that it is in the public interest to issue an order substantially in the form of Schedule 'A' to that agreement.

Dated at Toronto this 7th day of June, 2018.

"AnneMarie Ryan"

"Frances Kordyback"

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
AlkaLi3 Resources Inc.	05 June 2018	
Golden Harp Resources Inc.	05 June 2018	11 June 2018
Leo Acquisitions Corp.	05 June 2018	08 June 2018
Mag One Products Inc.	05 June 2018	
Plymouth Realty Capital Corp.	05 June 2018	08 June 2018
Russell Breweries Inc.	05 June 2018	
Tribute Resources Inc.	04 May 2018	07 June 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
Agility Health, Inc.	01 May 2018	
Katanga Mining Limited	15 August 2017	
Sage Gold Inc.	01 May 2018	

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Chapter 6

Request for Comments

6.1.1 CSA Notice and Second Request for Comment – Proposed National Instrument 93-101 Derivatives: Business Conduct and Proposed Companion Policy 93-101CP Derivatives: Business Conduct

CSA Notice and Second Request for Comment

Proposed National Instrument 93-101
Derivatives: Business Conduct

Proposed Companion Policy 93-101CP
Derivatives: Business Conduct

June 14, 2018

Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are publishing the following for a second comment period of 95 days, expiring on September 17, 2018:

- Proposed National Instrument 93-101 *Derivatives: Business Conduct* (the **Instrument**);
- Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (the **CP**).

Collectively, the Instrument and the CP are referred to as the **Proposed Instrument** in this Notice.

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on this publication and have also included specific questions in the Comments section.

In developing the Proposed Instrument, the CSA has consulted with the Bank of Canada, the Office of the Superintendent of Financial Institutions (**OSFI**) and the Department of Finance (Canada). We intend to continue to consult with these entities throughout the development of the Proposed Instrument.

On April 19, 2018, we published for comment Proposed National Instrument 93-102 D*erivatives: Registration* and Proposed Companion Policy 93-102 *Derivatives: Registration* (collectively, the **Proposed Registration Instrument**). The Proposed Instrument, together with the Proposed Registration Instrument, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives. Accordingly, we are overlapping the comment period for the Proposed Instrument with that of the Proposed Registration Instrument, which will also close on September 17, 2018. This will allow commenters to consider the Proposed Instrument and the Proposed Registration Instrument together when making their comments.

Background

In April 2013, the CSA published for comment CSA Consultation Paper 91-407 *Derivatives: Registration* which outlined a proposed registration and business conduct regime for derivatives markets participants.

On April 4, 2017, we published for comment Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (the **first consultation**). The comment period for the first consultation closed on September 1, 2017. During the comment period, we received submissions from 21 commenters. We thank all commenters for their input. We have carefully reviewed the comments received and have revised the Proposed Instrument. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex A of this

Notice. Copies of the submissions on the Proposed Instrument can be found on the websites of the Alberta Securities Commission,[1] Ontario Securities Commission[2] and Autorité des marchés financiers.[3]

As we indicated in the CSA Notice that accompanied the first consultation, we have chosen to split the proposed derivatives registration and business conduct regime into two separate rules. This approach simplifies each rule and is intended to ensure that all derivatives firms (i.e., all derivatives advisers and all derivatives dealers) remain subject to certain minimum standards in all Canadian jurisdictions.

The Proposed Instrument applies to a person or company that meets the definition of "derivatives adviser" or "derivatives dealer" regardless of whether it is registered or exempted from the requirement to be registered in a jurisdiction.

Substance and Purpose of the Proposed Instrument

The CSA have developed the Proposed Instrument to help protect investors, reduce risk, improve transparency, increase accountability and promote responsible business conduct in the over-the-counter (**OTC**) derivatives[4] markets.

During the financial crisis of 2008, the inappropriate sale of financial investments led to major losses for retail and institutional investors. The International Organization of Securities Commissions (**IOSCO**) noted in 2012 that "until recently, OTC derivatives markets have not been subject to the same level of regulation as securities markets. Insufficient regulation allowed certain participants to operate in a manner that created risks to the global economy that manifested during the financial crisis of 2008."[5] Moreover, since the financial crisis, there have been numerous cases of serious market misconduct in the global derivatives market, including, for example, misconduct relating to the manipulation of benchmarks and front-running of customer orders.

To address these issues, the Proposed Instrument, together with the Proposed Registration Instrument, establishes a robust investor protection regime that meets IOSCO's international standards and takes into account CSA jurisdictions' commitments to create a derivatives dealer regime that is also consistent with the regulatory approach taken by most IOSCO jurisdictions with active derivatives markets.[6] As a result, the Proposed Instrument will help protect participants in the OTC derivatives markets from unfair, improper or fraudulent practices and foster confidence in the Canadian derivatives markets.

The Proposed Instrument is intended to create a uniform approach to derivatives markets conduct regulation in Canada and promote consistent protections for market participants regardless of the type of firms they deal with, while also providing that derivatives dealers and advisers operating in Canada are subject to consistent regulation that does not result in any competitive disadvantage.

A person or company is subject to the Proposed Instrument only if it is a "derivatives adviser" or a "derivatives dealer". As described below in the Summary of the Instrument, a test is used to determine if the person or company is in the business of trading or advising in OTC derivatives. Nevertheless, a person or company that may be in the business of trading in OTC derivatives may be exempt from the requirements of the Proposed Instrument if they qualify for the end-user exemption. Finally, even if a person or company is subject to the requirements of the Proposed Instrument, those requirements are tailored depending on the nature of the derivatives dealer's or derivatives adviser's derivatives party.

The Proposed Instrument sets out a comprehensive approach regulating the conduct of derivatives markets participants, including requirements relating to the following:

- Fair dealing
- Conflicts of interest
- Know your client (KYC)
- Suitability
- Pre-trade disclosure
- Reporting
- Compliance
- Senior management duties
- Recordkeeping
- Treatment of derivatives party assets

[1] Available at http://www.albertasecurities.com/Regulatory%20Instruments/5341884-v1-CSA_Notice_and_Request_for_Comment_NI_93-101.PDF

[2] Available at http://www.osc.gov.on.ca/en/55181.htm

[3] Available at https://lautorite.qc.ca/en/professionals/regulations-and-obligations/public-consultations/topic/derivatives/finished/

[4] The Proposed Instrument applies to derivatives as determined in accordance with the product determination rule applicable in the relevant jurisdiction. Each jurisdiction has adopted a product determination rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument. Only those OTC derivatives set out in the applicable product determination rule are relevant.

[5] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD381.pdf (DMI Report) at p 1.

[6] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD497.pdf (DMI Implementation Review) at p. 13.

Many of the requirements in the Proposed Instrument are similar to existing market conduct requirements applicable to registered dealers and advisers under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) but have been modified to reflect the different nature of derivatives markets.

Much like NI 31-103, the Proposed Instrument takes a two-tiered approach to investor/customer protection, as follows:

- certain obligations apply in all cases when a derivatives firm is dealing with or advising a derivatives party, regardless of the level of sophistication or financial resources of the derivatives party; and
- certain obligations:
  - do not apply if the derivatives firm is dealing with or advising a derivatives party that is an "eligible derivatives party" and is neither an individual nor a specified commercial hedger, and
  - apply but may be waived if the derivatives firm is dealing with or advising a derivatives party who is an "eligible derivatives party" that is an individual or a specified commercial hedger.

The definition of "eligible derivatives party" and the extent to which obligations do not apply, or apply unless waived, when dealing with or advising an eligible derivatives party are explained below in Part 1 of the Summary of the Instrument.

As explained in CSA Staff Notice 33-319 *Status Report on CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*, the CSA are presently considering a number of proposals aimed at strengthening the obligations that securities advisers, dealers and representatives owe to their clients. CSA staff responsible for this initiative continue to develop these proposals. We will monitor the work on this project, and may recommend amendments to the Proposed Instrument at a later date based on this work.

Summary of the Instrument

Part 1 – Definitions

Part 1 of the Instrument sets out relevant definitions and principles of interpretation.

Some of the most important definitions in the Instrument are provided below.

Derivatives adviser and derivatives dealer

The definitions of "derivatives adviser" and "derivatives dealer" include a "business trigger" similar to the business trigger for registration in Canadian securities legislation.

It is important to note that the Instrument applies to a person or company that meets the definition of "derivatives adviser" or "derivatives dealer", regardless of whether they are registered or exempted from the requirement to be registered in a jurisdiction. This is intended to ensure that certain derivatives markets participants that may benefit from an exemption from registration in certain jurisdictions nevertheless remain subject to certain minimum standards in relation to their business conduct towards their customers.

Paragraph (b) in the definitions of each of "derivatives adviser" and "derivatives dealer" has been included since the Proposed Registration Instrument may designate as or prescribe additional entities to be derivatives advisers or derivatives dealers based on specified activities (e.g., trading with non-eligible derivatives parties or engaging in certain market-making activities).

Derivatives party

In the Instrument, the term "derivatives party" refers to a derivatives firm's counterparties, customers, and other persons or companies that the derivatives firm may deal with or advise. It is not necessary that the parties consider a client relationship to exist in order for one party to be a derivatives party to the other.

Eligible derivatives party

The term "eligible derivatives party" is intended to refer to those sophisticated derivatives parties that do not require the full set of protections afforded to "retail" customers or investors, either because they may reasonably be considered to have sufficient knowledge and experience to assess the risks of transacting in derivatives or because they have sufficient financial resources to obtain professional advice in order to protect themselves through contractual negotiation with the derivatives firm.

As currently drafted, the definition of "eligible derivatives party" is generally consistent with the current regulatory regimes in the U.S. and Canada in relation to OTC derivatives.[7] In addition, the definition is similar to the definition of "permitted client" in NI 31-103, with a few modifications intended to reflect differences between derivatives and securities markets.

Specified commercial hedger

The term "specified commercial hedger" refers to a commercial hedger that meets the conditions under either paragraph (n) or (q) of the definition of eligible derivatives party.

Part 2 – Application

Part 2 of the Instrument sets out a number of provisions relating to the application and scope of the Instrument.

Section 3 is a scope provision intended to allow the Instrument to apply in respect of the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument.

Section 7 provides that the requirements of the Instrument, other than the specific requirements listed in subsection 7(1), do not apply to a derivatives firm if it is dealing with or advising an eligible derivatives party that:

- is not an individual or a specified commercial hedger, or
- is an individual or specified commercial hedger that has waived in writing the protections provided by the requirements.

An eligible derivatives party that is neither an individual nor a specified commercial hedger, or is an individual or specified commercial hedger that has waived these protections in writing, is referred to as a **specified eligible derivatives party** in this Notice.

When a derivatives firm is dealing with or advising a specified eligible derivatives party, the derivatives firm will only be subject to the following requirements of the Instrument:

(a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];

(b) sections 23 [*Interaction with other instruments*] and 24 [*Segregating derivatives party assets*] of Part 4 [*Derivatives party accounts*];

(c) subsection 27(1) [*Content and delivery of transaction information*] of Part 4 [*Derivatives party accounts*]; and

(d) Part 5 [*Compliance and recordkeeping*].

A derivatives firm and an eligible derivatives party may choose to incorporate additional protections in the contracts that govern their relationship and their derivatives trading activities. However, the CSA are of the view that, in the case of a derivatives firm dealing with or advising an eligible derivatives party, these protections should not be required but rather should be a matter of contract for the parties.

We have included a table that compares the approach in the Instrument with the approach under NI 31-103 in Appendix A.

Part 3 – Dealing with or advising derivatives parties

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Division 1 of Part 3 sets out the fundamental business conduct obligations that the CSA have recommended should apply to all derivatives firms when dealing with or advising derivatives parties, including eligible derivatives parties, namely:

[7] See, for example, the definition of "eligible contract participant" under the U.S. *Commodity Exchange Act* and the *Securities Exchange Act of 1934* applicable to CFTC and SEC swap dealers and major swap participants, the definition of "qualified party" in British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*, the definition of "qualified party" in Alberta Blanket Order 91-507 *Over-the-Counter Derivatives*, the definition of "qualified party" in Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*, the definition of "qualified party" in Manitoba Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*, the definition of "accredited counterparty" in section 3 of the Quebec *Derivatives Act*, the definition of "qualified party" in New Brunswick Local Rule 91-501 *Derivatives* and the definition of "qualified party" in Nova Scotia Blanket Order 91-501 *Over The Counter Trades in Derivatives*.

- fair dealing,
- responding to conflicts of interest, and
- general (or "gatekeeper") know-your-derivatives party obligations.

Fair dealing

The fair dealing obligation proposed in section 8 of the Instrument is consistent with international practice and is in line with the standards set by NI 31-103 while keeping in mind the differences between derivatives and securities markets. The CSA believe that the fair dealing obligation in section 8, as a principles-based obligation, should be interpreted flexibly and in a manner that is sensitive to context and to derivatives markets participants' reasonable expectations. We expect that the fair dealing obligation will be applied differently depending on the sophistication of the market participant.

Identifying and responding to conflicts of interest

Section 9 of the Instrument contains obligations to identify and respond to conflicts of interest. This obligation applies when dealing with or advising market participants of all levels of sophistication. It is a principles-based obligation which should be interpreted flexibly and in a manner that is sensitive to context and to derivatives markets participants' reasonable expectations. Furthermore, it is expected that in responding to any conflict of interest, the derivatives party will consider the fair dealing obligation as well as any other standard of care that may apply when dealing with or advising a derivatives party.

General (or "gatekeeper") know-your-derivatives party obligations

Section 10 of the Instrument sets out the general "gatekeeper" know-your-derivatives party (**KYDP**) obligations. These obligations include requirements to verify the identity of a derivatives party, verify that the derivatives party is an eligible derivatives party, determine if the derivatives party is an insider of a reporting issuer, and comply with anti-money-laundering and terrorist financing obligations.

We would anticipate that many derivatives firms, including Canadian financial institutions, will already have policies and procedures in place to address these obligations and that section 10 should not result in any significant new obligations for these entities.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 are intended to protect non-eligible derivatives parties. They do not apply to the extent that a derivatives firm is dealing with or advising a specified eligible derivatives party.

A description of a number of these obligations is provided below.

Derivatives-party-specific needs and objectives

Section 11 sets out the obligation on a derivatives firm to obtain information about a derivatives party's specific investment needs and objectives in order for the derivatives firm to meet its suitability obligations under section 12 and to provide the appropriate pre-transaction disclosure under subsection 19(1).

Information on a derivatives party's specific needs and objectives (sometimes referred to as "client-specific KYC information") forms the basis for determining whether transactions in derivatives are suitable for a derivatives party. The obligations in section 11 require a derivatives firm to take reasonable steps to obtain and periodically update information about its derivatives parties.

Suitability

Section 12 requires a derivatives firm to take reasonable steps to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH CERTAIN DERIVATIVES PARTIES

The obligations in Division 3 focus on restricting certain business activities when dealing with less sophisticated derivatives parties. These obligations relate to tied selling. The obligations in this Division do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Tied selling

Section 17 prohibits a derivatives firm from engaging in certain sales practices that would pressure or require a derivatives party to obtain a product or service as a condition of obtaining other products or services from the derivatives firm. An example of tied selling would be offering a loan on the condition that the derivatives party purchase another product or service, such as a swap to hedge the loan, from the derivatives firm or one of its affiliates.

As explained in the CP, section 17 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain derivatives parties.

Part 4 – Derivatives Party Accounts

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The CSA believe that less sophisticated derivatives parties, or those individuals who may require a higher level of protection, need more detailed information concerning their transactions and their accounts. Below are some of the requirements designed to keep derivatives parties informed. The obligations in this Division do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Section 18 requires a derivatives firm to provide a derivatives party with all information that the derivatives party needs in order to understand not only their relationship with the derivatives firm, but also the products and services that the derivatives firm will or may provide and the fees or other charges that the derivatives party may be required to pay.

Subsection 18(1) sets out the obligation for a derivatives firm to provide a derivatives party with disclosure that is reasonably designed to allow the derivatives party to assess the material risks of transacting in the derivative. This includes the derivatives party's potential exposure and the material characteristics of the derivative, which include the material economic terms and the rights and obligations of the counterparties to the type of derivative.

This section also requires a derivatives firm to provide a risk disclosure to a derivatives party before a transaction takes place, which explains that the leverage inherent in derivatives may require the derivatives party to deposit additional funds if the value of the derivative declines. The risk disclosure requires an explanation that borrowing money or using leverage to fund a derivatives transaction carries additional risk.

In addition, subsection 19(2) establishes obligations, before transacting a specific derivative,

- to advise the derivatives party about material risks in relation to the specific derivative that are materially different than the risks disclosed under subsection 19(1), and

- if applicable, to set out the price of the derivative to be transacted and the most recent valuation.

Further to these obligations, section 20 requires a derivatives firm to provide a derivatives party with a daily valuation of the derivatives that it has transacted with or on behalf of that derivatives party.

DIVISION 2 – DERIVATIVES PARTY ASSETS

Division 2 sets out certain requirements related to segregation and holding of collateral delivered to a derivatives firm as initial margin, and imposes a requirement on the derivatives firm to obtain the written consent of its derivatives party if the derivatives firm intends to use or invest the collateral that is delivered to it by or for a derivatives party.

The Instrument exempts a derivatives firm from this Division in respect of derivatives party assets if, in respect of those derivatives party assets, any of the following apply:

- the derivatives firm is subject to and complies with or is exempt from sections 3 through 8 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*,

- the derivatives firm is subject to and complies with securities legislation relating to margin and collateral requirements or National Instrument 81-102 *Investment Funds* (**NI 81-102**).

We expect that later this year, securities legislation relating to margin and collateral requirements will be published for comment in *Proposed National Instrument 95-101 Margin and Collateral Requirements for Non-Centrally Cleared Derivatives*.

The obligations in this Division, other than section 23 and section 24, do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

Division 3 sets out obligations of derivatives firms to provide certain reports to derivatives parties.

Section 27 provides that a derivatives firm must provide its derivatives party with a confirmation of the key elements of a derivatives transaction. If the derivatives party is not a specified eligible derivatives party, the required contents of this confirmation are set out in subsection 27(2).

Section 28 sets out the obligations of a derivatives firm to provide quarterly statements to derivatives parties. Subsection 28(2) describes the information that must be provided in the quarterly statement.

The obligations in this Division, other than the fundamental transaction confirmation requirement in subsection 27(1), do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Part 5 – Compliance and recordkeeping

DIVISION 1 – COMPLIANCE

Section 30 provides that a derivatives firm must have policies, procedures and controls to assure that, with respect to transacting or advising on derivatives, the firms and individuals acting on its behalf comply with applicable laws, to manage risk and to ensure that individuals have the necessary training and expertise.

The CSA are monitoring international regulatory initiatives designed to ensure that senior managers bear responsibility for the effective and efficient management of their business units. Section 31 imposes certain supervisory, management, and reporting obligations on “senior derivatives managers”. These requirements are intended to create accountability at the senior management level. A senior derivatives manager is an individual designated by the derivatives firm as responsible for the derivatives business unit of the derivatives firm. Senior derivatives managers must supervise compliance activities and respond, in a timely manner, to any material non-compliance by an individual working in the derivatives business unit. Furthermore, a senior derivatives manager or a chief compliance officer who has been delegated the responsibility must also report at least annually to the firm’s board of directors, either to specify each incidence of material non-compliance with, or to specify that each derivatives business unit is in material compliance with, the Instrument, applicable securities legislation and the policies and procedures required under section 30.

Section 32 sets out the requirement of a derivatives firm to respond to material non-compliance, and in certain circumstances to report material non-compliance to the regulator or securities regulatory authority.

Part 6 – Exemptions

DIVISION 1 – EXEMPTION FROM THE INSTRUMENT

End users

Section 37(1) provides that certain derivatives end-users (e.g., entities that trade derivatives for their own account for commercial purposes) are exempt from the Instrument provided they do not do any of the following:

- solicit or otherwise transact in a derivative with, for or on behalf of a person or company that is not an eligible derivatives party;
- advise persons or companies in respect of transactions in derivatives, if the person or company is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 42;
- regularly make or offer to make a market in a derivative with a derivatives party;
- regularly facilitate or otherwise intermediate transactions in derivatives for another person or company other than an affiliated entity that is not an investment fund;
- facilitate the clearing of a transaction in a derivative through the facilities of a qualifying clearing agency for another person or company.

DIVISION 2 AND DIVISION 3 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS OF THE INSTRUMENT

Foreign derivatives dealers and foreign derivatives advisers

Divisions 2 and 3 provide, under certain conditions, an exemption from requirements in the Instrument for foreign derivatives dealers and foreign derivatives advisers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument.

These exemptions apply to the provisions of the Instrument where the derivatives dealer or derivatives adviser is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix A and Appendix D of the Instrument opposite the name of the foreign jurisdiction. The jurisdictions specified in Appendices A and D will be determined on a jurisdiction-by-jurisdiction basis, and based on a review of the laws and regulatory framework of the jurisdiction.

Investment dealers

Division 2 provides an exemption from requirements in the Instrument for a derivatives dealer that is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**) if the derivatives dealer complies with the corresponding conduct and other regulatory requirements of IIROC as set out in Appendix B of the Instrument.

Canadian financial institutions

Division 2 provides an exemption from requirements in the Instrument for a derivatives dealer that is a Canadian financial institution and is subject to and complies with corresponding conduct and other regulatory requirements of its prudential regulator as set out in Appendix C of the Instrument.

Note that, as of the time of this publication for comment, the equivalency analysis required to populate the Appendices of the Instrument has not been completed. The Appendices will be completed and published for public comment prior to the Instrument being finalized.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

Division 3 provides an exemption for persons and companies that provide general advice in relation to derivatives, where the advice is not tailored to the needs of the person or company receiving the advice (e.g., analysis published in mass media), and the person or company discloses all financial or other interests in relation to the advice.

Part 8 – Effective Date

Section 45 provides that the requirements will not apply to unexpired derivatives that were entered into before the effective date of the Instrument other than the following ongoing requirements: fair dealing (Section 8), daily reporting (Section 20) and derivatives party statements (Section 28).

Summary of Key Changes to the Proposed Instrument from Previous Publication

(a) "eligible derivatives party" new paragraph (o) – commercial hedger

We received a number of comments relating to the net asset requirement of $25 million for a person or company to be considered an eligible derivatives party under paragraph (m) of that definition. Commenters expressed the view that this threshold may reduce liquidity for commercial hedgers and is not harmonized with the threshold in other major trading jurisdictions. In response to these comments, we have included a new paragraph of the eligible derivatives party definition for commercial hedgers that have at least $10 million in net assets and meet other specified conditions. Entities relying on this paragraph must waive their right to be treated as a non-eligible derivative party.

(b) "eligible derivatives party" new paragraph (p) – fully guaranteed entities

We received comments that the eligible derivatives party definition should be amended to allow an entity to qualify as an eligible derivatives party if its obligations are guaranteed by an entity that otherwise qualifies as an eligible derivatives party. In response to these comments we have included a new paragraph (p) of the eligible derivatives party definition for companies whose obligations under a derivative are fully guaranteed or otherwise fully supported under an agreement by one or more eligible derivatives parties.

(c) Managed accounts of eligible derivatives parties

We received a number of comments recommending that managed accounts for eligible derivatives parties should not be treated like those of non-eligible derivatives parties. They asserted that eligible derivatives parties are sophisticated investors and the fact that they have granted discretionary authority to an adviser to execute derivative transactions on their behalf should not change that classification. In response to these comments, we have removed subsection 7(3) which required managed accounts of eligible derivatives parties to be treated as those of non-eligible derivatives parties.

(d) Former section 19 – Fair terms and pricing

We received comments that the former section 19 fair terms and pricing provision was not appropriately tailored for the OTC derivatives market. The commenters pointed out the negotiated, bilateral and bespoke nature of OTC derivatives transactions. We received another comment that this provision would be better suited as part of the fair dealing obligation in section 8 of the Instrument. In response to these comments, we have deleted this provision and included companion policy guidance in section 8 relating to the pricing of derivatives.

(e) Part 4, Division 2 – Derivatives Party Assets

We received a number of suggestions to revise this Division, relating to the scope of its application generally and to the re-use and investment of derivatives party assets. Part 4 Division 2 now clarifies that this requirement does not apply to a derivatives firm's transactions with a derivatives party that are already subject to rules that apply to a specific type of derivatives party, such as securities legislation relating to margin and collateral requirements or NI 81-102. Furthermore, this Division imposes a requirement on the derivatives firm to obtain the written consent of its derivatives party if the derivatives firm intends to use or invest initial margin.

(f) Part 5, Division 1 – Compliance

We received comments that certain of the senior derivatives manager obligations, such as compliance reporting to a derivatives firm's board of directors, should be undertaken by a firm's chief compliance officer and not its senior derivatives manager. We have amended sections 31 and 32 to permit the senior derivatives manager or a chief compliance officer to fulfil the internal reporting requirements.

(g) Sections 38 and 43 – Foreign derivatives dealer exemption and foreign derivatives adviser exemption – trading on an exchange or derivatives trading facility

We received comments that the exemption for foreign derivatives dealers and foreign derivatives advisers should be available to foreign dealers and foreign advisers in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in a Canadian jurisdiction. In response to these comments, we have amended subsections 38(3) and 43(3) so that these foreign derivatives dealers and foreign derivatives advisers are no longer prohibited from qualifying for the exemptions under sections 38 and 43.

(h) Section 41 – Derivatives traded on a derivatives trading facility that are cleared

We received comments that a derivatives firm may not know the identity of its derivatives party prior to execution of a transaction anonymously on a derivatives trading facility. We have included an exemption from sections 10 and 27 of the Instrument for derivatives traded on a derivatives trading facility that, as soon as technologically practicable, are submitted for clearing to a qualifying clearing agency. This exemption is only available if the derivatives firm's derivatives party is an eligible derivatives party.

(i) Section 45 – Effective date

We received a number of comments that market participants should be permitted to leverage existing disclosures and representations to determine eligible derivatives party status. In response to these comments, we have included a transition provision that permits derivatives firms to rely on a derivatives party's "permitted client" status under National Instrument 31-103, "accredited counterparty" status under the *Derivatives Act* (Quebec) or "qualified party" status under the relevant blanket orders in the provinces of Alberta, British Columbia, Manitoba, New Brunswick or Nova Scotia for transactions entered into prior to the coming into force of the Instrument. However, the fair dealing obligation, daily reporting and derivatives party statement requirements will apply to these pre-existing transactions.

(j) International harmonization and miscellaneous drafting clarifications

There are a number of drafting changes throughout the Instrument to respond to comments that clarify the Instrument and further harmonize the Instrument with international regulatory regimes.

Anticipated Costs and Benefits

As mentioned above, we have developed the Proposed Instrument to help protect investors and counterparties, reduce risk, improve transparency, increase accountability and promote responsible business conduct in the OTC derivatives markets. Moreover, the business conduct requirements under the Instrument will help to protect participants in the OTC derivatives markets from unfair, improper or fraudulent practices and foster confidence in the Canadian derivatives market.

The Proposed Instrument aims to provide participants in the Canadian OTC derivatives markets with protections that are equivalent to protections offered to participants in other major international markets.

There will be compliance costs for derivatives firms that may increase the cost of trading or receiving advice for market participants. In the CSA's view, the compliance costs to market participants are proportionate to the benefits to the Canadian market of implementing the Proposed Instrument. The major benefits and costs of the Proposed Instrument are described below.

(a) Benefits

The Proposed Instrument will protect participants in the Canadian OTC derivatives markets by reducing the likelihood of suffering loss through inappropriate transactions, inappropriate sale of derivatives and market misconduct. The Proposed Instrument offers protections not only to retail market participants but also large market participants whose derivatives losses could impact their business operations and potentially the Canadian economy more broadly. The Proposed Instrument fills a regulatory gap in the Canadian OTC derivatives markets for certain derivatives firms that are not subject to business conduct regulation and oversight. It is intended to foster confidence in the Canadian derivatives markets by creating a regime that meets international standards and is, where appropriate, equivalent to the regimes in major trading jurisdictions. Currently, OTC derivatives are regulated differently across Canadian jurisdictions, and there is inconsistency in regulation of business conduct in OTC derivatives markets. The Proposed Instrument aims to reduce compliance costs for derivatives firms to the degree possible, by harmonizing the rules across Canadian jurisdictions and establishing a regime that is tailored for the derivatives market.

(b) Costs

Generally, firms will incur costs from analysing the requirements and establishing policies and procedures for compliance. Any costs associated with complying with the Proposed Instrument are expected to be borne by derivatives firms and in certain circumstances may be passed on to derivatives parties.

There is also a possibility that foreign derivatives firms may be dissuaded from entering or remaining in the Canadian market due to the costs of complying with the Proposed Instrument, which would reduce Canadian derivatives parties' options for derivatives services. However, the Instrument contemplates a number of exemptions, including an exemption for derivatives firms located in foreign jurisdictions, which are subject to and in compliance with equivalent requirements under foreign laws. These exemptions could significantly reduce compliance costs associated with the Proposed Instrument for derivatives firms located in and complying with the laws of approved foreign jurisdictions.

(c) Conclusion

The CSA are of the view that the impact of the Proposed Instrument, including anticipated compliance costs for derivatives firms, is proportional to the benefits sought.

Protection of derivatives parties and the integrity of the Canadian derivatives markets are the fundamental principles of the Proposed Instrument. The Proposed Instrument aims to provide a level of protection similar to that offered to derivatives parties in other jurisdictions with significant OTC derivatives markets, while being tailored to the nature of the Canadian market. To achieve a balance of interests, the Proposed Instrument is designed to promote a safer environment in the Canadian derivatives markets while offering exemptions to derivatives firms that only deal with eligible derivatives parties or that are already subject to and compliant with equivalent requirements.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex I – Summary of comments and CSA responses and list of commenters
- Annex II – Proposed National Instrument 93-101 *Derivatives: Business Conduct*
- Annex III – Proposed Companion Policy 93-101 *Derivatives: Business Conduct*

- Annex IV – Alternative version of the definition of "affiliated entity"
- Annex V – Local Matters

Comments

In addition to your comments on all aspects of the Proposed Instrument, the CSA also seek specific feedback on the following questions:

1) Definition of "affiliated entity"

The Instrument defines "affiliated entity" on the basis of "control", and sets out certain tests for "control". In the context of other rules relating to OTC derivatives, we are also considering a definition of "affiliated entity" that is based on accounting concepts of "consolidation" (a proposed version of the definition is included in Annex IV). Please provide any comments you may have on (i) the definition in the Instrument, (ii) the definition in Annex IV, and (iii) the appropriate balance between harmonization across related rules and using different definitions to more precisely target specific entities under different rules.

2) Definition of "eligible derivatives party"

Paragraphs (m), (n) and (o) provide that certain persons and companies are eligible derivatives parties if they meet certain criteria, including meeting certain financial thresholds. Are these criteria appropriate? Please explain your response.

3) Anonymous transactions executed on a derivatives trading facility

We are considering whether the exemption in section 41 should be expanded in respect of other requirements in this Instrument. Is it appropriate to expand this exemption?

We are also considering whether a similar exemption should be available in other scenarios, including, for example:

(a) derivatives traded anonymously on a derivatives trading facility that are not cleared; and

(b) derivatives that are not traded on a derivatives trading facility but are submitted for clearing to a regulated clearing agency.

Is it appropriate to provide a similar exemption in other scenarios? Please explain your response.

4) Handling complaints

The obligations in section 16, as proposed, do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is not an individual or a specified commercial hedger, or (ii) an eligible derivatives party who is an individual or a specified commercial hedger that has waived these protections. Should the obligations in section 16 be expanded towards all derivatives parties? Please explain your response.

5) Derivatives Party Assets

We note that the requirements with respect to initial margin in sections 25 and 26 only apply to transactions with non-EDPs. Please provide any comments you may have, including whether it would be appropriate to include, for all derivatives parties, restrictions with respect to collateral delivered to a derivatives firm (as initial margin) or adopt a model of requiring informed consent with respect to its use and investment, or some combination of the two approaches.

6) Policies, procedures and controls

Subparagraph 30(1)(c)(iii) requires a derivatives firm to have policies, procedures and controls that are sufficient to assure that an individual who transacts or advises on derivatives for a derivatives firm, conducts themselves with integrity. Please provide any comments you may have relating to this requirement, specifically about any issues relating to the implementation of the requirement in its current form. We will consider these comments in assessing the impact of this requirement on derivatives firms.[8]

Please provide your comments in writing by **September 17, 2018**.

[8] Staff in British Columbia are particularly concerned about the scope of this requirement, in its current form.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the *Autorité des marchés financiers* at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

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

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

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

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

Questions

Please refer your questions to any of:

Lise Estelle Brault
Co-Chair, CSA Derivatives Committee
Senior Director, Derivatives Oversight
Autorité des marchés financiers
514-395-0337, ext. 4481
lise-estelle.brault@lautorite.qc.ca

Kevin Fine
Co-Chair, CSA Derivatives Committee
Director, Derivatives Branch
Ontario Securities Commission
416-593-8109
kfine@osc.gov.on.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
204-945-5195
paula.white@gov.mb.ca

Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
403-297-4295
Chad.Conrad@asc.ca

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Abel Lazarus
Director, Corporate Finance
Nova Scotia Securities Commission
902-424-6859
abel.lazarus@novascotia.ca

Wendy Morgan
Senior Legal Counsel, Securities
Financial and Consumer Services Commission, New Brunswick
506-643-7202
wendy.morgan@fcnb.ca

Liz Kutarna
Deputy Director, Capital Markets,
Securities Division
Financial and Consumer Affairs Authority
of Saskatchewan
306-787-5871
liz.kutarna@gov.sk.ca

Appendix A

Comparison of protections that do not apply to, or may be waived by, "eligible derivatives parties" under Proposed NI 93-101 *Derivatives: Business Conduct* and "permitted clients" under NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Certain requirements in the Proposed Instrument are similar to existing market conduct requirements applicable to registered dealers and advisers under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) but have been modified to reflect the different nature of derivatives markets.

The extent to which obligations do not apply, or apply unless waived, when dealing with or advising an eligible derivatives party is set out in the following chart:

Obligation	Approach under NI 31-103	Approach under NI 93-101
Fair dealing[9]	Applies in respect of all clients	Applies in respect of all derivatives parties (s. 8)
Identifying and responding to conflicts of interest	Applies in respect of all clients (s. 13.4) However, client relationship disclosure obligations in relation to conflicts of interest do not apply in respect of a permitted client that is not an individual (s. 14.2(6))	Applies in respect of all derivatives parties (s. 9) However, relationship disclosure obligations in Part 4 in relation to conflicts of interest do not apply in respect of • an EDP that is not an individual • an EDP that is an individual that has waived this disclosure • an EDP that is a specified commercial hedger that has waived this disclosure
Gatekeeper KYC (AML, etc.)	Applies in respect of all clients (s. 13.2) However, this does not apply if the client is a registered firm, Canadian financial institution or Schedule III bank (s. 13.2(5))	Applies in respect of all derivatives parties (s. 10) However, this does not apply if the derivatives party is a registered firm or a Canadian financial institution (including a Schedule III bank). Additionally, this does not apply to an anonymous transaction executed on a derivatives trading facility that is cleared.
Client-specific KYC (investment needs and objectives, etc.) Suitability	Applies in respect of all clients (ss. 13.2(2)(c) and 13.3) May be waived in writing by a permitted client (including an individual permitted client) if registrant does not act as an adviser in respect of a managed account for the client (ss. 13.2(6) and 13.3(4))	Applies in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived in writing this obligation • an EDP that is a specified commercial hedger that has waived this obligation (ss. 7, 11 and 12)
Miscellaneous other obligations	Do not apply to a permitted client • Disclosure when recommending the use of borrowed money – s. 13.13(2) • When the firm has a relationship with a	Apply in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived

[9] See section 2.1 of OSC Rule 31-505 *Conditions of Registration*; section 14 of the Securities Rules, B.C. Reg. 194/97 **[B.C. Regulations]** under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 **[B.C. Act]**; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 **[Alberta Act]**; section 33.1 of *The Securities Act, 1988* (Saskatchewan), S.S. 1988-89, c. S-42.2 **[Saskatchewan Act]**; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 **[Manitoba Act]**; section 65 of the *Derivatives Act* (Québec), R.S.Q., c. 14.01 **[Québec Act]**; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 **[N.B. Act]**; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 **[P.E.I. Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 **[N.S. Act]**; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 **[Newfoundland Act]**; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 **[Nunavut Act]**; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 **[N.W.T. Act]**; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 **[Yukon Act]**.

Obligation	Approach under NI 31-103	Approach under NI 93-101
	financial institution – s. 14.4(3)	in writing this obligation • an EDP that is a specified commercial hedger that has waived this obligation (ss. 7 and 19)
Miscellaneous other obligations	Do not apply to a permitted client that is not an individual • Dispute resolution service – s. 13.16(8) • Relationship disclosure information – s. 14.2(6) • Pre-trade disclosure of charges – s. 14.2.1(2), • Restriction on self-custody and qualified custodian requirement – s. 14.5.2 • Additional statements – s. 14.14.1 • Security position cost information – s. 14.14.2 • Report on charges and other compensation – s. 14.17 • Investment performance report – s. 14.18	Apply in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived in writing this obligation • an EDP that is a specified commercial hedger that has waived this obligation (See ss. 7 and Part 4)

Appendix B

Application of business conduct requirements

Regulatory Requirement	Derivatives firms dealing with EDPs	Derivatives firms dealing with non-EDPs
General obligations toward all (Part 3 Div 1) • Fair dealing • Conflict of interest management • General/gatekeeper know-your-derivatives party	•	•
Additional obligations and restrictions (Part 3 Div 2–3) • Derivatives-party-specific know-your-derivatives party • Product suitability • Permitted referral arrangements • Complaint handling • Prohibition on tied selling		•
Client and counterparty accounts (Part 4) • Relationship disclosure • Pre-trade disclosures re. leverage/borrowing, risk, product, price, and compensation • Report daily valuations • Notice by non-resident registrants • Holding of assets[10] • Use and investment of assets • Transaction confirmations[11] • Quarterly statements		•
Compliance and recordkeeping (Part 5) • Compliance and risk management systems • Senior manager report • Client/counterparty agreement • Recordkeeping	•	•

[10] A basic segregation requirement applies in all circumstances, but most of the asset requirements only apply in the non-EDP context.

[11] A basic transaction confirmation requirement applies in all circumstances, but the more detailed requirement applies only in the non-EDP context.

ANNEX I

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Summary of Issues/Comments	Response
Part 1 – Definitions and Interpretation		
s. 1 – Definition of "derivatives adviser"	Two commenters noted the compliance requirements of National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and suggested the Instrument would be duplicative.	Many of the requirements in the Proposed Instrument are similar to existing business conduct requirements applicable to registered dealers and advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. In the case of firms that are registered under NI 31-103, we would expect these firms to have policies and procedures in place aimed at complying with these obligations. To the extent compliance requirements under the Instrument are similar to compliance requirements under NI 31-103, a registered firm will be able to satisfy the requirements through its existing policies and procedures. However, to the extent compliance requirements are dissimilar, these firms will need to adopt additional policies and procedures that reflect the different nature of derivatives markets.
	One commenter suggested that the list of factors for determining whether a party is in the business of advising in respect of derivatives should not be the same as that for trading.	Change made. The CP has been revised to include additional guidance on the business trigger for advising. See revised CP guidance on factors in determining a business purpose – derivatives advisers.
s. 1 – Definition of "derivatives dealer"	One commenter requested clarification on which agency roles fall within the scope of the definition.	Change made. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer. See revised CP guidance on factors in determining a business purpose – derivatives dealer.
	One commenter suggested the definition of derivatives dealer be harmonized across Canada into a national instrument.	No change. The definition of derivatives dealer and the criteria used to assess if a firm is a derivatives dealer found in the CP to this Instrument will be applied consistently across Canada and in Proposed National Instrument 93-102 *Derivatives: Registration* ("**Proposed NI 93-102**"). To the extent necessary, any further consequential amendments to other rules, such as rules relating to trade reporting, will be made at a later date.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", General	Two commenters requested clarification of the definition of "derivatives adviser" and "derivatives dealer" to enable derivatives parties to receive definitive legal advice on whether their activities bring them into scope.	Change made. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser.
	Two commenters suggested replacing the word "trading" with "dealing" in the definition and CP	No change. The registration requirement in Canadian securities legislation is generally based

	guidance on "derivatives dealer".	on the concept of a "business trigger" for registration, namely whether a person or company is in the business of "trading" securities or derivatives or advising others in relation to securities or derivatives.
	Two commenters requested clarification of the jurisdictional scope of the Instrument and CP.	Changes made. The CP has been revised to include guidance on the jurisdictional scope of the Instrument under factors in determining a business purpose –general.
	One commenter requested a specific exemption or guidance that investment-related services provided by pension plan sponsors to their sponsored plans, such as hiring third party investment managers, is not captured. The commenter submitted that the inclusion of "directly or indirectly carrying on the activity with repetition, regularity or continuity" and "transacting with the intention of being compensated" may capture pension plans or their sponsors.	No change. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser. The registration requirement in Canadian securities legislation is generally based on the concept of a "business trigger" for registration, namely whether a person or company is in the business of trading securities or derivatives or advising others in relation to securities or derivatives. Accordingly, the Instrument does not fundamentally alter the nature of the existing registration requirement for market participants, but merely extends the requirement to OTC derivatives. If a firm, after considering the guidance in the CP, remains uncertain as to whether or not it has tripped the business trigger for registration, the firm should consider the exemptions in Part 6 of the Instrument, including the exemption in s. 37 for certain derivatives end-users.
	One commenter requested guidance that a person acting as a manager of investment managers providing derivatives advisory services will not be considered a "derivatives adviser" solely on the basis of engaging in hiring, and providing investment guidelines to, third-party investment managers.	No change. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser. The Instrument and Proposed NI 93-102 do not contemplate a separate category of registration for fund managers of funds that invest in derivatives. However, the existing registration category of investment fund manager in NI 31-103 would likely cover these activities.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", Routinely quotes prices	Several commenters suggested that routinely providing quotes should not be treated as indicia of dealing or advising. The commenters suggested that "derivatives dealer" be limited to market making activity, which absent other factors, should not be determined solely by quoting prices, routinely or not. The commenters requested clarification of the end-user exemption.	Partial change. Further revisions have been made to the indicia described in the CP to determine whether a derivatives dealer or derivatives advisor is in the business of trading derivatives. The CP explains that the end-user exemption may be available to a party that trades derivatives with regularity but does not engage in specified dealer-like activities.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer",	One commenter requested clarification of clearing services that would result in a clearing broker being considered a "derivatives dealer".	No change. Providing clearing services is one of the indicia of being in the business of trading derivatives.

Derivatives clearing services		
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", *De minimis*	Several commenters submitted that a notional value-based *de minimis* exception to "derivatives dealer" requirements be provided to alleviate risk concentration and decreased liquidity.	No change. The Instrument creates a uniform approach to regulating conduct in derivatives markets and promotes consistent protections for market participants. However, a *de minimis* exemption from certain requirements imposed on derivatives dealers is contemplated in Proposed NI 93-102. This is intended to strike a balance between addressing liquidity/market access concerns without significantly impacting protections for market participants.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", Incidental advisory activities	Several commenters suggested express exclusions of professionals whose advisory services are solely incidental to their business or profession.	Change made. Clarifying language has been added to the CP. Appropriately licensed professionals would generally not be considered to be advising on derivatives if their activities are incidental to their *bona fide* professional activities.
	Commenters suggested express exclusion of otherwise-regulated persons including banks, trust companies and insurance companies. Pension plan sponsors and affiliates providing investment-related services to a Canadian regulated pension fund or subsidiary were requested to be expressly excluded.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
s. 1 – Definition of "eligible derivatives party", General	Several commenters supported the concept of an eligible derivatives party ("EDP") to classify sophisticated market participants. One commenter recommended reconsideration of EDP status for advisers that only advise on an incidental basis (and accordingly do not require registration as derivatives advisers). One commenter suggested that managed account clients be subject to the same carve-outs applicable to EDPs.	We thank the commenters for their comments. We have specifically requested comment in the Notice and Request for Comment in relation to Proposed NI 93-102 as to whether and in what circumstances registered advisers (portfolio managers) under NI 31-103 should be considered derivatives advisers. We will consider these responses in determining whether registered advisers (portfolio managers) should remain included within the EDP definition. We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser in respect of a managed account of an EDP will be subject to the reduced set of obligations contemplated by s. 7 of the Instrument unless otherwise agreed by the firm and the EDP.
s. 1 – Definition of "eligible derivatives party", Consistency with other regulatory definitions	Several commenters suggested that the definition of EDP be expanded to include all "permitted clients" under NI 31-103, including mutual fund dealers, exempt market dealers and charities. The commenters noted the compliance burdens on the derivatives industry if the "permitted client" status cannot be leveraged to determine EDP status under the Instrument.	We have amended the definition of EDP to include certain new categories; however, the definition of EDP has not been extended to expressly include mutual fund dealers, exempt market dealers and registered charities. In terms of the compliance burden, we point out that the financial asset test for companies found in the definition of "permitted client" may be higher than the threshold contemplated in this Instrument. For example, the net asset test that applies to a company that qualifies as a specified commercial hedger in this Instrument is

		$10,000,000. Furthermore, we are permitting a derivatives firm to leverage a pre-existing "permitted client", "accredited counterparty" or "qualified party" representation from its client as set out in s. 45 of the Instrument for pre-existing transactions. If the conditions in that section are satisfied, then those transactions are only subject to s. 8 [*Fair dealing*], s. 20 [*Daily reporting*] and s. 30 [*Derivatives party statements*]. The definition of EDP is built on the knowledge and experience test found in the *Derivatives Act* (Quebec). Unless a person or company qualifies as an EDP under any of the prescribed categories, we are not persuaded that they otherwise have sufficient sophistication, derivatives-related expertise, or financial resources so as to not require the additional protections afforded to non-EDP customers.
	Several commenters suggested harmonization of the definition of EDP with existing definitions, noting liquidity and equivalence concerns. These definitions included "eligible contract participant" used by the U.S. Commodity Futures Trading Commission ("**CFTC**")[1], "qualified party" in Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* ("**BO 91-507**"),[2] "accredited investor" in National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), and "permitted client" under NI 31-103.	Change made. We have amended the definition of EDP to include certain new categories, including: • (n) non-individual commercial hedger that has net assets of $10,000,000, • (p) non-individual entity whose obligations under derivatives are fully guaranteed by another EDP, other than an individual or commercial hedger, and • (q) non-individual entity that is a commercial hedger and whose obligations under derivatives are fully guaranteed by another EDP, other than an individual. We believe that, with these changes, the definition of EDP is sufficiently harmonized with the definitions cited by the commenter, recognizing that there are differences in the overall regulatory approach that warrant certain distinctions.
s. 1 – Definition of "eligible derivatives party", para (m)	Several commenters requested a lower asset threshold necessary to qualify as an EDP and specifically requested harmonization with the $10 million threshold applicable to an "eligible contract participant" under the U.S. *Commodity Exchange Act*[3] ("**CEA**") and an "accredited counterparty" under the Quebec *Derivatives Act*.[4] One commenter suggested a threshold of $25 million of total assets instead of net assets.	Change made. See new paragraph (n) of the EDP definition.

1 See s. 1a(18)(a)(v) of the U.S. *Commodity Exchange Act*.

2 In Quebec, "accredited counterparty" under the Quebec *Derivatives Act*.

3 The U.S. Commodity Exchange Act sets out a $10 million total assets test in the definition of "eligible contract participant" (calculated as $10 million in total assets, or, if hedging, a minimum net worth exceeding $1 million).

4 "Accredited counterparty" under the Quebec *Derivatives Act* is calculated as "cash, securities, insurance contracts or deposits having an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, of more than $10,000,000" (Derivatives Regulation, c. I-14.01, r.1, s. 1).

	Another commenter suggested that individuals with net assets reaching an aggregate realizable value of $25 million should be treated as EDPs that are not individuals.	
s. 1 – Definition of "Eligible Derivatives Party", para (n)	Two commenters suggested that individuals with minimum net assets of $5 million should be treated as EDPs. One of these commenters suggested harmonization with the definition of "accredited counterparty" under the Quebec *Derivatives Act*.[5]	No change. Based on our analysis, the threshold aggregate realizable value before tax but net of any related liabilities of at least $5 million of *financial assets* is appropriate for the determination of eligible derivatives party status for an individual. This is consistent with the current financial threshold for individuals in the definition of "permitted client" in NI 31-103.
s. 1 – Definition of "eligible derivatives party", Knowledge and experience requirements of paras (m)-(n)	Several commenters suggested a "bright line" financial resources test eliminating the knowledge and experience requirements, consistent with the approach in NI 31-103 and NI 45-106. Alternatively, the knowledge and experience requirements should apply generally with no transaction-specific determination. One commenter submitted that investable assets do not necessary imply financial sophistication, such that tests based on financial assets may not be indicative of better access to information and less need for protection.	No change. Appropriate knowledge and experience is necessary for a derivatives party to transact in derivatives without the additional protections provided to non-EDPs. This is also consistent with requirements that currently apply in Quebec under the Quebec *Derivatives Act*.
	Several commenters suggested that the Instrument allow representations as to the knowledge and experience requirements to be given in ISDA Master Agreements or protocols amending them.	Change made. Representations are required to be made in writing and can be included as an element of a broader written agreement.
	One commenter noted that to the extent previously given representations are no longer true or reliable about a party's knowledge and experience with particular types of derivatives, the knowledge and experience requirements may potentially trigger default events, followed by transaction terminations, under derivatives trading agreements. As the OTC derivatives market is characterized by inter-related transactions, such default and subsequent termination may spread to other derivatives transactions among different parties.	No change. The CP provides guidance on when a derivatives firm may rely on a representation. See CP guidance on subsection 1(7).
	One commenter submitted that it is practically remote to receive written representations from each counterparty and requested that derivatives firm be allowed to otherwise confirm, acting reasonably, that the counterparty satisfies the requirements.	No change. Representations form part of the written agreements that document derivatives transactions.
s. 1 – Definition of "eligible derivatives party", Waiver and	Several commenters suggested that market participants who would not otherwise qualify for EDP status be allowed to affirmatively represent their qualification to evaluate risks associated with	No change. However, new paragraphs have been added under the definition of eligible derivatives party. A person or company, other than an individual, may qualify for EDP status under these

[5] Calculated as "cash, securities, insurance contracts or deposits having an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, of more than" $5,000,000 (Derivatives Regulation, c. I-14.01, r.1, s. 1).

representations *See also s. 7 below.*	derivatives transactions and waive the applicability of certain provisions.	new paragraphs.
	One commenter submitted that allowing an investor to waive protections may result in abuse.	No change. Derivatives firms have an obligation to act in good faith. Applying undue pressure on a derivatives party to waive protections would be a breach of that obligation.
	Several commenters requested clarification that there is no affirmative duty to perform an investigation of a party's representation or warranty, unless a reasonable person would have grounds to believe that such statements are false or otherwise unreasonable to rely on.	Change made. We have further clarified that a derivatives firm may rely on written representations unless it would be unreasonable to do so. See CP guidance on subsection 1(7).
s. 1 – Definition of "eligible derivatives party", Commercial hedger	Several commenters requested that the definition of EDP include an exemption for hedgers. The commenters suggested a definition similar to the existing exemptions in BO 91-507 for "qualified parties" or "eligible contract participants" in the U.S., and broad enough to include all end-users who currently transact in OTC derivatives transactions for hedging purposes. One commenter submitted that regardless of size, many commercial operations need to hedge their foreign currency or interest rate risks and no market other than the OTC derivatives market can provide an equivalent tailored risk management solution.	Change made. Please see new paragraphs (n) and (q) under the definition of EDP. A person or company, other than an individual, will qualify for EDP status subject to certain requirements when it meets the definition of commercial hedger.
s. 1 – Definition of "eligible derivatives party", Guarantees	Several commenters suggested that the definition of EDP also include an entity whose obligations are guaranteed by an entity that otherwise qualifies as an EDP. One of these commenters suggested that the definition of EDP also include an entity that wholly, directly or indirectly, owns, is owned by, or is under common ownership with, one or more EDPs.	Change made. Please see new paragraph (p) under the definition of EDP. A person or company, other than an individual, whose obligations under a derivative are fully guaranteed or fully supported (under a letter of credit or credit support agreement) by one or more eligible derivatives parties will qualify for EDP status subject to certain conditions.
Part 2 – Application		
s. 3 – Application - scope of instrument	One commenter submitted that the imposition of the same requirements on derivatives advisers as those on derivatives dealers creates a duplicative and unnecessary compliance burden.	Change made. The CP has been revised to include additional guidance on the business trigger for advising. The requirements in the Instrument are generally similar to existing business conduct requirements applicable to registered advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. Accordingly, we do not believe that the proposed regulatory regime for derivatives advisers unnecessarily duplicates the regime for derivatives dealers.
	One commenter suggested that members of the Investment Industry Regulatory Organization of Canada ("**IIROC**") not be required to comply with the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter suggested exempting derivatives firms that adhere to the FX Global Code of	No change. The FX Global Code of Conduct does not impose legal or regulatory obligations on

	Conduct, whether or not their counterparty is an EDP. Alternatively, that such exemption applies in respect of physically-settled FX swaps and FX forwards.	market participants. Many of the requirements in the Instrument are principles-based and may be satisfied in different ways. We encourage derivatives firms that trade or advise others in relation to FX-related derivatives to consider the contents of the FX Global Code of Conduct in developing their policies and procedures aimed at complying with the requirements of the Instrument.
s. 4 – Application – affiliated entities	One commenter supported the inclusion of s. 4, which exempts a person providing derivatives advisory services to an affiliated entity from the Instrument. The commenter requested an exemption for the person providing investment advisory services for no compensation to an associated or related person that does not otherwise fall within the definition of an affiliated entity. Alternatively, that guidance clarify that such person does not trip any business trigger as a "derivatives adviser".	We thank the commenter for their comment. A person or company that deals with or advises an entity that meets the definition of "affiliated entity" may qualify for the exemption. However, the exemption is not available if the affiliated entity is an investment fund. We have specifically requested comment in the Notice and Second Request for Comment in relation to this Instrument and in the Notice and Request for Comment in relation to Proposed NI 93-102 as to how we should define the concept of affiliated entity for the purposes of these rules.
s. 5 – Application - qualifying clearing agencies	One commenter requested clarification on whether derivatives firms are exempt from the Instrument when facing regulated clearing agencies. The commenter also requested that EDP status be granted for clearing agencies that enter into proprietary trades that are not cleared transactions.	Change made. Qualifying clearing agencies have been added to the definition of EDP. See new paragraph (r) under the definition of EDP. A clearing agency will be an EDP for all trades, including proprietary trades.
s. 6 – Application - governments, central banks and international organizations	Two commenters requested clarification on whether derivatives firms are exempt from the Instrument when facing entities listed under s. 6.	Clarifying language has been added to the CP to make it clear that derivatives firms are not exempt from their obligations when facing government entities, central banks and international organizations. However, these entities will generally be EDPs.
	One commenter suggested expanding the list of excluded entities to include (1) crown corporations, government agencies and any other entity wholly owned or controlled by, or all of whose liabilities are guaranteed by, one or more governments, central banks and international organizations, and (2) state, regional and local governments in foreign jurisdictions.	No change. To ensure a level playing field, all derivatives dealers and derivatives advisors are subject to a minimum set of standards in their dealings with derivatives parties.
s. 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party, General	Several commenters supported the two-tiered approach of the Instrument with the effect that a substantial portion of the Instrument will not apply to transactions with an EDP and submitted that no additional requirements are necessary when a derivatives firm deals with an EDP. Two commenters suggested a three-tier approach with the effect of an outright exemption for the inter-dealer market.	No change. The Instrument sets out a two-tiered regime with the effect that a derivatives firm is not required to comply with certain requirements in the Instrument when dealing with eligible derivatives parties. The obligations of a derivatives firm differ depending on the nature of the derivatives party. Please see s. 7 of the Instrument and related guidance in the CP. The inter-dealer market will typically involve transactions between two EDPs and since those parties can bargain for appropriate protections, they are subject to a limited set of provisions in

		this Instrument. It is inappropriate and inconsistent with the rule to provide an outright exemption for the inter-dealer market and also inconsistent with the approach taken internationally.
s. 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party, subsection (2)	Three commenters submitted that the Instrument requires individual EDPs to waive in writing the second tier of requirements. The commenters suggested that individual EDPs be exempt from the second-tier requirements similar to other categories of EDPs. In the alternative, the commenters requested that no new waiver be required from the individual every 365 days and instead the onus for revocation be placed on the individual.	Change made. An individual eligible derivatives party may waive, in writing, any or all of the requirements of the Instrument, other than as set out in s. 7(1). Waiver may be included in account-opening documentation or other relationship disclosure, and there is no obligation to update the waiver once a derivatives party has begun trading. A derivatives party may withdraw their waiver at any time.
s. 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party, subsection (3)	Several commenters suggested that s. 7(3) be deleted on the basis that disclosures and protections are not affected by whether the trading decision is client-directed or at the discretion of the adviser. Managed account clients benefit from both the fiduciary obligation owed to them by their adviser and the contractual terms of the investment management agreement. In the alternative, the commenters requested that managed account clients be permitted to waive sections of the Instrument that but for s. 7(3) would not apply.	Change made. The requirements of the Instrument are not dependent on whether a derivatives firm is acting as an adviser to an EDP or an adviser in respect of a managed account of an eligible derivatives party. We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser in respect of a managed account of an EDP will be subject to the reduced set of obligations contemplated by s. 7 of the Instrument unless otherwise agreed by the firm and the EDP.
Part 3 – Dealing with or Advising Derivatives Parties		
Division 1 – General Obligations Towards All Derivatives Parties		
s. 8 – Fair dealing	Several commenters supported the fair dealing requirements, noting the importance of regulatory tools necessary to enforce against deceptive and manipulative trading practices or fraudulent activity. One commenter requested clarification on s. 8 as compared with s. 19.	We thank the commenters for their comments. Change made. Former stand-alone provision in s. 19 on fair terms and pricing has been removed and clarifying language in the CP has been added that fair terms and pricing may, in certain circumstances, be viewed to fall within the overall fair dealing principle in s. 8.
	Two commenters suggested higher requirements for derivatives advisers, while other commenters noted that fiduciary standards apply, NI 31-103 regulates derivatives advisers, and that transactions are often of a bespoke nature.	We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser/investment counsel to an EDP will be subject to the same set of obligations under the Instrument as a derivatives firm acting as an adviser/portfolio manager for an EDP. However, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law.
	One commenter requested an exemption for derivatives firms dealing with other derivatives firms or financial institutions.	No change. However, clarifying language has been added to the CP. Fair dealing obligations will be interpreted flexibly and in a manner sensitive to context.
	One commenter submitted that the need for regulation has not been identified, as no	No change. Canadian jurisdictions are committed to implementing harmonized business conduct

	appreciable or material examples of banks or other derivatives firms have been identified in Canada as violating existing fair dealing rules.	rules that will protect derivatives parties in the Canadian market.
	One commenter submitted that fair dealing should not change depending on the sophistication of counterparties and s. 8 should be deleted. The commenter submitted that the derivatives dealer relationship is not a fiduciary one, nor does good faith generally apply to the negotiation of transactions at common law. In the alternative, s. 8 should be harmonized with other regulatory regimes, which do not impose requirements on individuals acting on behalf of a derivatives firm.	No change. Fair dealing obligations will be interpreted flexibly and in a manner sensitive to context.
s. 9 – Conflicts of interest	Two commenters requested clarification of the Instrument and CP, particularly with respect to the divergent nature of two parties' interests. For conflicts of interest not prohibited by law, the only regulatory requirement should be to identify and disclose material conflicts. One of the commenters suggested limiting the requirement to conflicts of interest relating to research and clearing activities.	No change. Requirements relating to conflicts of interest are a central pillar of business conduct regulation.
	One commenter suggested eliminating specific conflict of interest requirements with respect to derivatives advisers, as they face fiduciary obligations.	The requirements in the Instrument are generally similar to existing business conduct requirements applicable to registered advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. These requirements include requirements in relation to identifying and responding to conflicts of interest. We acknowledge that, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law. However, this may not be the case where the derivatives adviser is merely providing advice in relation to derivatives or strategies but does not exercise discretion over the EDP's account.
	One commenter submitted that the Instrument overlaps with conflicts of interest requirements under existing Canadian laws[6] and that overlapping requirements should be removed from the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	Two commenters submitted that disclosure must be specific and provided before a transaction takes place, recognizing that in certain situations disclosure may be more appropriate after the transaction. Another commenter requested that the use of standardized disclosures be permitted	Change made. Please see revised CP guidance related to s. 9. We expect derivatives firms to provide general and specific disclosures.

[6] The *Bank Act* requires Canadian banks to establish procedures to identify and address conflicts of interest. OSFI Guideline B-7 requires federally regulated financial institutions that are dealing in derivatives to take reasonable steps to identify and address potential material conflicts of interest.

	provided that additional or particularized disclosures are made available as appropriate.	
s. 10 – Know your derivatives party, General	Several commenters suggested harmonization of s. 10 with similar regulatory requirements in other jurisdictions.[7] Several commenters submitted that an exemption is needed for derivatives dealers that do not know the identity of their counterparties prior to execution of the transaction.	Change made. New s. 41 exempts a derivatives firm in certain circumstances where it does not know the identity of its derivatives party prior to the execution of the transaction. The exemption in s. 41 is applicable to transactions executed on a derivatives trading facility (or analogous platform) where at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the availability of a similar exemption in respect of derivatives traded anonymously on a derivatives trading facility that are not cleared, derivatives that are not traded on a derivatives trading facility but are submitted for clearing to a regulated clearing agency, and otherwise if it is appropriate to extend the scope of the exemption to other sections of this Instrument. We understand that a trading platform would perform know-your-derivatives-party diligence prior to accepting a derivatives party for trading on the platform. We consider this to be a reasonable steps obligation and we would accept that if it is not possible to know the identity of the counterparty, that information is not required.
s. 10 – Know your derivatives party, subsection (2)	Several commenters requested that s. 10(2)(c) be removed, submitting that it is disproportionately impracticable to require derivatives advisers, in connection with securities-based derivatives, to establish if the party they are advising (i) is an insider of a reporting issuer or any other issuer whose securities are publicly traded, or (ii) would be reasonably expected to have access to material non-public information relating to any interest underlying the derivative.	No change. These obligations already exist for registered firms under securities legislation. In the case of derivatives firms that are not currently registered under securities legislation but nevertheless provide products or services in relation to equity derivatives, we would expect these firms today to have policies and procedures in place aimed at preventing illegal insider trading and tipping. This information is necessary to ensure that securities law is being complied with.
s. 10 – Know your derivatives party, subsection (4)	Two commenters requested that information be deemed current, unless a client informs a derivatives firm otherwise.	No change. The requirements in relation to "gatekeeper" KYDP in s. 10 of the Instrument and "derivatives-party-specific" KYDP in s. 11 of the Instrument are generally consistent with existing "know-your-client" obligations under Canadian securities legislation and comparable requirements in foreign jurisdictions. This information is necessary to ensure that securities law is being complied with.
s. 10 – Know your derivatives party, subsection (5)	Two commenters requested an expansion of s. 10(5) to cover EDPs, registration-exempt entities, and foreign financial institutions.	No change. Know-your-derivatives party requirements do not apply to a registered securities firm, registered derivatives firm, or a Canadian financial institution.

[7] See CFTC's relief in No Action Letter 13-70 in respect of swaps that are intended to be cleared.

Division 2 – Additional Obligations when Dealing with or Advising Certain Derivatives Parties		
s. 12 – Suitability	Two commenters requested clarification on what constitutes a recommendation by a derivatives dealer. The commenters suggested that suitability be limited to recommendations, and not instructions.	No change. Reasonable steps must be taken to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.
	One commenter requested that s. 12 clarify that a determination of suitability need not be made on a trade-by-trade basis if a discrete trade fits into a larger trading strategy or series of trades, for which suitability can be assessed.	No change. Reasonable steps must be taken to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative. If a discrete transaction fits into a larger trading strategy or series of transactions, and the derivatives firm has determined that the larger trading strategy or series of transactions is suitable for the derivatives party, it is unclear why there should be a concern over the discrete transaction.
	One commenter submitted that specific suitability obligations are not necessary in the case of a derivatives adviser, as they have broader fiduciary obligations.	We acknowledge that, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law. However, this may not be the case where the derivatives adviser is merely providing advice in relation to derivatives or strategies but does not exercise discretion over the EDP's account.
	Two commenters requested safe harbours from the suitability requirements, including for derivatives dealers and intended to be cleared derivatives.	No change. Suitability requirements are crucial to the protection of non-EDPs. Suitability requirements do not apply when trading with or advising non-individual EDPs and apply, but may be waived, when trading with or advising individual EDPs. As explained in the Notice and Request for Comment for the Instrument published in April 2017, this is generally similar to the regime that applies to registered securities firms under NI 31-103.
s. 13 – Permitted referral arrangements	Three commenters submitted that s. 13 imposes broad obligations. One commenter requested clarification that establishing a relationship with a dealer on behalf of an advisory client does not constitute a referral arrangement. Other commenters requested that s. 13 be removed to better align with the absence of comparable obligations in CFTC rules. Alternatively, that s. 13 apply only to referral arrangements that specifically involve derivatives and that exemptions be provided for inter-group referrals.	No change. The requirements in relation to permitted referral arrangements do not apply if the firm is trading with or advising non-individual EDPs and apply but may be waived if the firm is trading with or advising individual EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms.
Former s. 16 – Disclosure regarding the use of borrowed money or leverage	One commenter requested that to avoid duplication, the disclosure statement apply only to derivatives dealers. The commenter requested clarification that posting of the disclosure statement on a website in a readily accessible location will be sufficient.	Change made. Disclosure regarding the use of borrowed money or leverage has been incorporated into new s. 19. Disclosure must be delivered to a derivatives party.

Former s. 17 – Handling complaints	One commenter suggested harmonization with CFTC rules by eliminating complaint handling obligations.	No change. The requirements in relation to complaint handling do not apply if the firm is trading with or advising non-individual EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms. Please see the Instrument and related guidance in the CP.
Division 3 – Restrictions on Certain Business Practices when Dealing with Certain Derivatives Parties		
Former s. 18 – Tied selling	One commenter suggested that tied selling obligations are duplicative of existing Canadian legislation and should be eliminated to better align with other regulatory regimes.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 19 – Fair terms and pricing	Two commenters supported the requirement. One commenter submitted that the terms are better suited to CP guidance on s. 8. Another submitted that the inclusion of an express best execution requirement would be beneficial to avoiding conflicts. Two other commenters suggested that the requirement should be deleted. The commenters suggested that given the negotiated, bilateral and bespoke nature of transactions, there is no fair price beyond what the parties agree, and that legal obligations and remedies already exist.	Change made. Former s. 19 on fair terms and pricing has been merged with s. 8. Clarifying language has been added to the CP in relation to guidance on s. 8. Both the compensation and market value or price components of a derivative are relevant to a derivatives firm's obligation to transact with derivatives parties under terms and pricing that are fair. Derivatives firms are expected to set and follow policies and procedures that are reasonably designed to achieve the most advantageous terms for the derivatives firm's derivatives parties.
Part 4 – Derivatives Party Accounts		
Division 1 – Disclosure to Derivatives Parties		
Division 1, General	Several commenters suggested harmonization of the requirements with CFTC rules. Derivatives firms should not be required to provide valuations or related inputs and assumptions and that instead "mid-market marks"[8] should be used. Several other commenters supported the requirement to provide valuations that are accompanied by inputs and assumptions in order to make the estimates/prices more meaningful. Commenters suggested that daily marks should only be required for uncleared transactions. One commenter suggested limiting "inputs and assumptions" to "methodology and assumptions".	Change made. Please see revised CP guidance on the definition of valuation.
Former s. 20 – Relationship disclosure	One commenter submitted that certain relationship documentation listed in former s. 20(2) is not applicable for a derivatives	No change made. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or advising non-individual

[8] CFTC rules do not include amounts for profit, credit reserve, hedging, funding, liquidity or other costs or adjustments in the mid-market mark.

information	relationship.	EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms. The required disclosure is important for non-EDPs to understand the risks associated with derivatives.
Former s. 21 – Pre-transaction disclosure	One commenter requested that the use of standardized disclosures be permitted provided additional or particularized disclosures are made available as appropriate.	No change. Where standardized disclosure meets all requirements, it is acceptable.
	Two commenters requested clarification that pre-transaction disclosures do not apply where the transaction is an intended to be cleared derivative or executed on an exchange.	No change. Pre-transaction disclosures are required for all transactions with non-EDPs.
	One commenter requested clarification on when disclosure would not be required as result of the application of subsection (2)(b) and what additional information is intended by subsection (2)(c).	Change made. The phrase "if applicable" has been removed from new s. 19(2)(b). Compensation not reflected in the price would be required to be disclosed pursuant to s. 19(2)(c).
Former s. 22 – Daily reporting	Only derivatives dealers should have a daily reporting obligation, and it is sufficient for derivatives advisers to provide reporting on a monthly basis, unless otherwise agreed.	Change made. See new s. 20(2).
Former s. 23 – Notice to derivatives parties by non-resident derivative firms	One commenter submitted that the notice requirement for non-resident derivatives firms is duplicative of former s. 20 and standard information that is provided in relationship documentation.	No change. However, clarifying language has been added to the CP. A separate statement is not required when information required is already provided to counterparties under standard form industry documentation.
Division 2 – Derivatives Party Assets		
Division 2, General	Several commenters requested a revision of Division 2 of Part 4 to recognize that re-hypothecation is a private commercial matter, unless otherwise subject to existing regulatory restrictions, such as segregation, margin, and specific types of counterparty requirements. Two commenters submitted that only former s. 24 should apply to EDPs. Two commenters requested clarification of the application of the requirements to derivatives advisers fulfilling discretionary mandates, for which they are generally given authority by their clients with respect to the use and investment of assets.	Change made. A derivatives firm is exempted from the requirements of the division if it is subject to and complies with or is otherwise exempt from National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* ("**NI 94-102**"), securities legislation relating to margin and collateral requirements or National Instrument 81-102 *Investment Funds*. We note that ss. 25 and 26 only apply to transactions with non-EDPs. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the appropriate model for protecting customer assets of derivatives parties.
Former s. 24 – Interaction with NI 94-102	Several commenters submitted that the Instrument was more onerous than securities instruments such as NI 94-102. One commenter requested clarification regarding the application of provisions relating to the	Change made. In circumstances where initial margin has been delivered by a non-EDP to a derivatives firm, the requirement is that this collateral will be (i) segregated and held at a permitted depository and (ii) the derivatives firm has obtained written consent from its counterparty

	segregation, use, holding and investment of derivatives party assets as applied to a portfolio manager acting on behalf of a managed account client, where the adviser has been granted authority with respect to portfolio assets that include but are not limited to derivatives. Another commenter requested clarification of the exemption from Division 2 for parties relying on the substituted compliance provisions in NI 94-102.	to the use or investment of the collateral. Division 2 does not apply to a derivatives firm for transactions that are subject to NI 94-102, including firms relying on exemptions in that instrument.
Division 3 – Reporting to Derivatives Parties		
Former s. 29 – Content and delivery of transaction information	Two commenters supported the requirement that transactions be confirmed in writing but submitted the prescriptive contents of those confirmations are not appropriate. The commenters requested harmonization with CFTC requirements. The commenters requested clarification of the application of the requirement to uncleared derivatives and that electronic confirmations satisfy the "in writing" requirement.	No change. However, clarifying language has been added to the CP. New s. 41 exempts a derivatives firm from the requirement in subsection 27(1) to deliver a written confirmation of the transaction in certain circumstances. The exemption in s. 41 is applicable to transactions executed on a derivatives trading facility (or analogous platform) where at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the availability of a similar exemption in respect of derivatives traded anonymously on a derivatives trading facility that are not cleared, derivatives that are not traded on a derivatives trading facility but are submitted for clearing to a regulated clearing agency, and otherwise if it is appropriate to extend the scope of the exemption to other sections of this Instrument. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or advising non-individual EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs.
Former s. 30 – Derivatives party statements	One commenter noted that there are no requirements to prepare monthly statements under either the CFTC rules or MiFID II.[9] As it would require derivatives dealers to implement new reporting technology, the commenter requested that the requirement to deliver monthly statements be removed.	No change. Monthly statements contain important information for non-EDPs to monitor their derivatives transactions. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or advising non-individual EDPs and apply but may be waived if the firm is trading with or advising individual or specified commercial hedger EDPs.
Part 5 – Compliance and Recordkeeping		
Division 1 – Compliance		
Former s. 33 – Responsibilities of senior derivatives	Several commenters requested that former s. 33 be eliminated or the responsibilities reassigned to a chief compliance officer to reflect current	Change made. Revisions have been made to the Instrument and CP to better reflect existing compliance structures at derivatives firms.

[9] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("**MiFID II**").

managers	industry best practices. A derivatives manager's oversight of activities within the derivatives manager's functional business unit is a conflict of interest. Any reporting to the regulators should be the obligation of the chief compliance officer. One commenter, noting the Office of the Superintendent of Financial Institutions ("**OSFI**") Guidelines,[10] submitted that the proposed requirements are at odds with the existing compliance structure. Two commenters submitted that the context where a specific duty has been introduced for senior managers in other jurisdictions is distinguishable from that in Canada. There has not been any crisis of confidence in Canada. Where specific duty has been imposed, it has been part of a comprehensive framework across business lines and the responsibility is shared across multiple functions. Several commenters noted that personal liability for a senior derivatives manager is unwarranted and inconsistent with best practices.	
	One commenter requested clarification of CP guidance on "serious misconduct" and "material non-compliance".	No change. The CP provides guidance on these terms. See CP guidance under new s. 31 – responsibilities of senior derivatives managers
	One commenter requested an optional carve-out for firms registered under NI 31-103 from the senior derivatives manager requirements to allow the senior derivatives manager to be the chief compliance officer. A separate senior derivatives manager regime should not be mandated for firms registered as portfolio managers under NI 31-103.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter submitted that there should be flexibility to former s. 33(2) to submit reports to senior management in lieu of reporting to the board. Another commenter submitted that all instances of material non-compliance should be reported no less frequently than on an annual basis and following the review of the annual report by the board.	Change made. The instrument has been revised in new s. 31 to permit a senior derivative manager to delegate its responsibility for submitting the report to the board to the firm's chief compliance officer.
Former s. 34 – Responsibility of derivatives firm to respond to material non-compliance	One commenter submitted that former s. 34(b) places a broad and onerous self-reporting burden on derivatives firms without precedent in Canadian securities legislation and should be removed from the Instrument. One commenter requested clarification of the CP guidance related to former s. 34 to expressly provide an opportunity for derivatives firms to raise issues with their board before being required to report to regulators.	No change. Self-reporting is a key element of the Instrument. The Instrument does not prohibit issues of material non-compliance with the Instrument from being raised with a board as long as the report is submitted to the regulator in a timely manner.

[10] For example, OSFI Guideline E-13 *Regulatory Compliance Management* and OSFI Guideline E-21 *Operational Risk Management.*

Division 2 – Recordkeeping		
Division 2 – General	One commenter submitted that recordkeeping obligations already exist under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and OSFI Guidelines for federally regulated financial institutions. One commenter submitted that federally regulated financial institutions should be exempt from compliance and in the alternative, should be granted substituted compliance.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 35 – Derivatives party agreement	Two commenters requested an exemption for transactions that are executed on an exchange and for transactions that are cleared.	No change. However, clarifying language has been added to the CP.
	Two commenters submitted that firms regularly enter into foreign exchange transactions prior to completing an ISDA Master Agreement and should be exempt from such requirement.	No change. A written agreement should be entered into prior to completing a transaction.
Former s. 36 – Records	Several commenters note that the recordkeeping requirements are too broad and the added costs on derivatives firms will be passed on to other market participants. Commenters suggested that the recordkeeping obligations be limited to keeping records of communications related to the negotiation, execution and amendment or termination of derivatives. All records of communications should not be kept where a record of those communications otherwise exists.	No change. Please see the Instrument and related guidance in the CP.
Former s. 37 – Form, accessibility and retention of records	Two commenters submitted that the length of the record retention requirement exceeds that of the CFTC.	No change. This retention period is consistent with other Canadian requirements.
Part 6 – Exemptions		
Division 1 – Exemption from this Instrument		
Former s. 39 – Exemption for certain derivatives end-users, General	Two commenters requested clarification of the scope of the end-user exemption and suggested reference to particular categories of persons. Several commenters submitted that the availability of the end-user exemption should not be restricted to parties that interact solely with EDPs.	Change made. The end-user exemption in new s. 37 of the Instrument has been amended to clarify the scope of the exemption. The end-user exemption includes the following conditions: • (a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party; • (b) the person or company does not, in respect of any derivative or transaction, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of s. 42 [*Advising generally*]; • (c) the person or company does not regularly make or offer to make a market in a derivative with a derivatives party;

		• (d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company other than an affiliated entity that is not an investment fund; • (e) the person or company does not facilitate clearing of a derivative through the facilities of a qualifying clearing agency for another person or company. Although the end-user exemption includes a condition that the person or company does not solicit or transact with a non-EDP, we have also amended the definition of EDP to include a specified commercial hedger category. We believe this should partially address the commenter's concerns.
Former s. 39 – Exemption for certain derivatives end-users, para (c)	Several commenters submitted that entities that are market-makers and that do not otherwise act as derivatives dealers or advisers, but regularly quote prices due to a need to regularly hedge positions, should not be excluded from the end-user exemption. One commenter requested clarification on whether former s. 39(c) is intended to capture commodity firms trading amongst themselves in the over the counter market.	No change. However, clarifying changes have been made to the CP. A person or company that frequently and regularly transacts in derivatives to hedge business risk but that does not undertake any of the activities listed in new s. 37 may qualify for this exemption.
Division 2 – Exemptions from Specific Requirements in this Instrument		
Former s. 40 – Foreign derivatives dealers, General	One commenter submitted that substituted compliance from substantially the entire Instrument should be granted either to both foreign derivatives dealers and Canadian financial institutions or to neither of them in order to maintain a level playing field.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter requested that corresponding domestic and foreign laws that can be complied with in lieu of the Instrument and the residual provisions of the Instrument be published for consultation before the Instrument is finalized.	Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 40 – Foreign derivatives dealers, subsection (1)	One commenter submitted that the foreign dealer exemption should not be conditional on dealings with EDPs when the business conduct rules of a foreign jurisdiction are deemed equivalent.	No change. The foreign dealer exemption is not available to derivatives firms that transact with non-EDPs. This approach is similar to the approach taken towards foreign dealers in NI 31-103.
Former s. 40 – Foreign derivatives dealers, subsection (3)	Two commenters submitted that the requirement to deliver a statement pursuant to former s. 40(3)(c) in order to qualify for the exemption does not provide any additional protection and the disclosures are generally addressed in the Master Agreement. This type of statement is not required by the CFTC as a condition of substituted compliance. This requirement should be removed, and disclosure in a Master Agreement should be	No change. However, clarifying language has been added to the CP. Disclosures contemplated in s. 38(3)(b) can be made by a derivatives firm in a master trading agreement with its counterparty.

	sufficient. In the alternative, the statement should only be required delivered to non-EDPs.	
	Several commenters requested clarification on the policy rationale behind former s. 40(3)(e) on which the exemption for foreign dealers based on substituted compliance is not available if the dealer is in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in a Canadian jurisdiction, particularly if only dealing with EDPs.	Change made. The subsection was removed. A person or company in the business of trading in derivatives on an exchange or a derivatives trading facility is no longer prohibited from qualifying for the exemption under new s. 38(1).
Division 3 – Exemptions for Derivatives Advisers		
Division 3, General	One commenter submitted that a corresponding exemption to former s. 41 should be added for portfolio managers, as they have limited derivatives activity.	We have specifically requested comment in the Notice and Request for Comment in relation to Proposed NI 93-102 as to whether and in what circumstances registered advisers (portfolio managers) under NI 31-103 should be considered derivatives advisers. We will consider these responses in determining whether registered advisers (portfolio managers) that provide incidental advice in relation to derivatives should be considered in the business of advising in relation to derivatives or whether an express exemption is required.
Former s. 44 – Foreign derivatives advisers, General	Several commenters generally supported exempting foreign derivatives advisers but noted that the exemption is too narrow, as many jurisdictions do not subject derivatives advisers to registration. Derivatives advisers should be exempt from the Instrument when exempt or not required to be registered in their principal jurisdiction, which would better align with the international adviser exemption in NI 31-103.	No change. We have intentionally limited the exemption in s. 43 [*Foreign derivatives advisers*] of the Instrument to foreign derivatives advisers that are "registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D".
	One commenter requested that corresponding domestic and foreign laws that can be complied with in lieu of the Instrument and the residual provisions of the Instrument be published for consultation before the Instrument is finalized.	Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 44 – Foreign derivatives advisers, subsection (1)	One commenter submitted that the foreign adviser exemption should not be conditional on dealings with EDPs when the business conduct rules of a foreign jurisdiction are deemed equivalent.	No change. The foreign adviser exemption is not available to derivatives firms that transact with non-EDPs.
Former s. 44 – Foreign derivatives advisers, subsection (3)	One commenter submitted that the requirement to deliver a statement pursuant to former s. 44(3)(c) in order to qualify for the exemption does not provide any additional protection and is inconsistent with former s. 23, which requires a similar statement only be delivered to non-EDPs.	No change. However, clarifying language has been added to the CP. Disclosures contemplated in s. 43(3)(b) can be made by a derivatives firm in a master trading agreement with its counterparty.
	Several commenters requested clarification on the policy rationale behind former s. 44(3)(e) on which the exemption for foreign advisers based on substituted compliance is not available if the adviser is in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in a Canadian jurisdiction, particularly if only dealing with EDPs.	Change made. A person or company in the business of trading in derivatives on an exchange or a derivatives trading facility is no longer prohibited from qualifying for the exemption under s. 43(1).

Part 7 – Granting an Exemption		
Former s. 45 – Exemption	One commenter submitted that credit unions make available products largely on demand to provide a full suite of services and do not operate platforms, are not market makers, and are not directly offering quotes. Credit unions are the intended beneficiaries of the Instrument and qualify for the end-user exemption. Credit unions should not be defined as derivatives dealers or advisers and should fall outside the scope of the Instrument.	No change. The exemption available for derivatives end-users that satisfy certain requirements is set out in s. 37. Discretionary exemptions are available on an ad-hoc basis.
	One commenter submitted that IIROC-regulated dealers are already regulated and should be exempt from the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Part 8 – Effective Date		
Former s. 46 – Effective date	Two commenters suggested delaying the implementation date to harmonize the Instrument with CFTC and Securities and Exchange Commission rules.	No change. Canadian jurisdictions are committed to implementing harmonized business conduct rules.
	Several commenters suggested extending the implementation period to become compliant to 6 months for previously regulated firms and 12 months for those not previously regulated.	No change. Please see the Instrument and related guidance in the CP.
	One commenter submitted that all pre-effective date transactions regardless of their remaining term should be grandfathered and that grandfathering should apply even if pre-effective date transactions are subsequently amended after the date the Instrument is finalized.	We are permitting a derivatives firm to leverage a pre-existing "permitted client", "accredited counterparty" or "qualified party" representation from its client as set out in s. 45 of the Instrument for pre-existing transactions. If the conditions in that section are satisfied, then those transactions are only subject to s. 8 [*Fair dealing*], s. 20 [*Daily reporting*] and s. 28 [*Derivatives party statements*].

List of Commenters

1. Associated Foreign Exchange, ULC
2. Bruce Power L.P.
3. Canadian Bankers Association
4. Canadian Credit Union Association
5. Capital Power Corporation
6. Enbridge Inc.
7. Franklin Templeton Investments Corp.
8. International Energy Credit Association
9. International Swaps and Derivatives Association, Inc.
10. Investment Industry Association of Canada
11. Investor Advisory Panel
12. Just Energy Corp.
13. NorthPoint Energy Solutions, Inc.
14. Osler, Hoskin & Harcourt LLP
15. Pension Investment Association of Canada
16. Portfolio Management Association of Canada
17. SIFMA Asset Management Group
18. The Canadian Advocacy Council for Canadian CFA Institute Societies
19. The Canadian Commercial Energy Working Group
20. The Canadian Market Infrastructure Committee
21. Western Union Business Solutions

ANNEX II

PROPOSED NATIONAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"Canadian financial institution" means any of the following:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"collateral" means all cash, securities and other property that is

(a) received or held by the derivatives firm from, for or on behalf of a derivatives party, and

(b) intended to or does margin, guarantee, secure, settle or adjust one or more derivatives between the derivatives firm and the derivatives party;

"commercial hedger" means a person or company that carries on a business and that transacts a derivative that is intended to hedge risks relating to that business if those risks arise from potential changes in value of any of the following:

(a) an asset that the person or company owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(b) a liability that the person or company incurs or anticipates incurring;

(c) a service which the person or company provides, purchases, or anticipates providing or purchasing;

"derivatives adviser" means

(a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others in respect of derivatives, and

(b) any other person or company required to be registered as a derivatives adviser under securities legislation;

"derivatives dealer" means

(a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent, and

(b) any other person or company required to be registered as a derivatives dealer under securities legislation;

"derivatives firm" means a derivatives dealer or a derivatives adviser, as applicable;

"derivatives party" means

(a) in relation to a derivatives dealer, any of the following:

(i) a person or company for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction;

(ii) a person or company that is, or is proposed to be, a party to a derivative if the derivatives dealer is the counterparty, and

(b) in relation to a derivatives adviser, a person or company to which the adviser provides or proposes to provide advice in relation to a derivative;

"derivatives party assets" means any asset, including collateral, received or held by a derivatives firm from, for or on behalf of a derivatives party;

"derivatives position" means the economic interest of a counterparty in an outstanding derivative at a point in time;

"eligible derivatives party" means, for a derivatives party of a derivatives firm, any of the following:

(a) a Canadian financial institution;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of a person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as at least one of the following:

(i) a derivatives dealer;

(ii) a derivatives adviser;

(iii) an adviser;

(iv) an investment dealer;

(e) a pension fund that is regulated by the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of the pension fund;

(f) an entity organized under the laws of a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or the government of a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or the government of a jurisdiction of Canada;

(h) the government of a foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person or company that is acting on behalf of a managed account if the person or company is registered or authorized to carry on business as one of the following:

(i) an adviser or a derivatives adviser;

(ii) the equivalent of an adviser or a derivatives adviser under the securities legislation of a jurisdiction of Canada or of a foreign jurisdiction;

(l) an investment fund that is advised by an adviser registered or exempted from registration under securities legislation or under commodity futures legislation in Canada;

(m) a person or company, other than an individual, that has represented to the derivatives firm in writing, that

(i) it has the requisite knowledge and experience to evaluate the information provided to the person or company about derivatives by the derivatives firm, the suitability of the derivatives for the person or company, and the characteristics of the derivatives to be transacted on the person or company's behalf, and

(ii) it has net assets of at least $25 000 000 as shown on its most recently prepared financial statements;

(n) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that

(i) it has the requisite knowledge and experience to evaluate the information provided to the person or company about derivatives by the derivatives firm, the suitability of the derivatives for the person or company, and the characteristics of the derivatives to be transacted on the person or company's behalf,

(ii) it has net assets of at least $10 000 000 as shown on its most recently prepared financial statements, and

(iii) it is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;

(o) an individual that has represented to the derivatives firm, in writing, that

(i) he or she has the requisite knowledge and experience to evaluate the information provided to the individual about derivatives by the derivatives firm, the suitability of the derivatives for the individual, and the characteristics of the derivatives to be transacted on the individual's behalf, and

(ii) he or she beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, that have an aggregate realizable value before tax but net of any related liabilities of at least $5 000 000;

(p) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that its obligations under derivatives that it transacts with the derivatives firm are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties, other than a person or company that only qualifies as an eligible derivatives party under paragraph (n) or under paragraph (o);

(q) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that all of the following apply:

(i) the person or company is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;

(ii) the obligations of the person or company, under derivatives that it transacts with the derivatives firm, are fully guaranteed or otherwise fully supported, under a written agreement, by one or more eligible derivatives parties that qualifies as an eligible derivatives party under paragraph (n);

(r) a qualifying clearing agency;

"investment dealer" means a person or company registered as an investment dealer under the securities legislation of a jurisdiction of Canada;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"managed account" means an account of a derivatives party for which a person or company makes the trading decisions if that person or company has discretion to transact derivatives for the account without requiring the derivatives party's express consent to the transaction;

"permitted depository" means a person or company that is any of the following:

(a) a Canadian financial institution;

(b) a qualifying clearing agency;

(c) the Bank of Canada or the central bank of a permitted jurisdiction;

(d) in Québec, a person recognized or exempted from recognition as a central securities depository under the *Securities Act* (Québec);

(e) a person or company

(i) whose head office or principal place of business is in a permitted jurisdiction,

(ii) that is a banking institution or trust company of a permitted jurisdiction, and

(iii) that has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100 000 000;

(f) with respect to derivatives party assets that it receives from a derivatives party, a derivatives dealer;

"permitted jurisdiction" means a foreign jurisdiction that is any of the following:

(a) a country where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;

(b) if a derivatives party has provided express written consent to the derivatives dealer entering into a derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the derivative entered into by, for or on behalf of the derivatives party, and a political subdivision of that country;

"qualifying clearing agency" means a person or company if any of the following applies:

(a) it is recognized or exempted from recognition as a clearing agency or a clearing house, as applicable, in a jurisdiction of Canada;

(b) it is regulated by an authority in a foreign jurisdiction that applies regulatory requirements that are consistent with the *Principles for market infrastructures* applicable to central counterparties, as amended from time to time, and published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

"referral arrangement" means any arrangement in which a derivatives firm agrees to pay or receive a referral fee;

"referral fee" means any compensation, regardless of its form, whether made directly or indirectly, paid for the referral of a derivatives party to or from a derivatives firm;

"registered derivatives firm" means a derivatives dealer or a derivatives adviser that is registered under the securities legislation of a jurisdiction in Canada as a derivatives dealer or a derivatives adviser;

"registered firm" means a registered derivatives firm or a registered securities firm;

"registered securities firm" means a person or company that is registered as a dealer, an adviser or an investment fund manager in a category of registration specified in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"segregate" means to separately hold or separately account for a derivatives party's positions related to derivatives or derivatives party assets;

"specified commercial hedger" means a person or company described in paragraph (n) or (q) of the definition of "eligible derivatives party";

"transaction" means any of the following:

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

(b) the novation of a derivative, other than a novation with a qualifying clearing agency;

"valuation" means the value of a derivative as at a certain date determined in accordance with applicable accounting standards for fair value measurement using a methodology that is consistent with industry standards.

(2) In this Instrument, "adviser" includes

(a) in Manitoba, an "adviser" as defined in the *Commodity Futures Act* (Manitoba),

(b) in Ontario, an "adviser" as defined in the *Commodity Futures Act* (Ontario), and

(c) in Québec, an "adviser" as defined in the *Securities Act* (Québec).

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

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

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

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

(c) all of the following apply:

(i) the second party is a limited partnership;

(ii) the first party is a general partner of the limited partnership referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a general partner of the second party;

(d) all of the following apply:

(i) the second party is a trust;

(ii) the first party is a trustee of the trust referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a trustee of the second party.

(5) In this Instrument, a person or company is a subsidiary of another person or company if one of the following applies:

(a) it is controlled by

(i) the other person or company,

(ii) the other person or company and one or more persons or companies each of which is controlled by that person or company, or

(iii) 2 or more persons or companies each of which is controlled by the other person or company;

(b) it is a subsidiary of a person or company that is that other person or company's subsidiary.

(6) For the purpose of this Instrument, a person or company described in paragraph (k) of the definition of "eligible derivatives party" is an adviser acting on behalf of a managed account owned by another person or company.

(7) For the purpose of determining whether a derivatives party is an eligible derivatives party, a derivatives firm must not rely on a written representation if reliance on that representation would be unreasonable.

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

PART 2
APPLICATION

Application to registered and unregistered persons or companies

2. This Instrument applies to a person or company whether or not the person or company is a registered derivatives firm or an individual acting on behalf of a registered derivatives firm.

Application – scope of Instrument

3. This Instrument applies to

(a) in Manitoba,

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

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

(b) in Ontario,

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

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

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

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(8) of this Instrument. The text boxes in this Instrument do not form part of this Instrument and have no official status.

Application – affiliated entities

4. A person or company is exempt from the requirements of this Instrument in respect of dealing with or advising an affiliated entity of the person or company, other than an affiliated entity that is an investment fund.

Application – qualifying clearing agencies

5. This Instrument does not apply to a qualifying clearing agency.

Application – governments, central banks and international organizations

6. This Instrument does not apply to any of the following:

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

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

(c) the Bank for International Settlements;

(d) the International Monetary Fund.

Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party

7. (1) A derivatives firm is exempt from the requirements of this Instrument if a derivatives party is an eligible derivatives party and is neither an individual nor a specified commercial hedger, except for the following requirements,

(a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];

(b) sections 23 [*Interaction with other Instruments*] and 24 [*Segregating derivatives party assets*];

(c) subsection 27(1) [*Content and delivery of transaction information*];

(d) Part 5 [*Compliance and recordkeeping*].

(2) A derivatives firm is exempt from the requirements of this Instrument in respect of a derivatives party that is an eligible derivatives party and that is an individual or a specified commercial hedger, if the eligible derivatives party has waived in writing its right to receive some or all of the protections provided under those requirements in relation to all derivatives, a class of derivatives or a specific derivative.

(3) The exemption in subsection (2) does not apply in respect of the requirements in the provisions identified in paragraphs (1)(a) to (d).

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Fair dealing

8. (1) A derivatives firm must act fairly, honestly and in good faith with a derivatives party.

(2) An individual acting on behalf of a derivatives firm must act fairly, honestly and in good faith with a derivatives party.

Conflicts of interest

9. (1) A derivatives firm must establish, maintain and apply reasonable policies and procedures to identify existing material conflicts of interest, and material conflicts of interest that the derivatives firm in its reasonable opinion would expect to arise, between the derivatives firm, including each individual acting on behalf of the derivatives firm, and a derivatives party.

(2) A derivatives firm must respond to an existing or potential conflict of interest identified under subsection (1).

(3) If a reasonable derivatives party would expect to be informed of a conflict of interest identified under subsection (1), the derivatives firm must disclose, in a timely manner, the nature and extent of the conflict of interest to a derivatives party whose interest conflicts with the interest identified.

Know your derivatives party

10. (1) For the purpose of paragraph (2)(c) in Ontario, Nova Scotia and New Brunswick, “insider” has the meaning ascribed to that term in the *Securities Act* of these jurisdictions except that “reporting issuer”, as it appears in the definition of “insider”, is to be read as “reporting issuer or any other issuer whose securities are publicly traded”.

(2) A derivatives firm must establish, maintain and apply reasonable policies and procedures to

(a) obtain facts necessary to comply with applicable legislation relating to the verification of a derivatives party’s identity,

(b) establish the identity of a derivatives party and, if the derivatives firm has cause for concern, make reasonable inquiries as to the reputation of the derivatives party,

(c) if transacting with, for or on behalf of, or advising a derivatives party in connection with a derivative that has one or more securities as an underlying interest, establish whether either of the following applies:

(i) the derivatives party is an insider of a reporting issuer or any other issuer whose securities are publicly traded;

(ii) the derivatives party would reasonably be expected to have access to material non-public information relating to any interest underlying the derivative; and

(d) if the derivatives firm will, as a result of its relationship with the derivatives party have any credit risk in relation to the derivatives party, establish the creditworthiness of the derivatives party.

(3) For the purpose of establishing the identity of a derivatives party that is a corporation, partnership or trust, a derivatives firm must establish the following:

(a) the nature of the derivatives party's business;

(b) the identity of any individual who meets either of the following:

(i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;

(ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.

(4) A derivatives firm must take reasonable steps to keep the information required under this section current.

(5) This section does not apply if the derivatives party is a registered firm or a Canadian financial institution.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Derivatives-party-specific needs and objectives

11. A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, it has sufficient information regarding all of the following to enable it to meet its obligations under section 12 [*Suitability*]:

(a) the derivatives party's needs and objectives with respect to its transacting in derivatives;

(b) the derivatives party's financial circumstances;

(c) the derivatives party's risk tolerance;

(d) if applicable, the nature of the derivatives party's business and the operational risks it wants to manage.

Suitability

12. (1) A derivatives firm, or an individual acting on behalf of a derivatives firm, must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, both the derivative and the transaction are suitable for the derivatives party.

(2) If a derivatives party instructs a derivatives firm, or an individual acting on behalf of a derivatives firm, to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would result in a transaction or derivative that is not suitable for the derivatives party, the derivatives firm must inform the derivatives party in writing of the derivatives firm's opinion and must not transact in the derivative unless the derivatives party instructs the derivatives firm to proceed anyway.

Permitted referral arrangements

13. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not participate in a referral arrangement in respect of a derivative with another person or company unless all of the following apply:

(a) before a derivatives party is referred by or to the derivatives firm, the terms of the referral arrangement are set out in a written agreement between the derivatives firm and the person or company;

(b) the derivatives firm records all referral fees;

(c) the derivatives firm, or the individual acting on behalf of the derivatives firm, ensures that the information prescribed by section 15 [*Disclosing referral arrangements to a derivatives party*] is provided to the derivatives party in writing before the derivatives firm or the individual receiving the referral either opens an account for the derivatives party or provides services to the derivatives party.

Verifying the qualifications of the person or company receiving the referral

14. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not refer a derivatives party to another person or company unless the derivatives firm first takes reasonable steps to verify and conclude that the person or company has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.

Disclosing referral arrangements to a derivatives party

15. (1) The written disclosure of the referral arrangement required by paragraph 13(c) [*Permitted referral arrangements*] must include all of the following:

(a) the name of each party to the agreement referred to in paragraph 13(a) [*Permitted referral arrangements*];

(b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration, or exemption from registration relied upon, of each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the agreement with a description of the activities that the derivatives firm or individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;

(f) any other information that a reasonable derivatives party would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the derivatives firm must ensure that written disclosure of that change is provided to each derivatives party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

Handling complaints

16. A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, promptly respond to each complaint made to the derivatives firm about any product or service offered by the derivatives firm or an individual acting on behalf of the derivatives firm.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH CERTAIN DERIVATIVES PARTIES

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Tied selling

17. (1) A derivatives firm, or an individual acting on behalf of the derivatives firm, must not impose undue pressure on or coerce a person or company to obtain a derivatives-related product or service from a particular person or company, including the derivatives firm or any of its affiliated entities, as a condition of obtaining another product or service from the derivatives firm.

(2) Before a derivatives firm, or an individual acting on behalf of the derivatives firm, first transacts in a derivative with or on behalf of a derivatives party or first advises a derivatives party in respect of a derivative, the derivatives firm must disclose to the derivatives party the prohibition on tied selling set out in subsection (1) in a statement in writing.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division 1 of Part 4 do not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Relationship disclosure information

18. (1) Before transacting with, for or on behalf of a derivatives party for the first time, or advising a derivatives party for the first time, a derivatives firm must deliver to a derivatives party all information that a reasonable person would consider important about the derivatives party's relationship with the derivatives firm and each individual acting on behalf of the derivatives firm that is providing derivatives-related services to the derivatives party, including all of the following:

(a) a description of the nature or type of the derivatives party's account;

(b) a description of the conflicts of interest that the derivatives firm is required to disclose to a derivatives party under securities legislation;

(c) disclosure of the fees or other charges the derivatives party might be required to pay related to the derivatives party's account;

(d) a general description of the types of transaction fees or other charges the derivatives party might be required to pay in relation to derivatives;

(e) a general description of any compensation paid to the derivatives firm by any other party in relation to the different types of derivatives that a derivatives party may transact in through the derivatives firm;

(f) a description of the content and frequency of reporting for each account or portfolio of a derivatives party;

(g) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 16 [*Handling complaints*];

(h) a statement that the derivatives firm has an obligation to assess whether a derivative is suitable for a derivatives party prior to executing a transaction or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(i) the information a derivatives firm must collect about the derivatives party under section 10 [*Know your derivatives party*] and 11 [*Derivatives-party-specific needs and objectives*]

(j) a general explanation of how performance benchmarks might be used to assess the performance of a derivatives party's derivatives and any options for benchmark information that might be available to the derivatives party from the derivatives firm;

(k) in the case of a derivatives firm that holds or has access to derivatives party assets, a general description of the manner in which the assets are held, used or are invested by the derivatives firm and a description of the risks and benefits to the counterparty arising from the derivatives firm holding or having access to use or invest the derivatives party assets in that manner.

(2) A derivatives firm must deliver the information in subsection (1) to the derivatives party in writing before the derivatives firm does either of the following:

(a) transacts in a derivative with, for or on behalf of the derivatives party;

(b) advises the derivatives party in respect of a derivative.

(3) If there is a significant change in respect of the information delivered to a derivatives party under subsections (1), the derivatives firm must take reasonable steps to notify the derivatives party of the change in a timely manner and, if possible, before the derivatives firm next does either of the following:

(a) transacts in a derivative with, for or on behalf of the derivatives party;

(b) advises the derivatives party in respect of a derivative.

(4) A derivatives firm must not impose any new fee or other charge in respect of an account of a derivatives party, or increase the amount of any fee or other charge in respect of an account of a derivatives party, unless written notice of the new or increased fee or charge is provided to the derivatives party at least 60 days before the date on which the imposition or increase becomes effective.

(5) Subsections (1), (2) and (3) do not apply to a derivatives dealer in respect of a derivatives party for whom the derivatives dealer transacts in a derivative only as directed by a derivatives adviser acting for the derivatives party.

(6) A derivatives dealer referred to in subsection (5) must deliver the information required under paragraphs (1)(a) to (g) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

19. (1) Before transacting in a type of derivative with, for or on behalf of a derivatives party for the first time, a derivatives dealer must deliver each of the following to the derivatives party:

(a) a general description of the type of derivatives and services related to derivatives that the derivatives firm offers;

(b) a document reasonably designed to allow the derivatives party to assess each of the following:

(i) the types of risks that a derivatives party should consider when making a decision relating to types of derivatives that the derivatives dealer offers, including the material risks relating to the type of derivatives transacted and the derivatives party's potential exposure under the type of derivatives;

(ii) the material characteristics of the type of derivative, including the material economic terms and the rights and obligations of the counterparties to the type of derivative;

(c) a statement in writing that is substantially similar to the following:

"A characteristic of many derivatives is that you are only required to deposit funds that correspond to a portion of your total potential obligations when entering into the derivative. However, your profits or losses from the derivative are based on changes in the total value of the derivative. This means the leverage characteristic magnifies the profit or loss under a derivative, and losses can greatly exceed the amount of funds deposited. We may require you to deposit additional funds to cover your obligations under a derivative as the value of the derivative changes. If you fail to deposit these funds, we may close out your position without warning. You should understand all of your obligations under a derivative, including your obligations where the value of the derivative declines.

Using borrowed money to finance a derivatives transaction involves greater risk than using cash resources only. If you borrow money, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the derivative declines."

(2) Before transacting in a derivative with, for or on behalf of a derivatives party, a derivatives dealer must advise the derivatives party of all of the following:

(a) any material risks or material characteristics that are materially different from those described in the disclosure required under subsection (1);

(b) if applicable, the price of the derivative to be transacted and the most recent valuation;

(c) any compensation or other incentive payable by the derivatives party relating to the derivative or the transaction.

Daily reporting

20. (1) On each business day, a derivatives dealer must make available to a derivatives party a valuation for each derivative that it has transacted with, for or on behalf of the derivatives party and with respect to which contractual obligations remain outstanding on that day.

(2) On a monthly basis, a derivatives adviser must make available to a derivatives party a valuation for each derivative that it has transacted for or on behalf of the derivatives party, unless a derivatives adviser and a derivatives party agree otherwise.

Notice to derivatives parties by non-resident derivatives firms

21. A derivatives firm whose head office or principal place of business is not located in Canada must not transact in a derivative with a derivatives party in the local jurisdiction unless it has delivered to the derivatives party a statement in writing disclosing all of the following:

(a) the foreign jurisdiction in which the head office or the principal place of business of the derivatives firm is located;

(b) that all or substantially all of the assets of the derivatives firm may be situated outside the local jurisdiction;

(c) that there may be difficulty enforcing legal rights against the derivatives firm because of the above;

(d) the name and address of the agent for service of process of the derivatives firm in the local jurisdiction.

DIVISION 2 – DERIVATIVES PARTY ASSETS

This Division, other than sections 23 and 24, does not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is either an individual or a specified commercial hedger that has waived these protections – see section 7.

Definition – initial margin

22. In this Division, "initial margin" means any derivatives party assets delivered by a derivatives party to a derivatives firm as collateral to cover potential changes in the value of a derivative over an appropriate close-out period in the event of a default.

Interaction with other instruments

23. A derivatives firm is exempt from the requirements in this Division in respect of derivatives party assets if any of the following apply:

(a) the derivatives firm is subject to and complies with or is exempt from sections 3 to 8 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* in respect of the derivatives party assets;

(b) the derivatives firm is subject to and complies with securities legislation relating to margin and collateral requirements[1] or National Instrument 81-102 *Investment Funds* in respect of the derivatives party assets.

Segregating derivatives party assets

24. A derivatives firm must segregate derivatives party assets and derivatives positions from the property and derivatives positions of the derivatives firm and other persons or companies.

Holding initial margin

25. A derivatives firm must hold initial margin in an account at a permitted depository.

Investment or use of initial margin

26. (1) A derivatives firm must not use or invest initial margin without receiving written consent from the derivatives party.

(2) A loss resulting from an investment or use of a derivatives party's initial margin by the derivatives firm must be borne by the derivatives firm making the investment and not by the derivatives party.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

This Division, other than subsection 27(1), does not apply if a derivatives firm is dealing with (i) an eligible derivatives party that is neither an individual nor a specified commercial hedger or (ii) an eligible derivatives party who is an individual or a specified commercial hedger that has waived these protections – see section 7.

Content and delivery of transaction information

27. (1) A derivatives dealer that has transacted with, for or on behalf of a derivatives party must promptly deliver a written confirmation of the transaction to

(a) the derivatives party, or

(b) if the derivatives party consents or has given a direction in writing, a derivatives adviser acting for the derivatives party.

(2) If the derivatives dealer has transacted with, for or on behalf of a derivatives party that is not an eligible derivatives party, the written confirmation required under subsection (1) must include all of the following, if and as applicable:

(a) a description of the derivative;

(b) a description of the agreement that governs the transaction;

(c) the notional amount, quantity or volume of the underlying asset of the derivative;

(d) the number of units of the derivative;

(e) the total price paid for the derivative and the per unit price of the derivative;

(f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;

(g) whether the derivatives dealer acted as principal or agent in relation to the derivative;

(h) the date and the name of the trading facility, if any, on which the transaction took place;

(i) the name of each individual acting on behalf of the derivatives firm, if any, that provided advice relating to the derivative or the transaction;

(j) the date of the transaction;

[1] This reference will be substituted with a reference to National Instrument 95-101 *Margin and Collateral Requirements for Non-Centrally Cleared Derivatives* once it is published.

(k) the name of the qualifying clearing agency, if any, where the derivative was cleared.

Derivatives party statements

28. (1) A derivatives firm must make available a statement to a derivatives party, at the end of each quarterly period, if either of the following applies:

(a) within the quarterly period the derivatives firm transacted a derivative with, for or on behalf of the derivatives party;

(b) the derivatives party has an outstanding derivatives position resulting from a transaction where the derivatives firm acted as a derivatives dealer.

(2) A statement delivered under this section must include all of the following information for each transaction made with, for or on behalf of the derivatives party by the derivatives firm during the period covered by the statement, if and as applicable:

(a) the date of the transaction;

(b) a description of the transaction, including the number of units of the transaction, the per unit price and the total price;

(c) information sufficient to identify the agreement that governs the transaction.

(3) A statement delivered under this section must include all of the following information as at the date of the statement, if and as applicable:

(a) a description of each outstanding derivative to which the derivatives party is a party;

(b) the valuation, as at the statement date, of each outstanding derivative referred to in paragraph (a);

(c) the final valuation, as at the expiry or termination date, of each derivative that expired or terminated during the period covered by the statement;

(d) a description of all derivatives party assets held or received by the derivatives firm as collateral;

(e) any cash balance in the derivatives party's account;

(f) a description of any other derivatives party asset held or received by the derivatives firm;

(g) the total market value of all cash, outstanding derivatives and other derivatives party assets in the derivatives party's account, other than assets held or received as collateral.

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

Definitions

29. In this Division,

"chief compliance officer" means the officer or partner of a derivatives firm that is responsible for establishing, maintaining and applying written policies and procedures to monitor and assess compliance, by the derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

"derivatives business unit" means, in respect of a derivatives firm, a division or an organizational unit that transacts in, or provides advice in relation to, a derivative, or a class of derivatives, on behalf of the derivatives firm;

"senior derivatives manager" means, in respect of a derivatives business unit of a derivatives firm, an individual designated by the derivatives firm under section 30(2).

Policies, procedures and designation

30. (1) A derivatives firm must establish, maintain and apply policies, procedures, controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:

(a) the derivatives firm and each individual acting on its behalf in relation to transacting in, or providing advice in relation to, a derivative, comply with securities legislation relating to trading and advising in derivatives;

(b) the risks relating to its derivatives activities within the derivatives business unit are managed in accordance with the derivative's firms risk management policies and procedures;

(c) each individual who performs an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, derivatives, prior to commencing the activity and on an ongoing basis,

(i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,

(ii) without limiting subparagraph (i), has the understanding of the structure, features and risks of each derivative that the individual transacts in or advises in relation to, and

(iii) has conducted themselves with integrity.

(2) A derivatives firm must designate a senior derivatives manager in respect of each derivatives business unit;

(3) A derivatives firm must identify to the regulator or the securities regulatory authority, upon request, each individual designated as the senior derivatives manager in respect of each derivatives business unit.

Responsibilities of senior derivatives managers

31. (1) A senior derivatives manager must do all of the following:

(a) supervise the derivatives-related activities conducted in the derivatives business unit directed towards ensuring compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Instrument, applicable securities legislation and the policies and procedures required under section 30 [*Policies, procedures and designation*];

(b) respond, in a timely manner, to any material non-compliance by an individual working in the derivatives business unit with this Instrument, applicable securities legislation or the policies and procedures required under section 30 [*Policies, procedures and designation*].

(2) At least once per calendar year, the senior derivatives manager in respect of each derivatives business unit must,

(a) prepare a report stating, as applicable, either of the following:

(i) each incidence of material non-compliance with this Instrument, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 30 [*Policies, procedures and designation*] by the derivatives business unit or an individual in the derivatives business unit and the steps taken to respond to each such incidence of material non-compliance;

(ii) the derivatives business unit is in material compliance with this Instrument, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 30 [*Policies, procedures and designation*];

(b) submit the report referred to in paragraph (a) to the board of directors of the derivatives firm.

(3) The senior derivatives manager may not delegate its obligation under paragraph (2)(b) except to the derivatives firm's chief compliance officer.

Responsibility of derivatives firm to report material non-compliance

32. The derivatives firm must report to the regulator or the securities regulatory authority in a timely manner any circumstance in which the derivatives firm is not or was not in material compliance with this Instrument or securities legislation relating to trading and advising in derivatives and one or more of the following applies:

(a) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party;

(b) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(c) the non-compliance is part of a pattern of non-compliance.

DIVISION 2 – RECORDKEEPING

Derivatives party agreement

33. (1) A derivatives firm must establish policies and procedures that are reasonably designed to ensure that the derivatives firm, before transacting in a derivative with, for or on behalf of a derivatives party, enters into an agreement with that derivatives party.

(2) The agreement referenced in subsection (1) must establish all of the material terms governing the relationship between the derivatives firm and the derivatives party including the rights and obligations of the derivatives firm and the derivatives party.

Records

34. A derivatives firm must keep complete records of all its derivatives, transactions and advising activities, including, as applicable, all of the following:

(a) general records of its derivatives business and activities conducted with derivatives parties, and compliance with applicable provisions of securities legislation, including

(i) records of derivatives party assets, and

(ii) evidence of the derivatives firm's compliance with internal policies and procedures;

(b) for each derivative, records that demonstrate the existence and nature of the derivative, including

(i) records of communications with the derivatives party relating to transacting in the derivative,

(ii) documents provided to the derivatives party to confirm the derivative, the terms of the derivative and each transaction relating to the derivative,

(iii) correspondence relating to the derivative and each transaction relating to the derivative, and

(iv) records made by staff relating to the derivative and each transaction relating to the derivative, including notes, memos or journals;

(c) for each derivative, records that provide for a complete and accurate reconstruction of the derivative and all transactions relating to the derivative, including

(i) records relating to pre-execution activity for each transaction including all communications relating to quotes, solicitations, instructions, transactions and prices however they may be communicated,

(ii) reliable timing data for the execution of each transaction relating to the derivative, and

(iii) records relating to the execution of the transaction, including

(A) information obtained to determine whether the counterparty qualifies as an eligible derivatives party,

(B) fees or commissions charged,

(C) any other information relevant to the transaction, and

(D) information used in calculating the derivative's valuation;

(d) an itemized record of post-transaction processing and events, including a record in relation to the calculation of margin and exchange of collateral;

(e) the price and valuation of the derivative.

Form, accessibility and retention of records

35. (1) A derivatives firm must keep a record that it is required to keep under this Part, and all supporting documentation,

(a) in a readily accessible and safe location and in a durable form,

(b) in the case of a record or supporting documentation that relates to a derivative, for a period of 7 years following the date on which the derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which the derivatives firm's last outstanding derivative with the derivatives party expires or is terminated.

(2) Despite subsection (1), in Manitoba, with respect to a derivatives firm or a derivatives party located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

PART 6
EXEMPTIONS

DIVISION 1 – EXEMPTION FROM THIS INSTRUMENT

Limitation on the availability of the exemption in this Division

36. The exemption in this Division is not available to a person or company if either of the following applies:

(a) the person or company is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or is registered under the commodity futures legislation of any jurisdiction of Canada;

(b) the person or company is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located in a category of registration to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction.

Exemption for certain derivatives end-users

37. (1) A person or company is exempt from the requirements of this Instrument if all of the following apply:

(a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a person or company that is not an eligible derivatives party;

(b) the person or company does not, in respect of any transaction, advise a person or company that is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 42 [*Advising generally*];

(c) the person or company does not regularly make or offer to make a market in a derivative with a derivatives party;

(d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company other than an affiliated entity that is not an investment fund;

(e) the person or company does not facilitate clearing of a derivative through the facilities of a qualifying clearing agency for another person or company.

(2) In determining whether a person or company satisfies the conditions in subsection (1), a person or company is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS INSTRUMENT

Foreign derivatives dealers

38. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Appendix A is exempt from this Instrument in respect of a transaction if all of the following apply:

(a) it does not solicit, or otherwise transact in a derivative with, for or on behalf of, a person or company in the local jurisdiction that is not an eligible derivatives party;

(b) it is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix A to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;

(c) it is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives dealer set out in Appendix A relating to the activities being conducted;

(d) it reports to the regulator or the securities regulatory authority in a timely manner any circumstance in which, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with the laws of the foreign jurisdiction or securities legislation relating to trading in derivatives that is listed in Appendix A and if any of the following applies:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party located in Canada;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(iii) the non-compliance is part of a pattern of non-compliance.

(2) Despite subsection (1), a derivatives dealer relying on the exemption set out in that subsection must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction in respect of the transaction.

(3) The exemption in subsection (1) is not available unless all of the following apply:

(a) the derivatives dealer engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(b) the derivatives dealer has delivered to the derivatives party a statement in writing disclosing all of the following:

(i) the foreign jurisdiction in which the derivatives dealer's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the derivatives dealer may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the derivatives dealer because of the above;

(iv) the name and address of the agent for service of the derivatives dealer in the local jurisdiction;

(c) the derivatives dealer has submitted to the regulator or the securities regulatory authority a completed Form 93-102F1 *Submission to Jurisdiction and Appointment of Agent for Service*;

(d) the derivatives dealer undertakes to the regulator or the securities regulatory authority to provide the regulator or the securities regulatory authority with prompt access to its books and records upon request.

(4) A derivatives dealer that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(6) A person or company is exempt from the requirements in subsections (4) and (5) if the person or company is registered as a derivatives dealer in the local jurisdiction.

(7) In determining whether a person or company satisfies the conditions in subsection (1), a person or company is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

(8) The requirement in paragraph (3)(b) does not apply if the derivatives party is an affiliated entity that is not an investment fund.

Investment dealers

39. A derivatives dealer that is a dealer member of IIROC is exempt from the requirements set out in Appendix B if all of the following apply:

(a) the derivatives dealer complies with the corresponding conduct and other regulatory requirements of IIROC in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator or the securities regulatory authority of each instance of material non-compliance with a requirement or guideline

(i) to which it is subject, and

(ii) that is specified in Appendix B.

Canadian financial institutions

40. A derivatives dealer that is a Canadian financial institution is exempt from the requirements set out in Appendix C if all of the following apply:

(a) the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory requirements of its prudential regulator in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator or the securities regulatory authority of each instance of material non-compliance with a requirement or guideline

(i) to which it is subject, and

(ii) that is specified in Appendix C.

Derivatives traded on a derivatives trading facility that are cleared

41. A derivatives firm is exempt from sections 10 [*Know your derivatives party*] and 27 [*Content and delivery of transaction information*] in respect of a transaction to which all of the following apply:

(a) the execution of the transaction is on and subject to the rules of a derivatives trading facility;

(b) as soon as technologically practicable following the transaction,

(i) the derivative is submitted for clearing to a qualifying clearing agency that provides clearing services in respect of the type of derivative, and

(ii) the derivative is accepted for clearing by the qualifying clearing agency;

(c) the derivatives firm does not know the identity of the derivatives party prior to execution of the transaction;

(d) at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

42. (1) For the purpose of subsection (3), "financial or other interest" includes the following:

(a) ownership, beneficial or otherwise, of the underlying interest or underlying interests of the derivative;

(b) ownership, beneficial or otherwise, of, or other interest in, a derivative that has the same underlying interest as the derivative;

(c) a commission or other compensation received or expected to be received from any person or company in relation to a transaction, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(d) a financial arrangement in relation to the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(e) any other interest that relates to the transaction.

(2) A person or company that acts as a derivatives adviser is exempt from the requirements of this Instrument applicable to a derivatives adviser if the advice that the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

(3) If the person or company that is exempt under subsection (2) recommends a transaction involving a derivative, a class of derivatives or the underlying interest of a derivative or class of derivatives in which any of the following has a financial or other interest, the person or company must disclose the interest, including a description of the nature of the interest, concurrently with providing the advice:

(a) the person or company;

(b) any partner, director or officer of the person or company;

(c) where the person is an individual, the spouse or child of the individual;

(d) any other person or company that would be an insider of the first mentioned person or company if the first mentioned person or company were a reporting issuer.

Foreign derivatives advisers

43. (1) A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix D is exempt from this Instrument in respect of advice provided to a derivatives party if all of the following apply:

(a) it does not provide advice to a person or company in the local jurisdiction that is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 43 [*Advising generally*];

(b) it is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;

(c) it is subject to and complies with the laws of the foreign jurisdiction applicable to the derivatives adviser set out in Appendix D relating to the activities being conducted; and

(d) it reports to the regulator or the securities regulatory authority in a timely manner any circumstance in which, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with the laws of the foreign jurisdiction or securities legislation relating to advising in derivatives, if any of the following applies:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to a derivatives party located in Canada;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of material harm to capital markets;

(iii) the non-compliance is part of a pattern of non-compliance.

(2) Despite subsection (1), a derivatives adviser relying on the exemption set out in that subsection must comply with the provisions of this Instrument set out in Appendix D opposite the name of the foreign jurisdiction in respect of the derivatives advice.

(3) The exemption under subsection (1) is not available unless all of the following apply:

(a) the derivatives adviser engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(b) the derivatives adviser has delivered to the derivatives party a statement in writing disclosing the following:

(i) the foreign jurisdiction in which the derivatives adviser's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the derivatives adviser may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the derivatives adviser because of the above;

(iv) the name and address of the agent for service of the derivatives adviser in the local jurisdiction;

(c) the derivatives adviser has submitted to the regulator or the securities regulatory authority a completed Form 93-102F2 *Submission to Jurisdiction and Appointment of Agent for Service*;

(d) the derivatives adviser undertakes to the regulator or the securities regulatory authority to provide the regulator or the securities regulatory authority with prompt access to its books and records upon request.

(4) A derivatives adviser that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a derivatives adviser that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(6) A person or company is exempt from the requirements in subsections (4) and (5) if they are registered as a derivatives adviser in the local jurisdiction.

(7) In determining whether a person or company satisfies the conditions in subsection (1), a person or company is not required to consider activities conducted with an affiliated entity, other than an affiliated entity that is an investment fund.

(8) The requirement in paragraph (3)(b) does not apply if the derivatives party is an affiliated entity that is not an investment fund.

PART 7
GRANTING AN EXEMPTION

Granting an exemption

44. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

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

PART 8
EFFECTIVE DATE

Effective date

45. (1) This Instrument comes into force on [*insert date of publication + one year*].

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

(3) Despite subsections (1) and (2), and except section 8 [*Fair dealing*], section 20 [*Daily reporting*] and section 28 [*Derivatives party statements*], the requirements of this Instrument do not apply in respect of a transaction if all of the following apply:

(a) the transaction was entered into before [*insert date of publication + one year*];

(b) the derivatives firm has taken reasonable steps to determine that the derivatives party is one or more of the following:

(i) a permitted client, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(ii) an accredited counterparty, as that term is defined in the *Derivatives Act* (Quebec);

(iii) a qualified party, as that term is defined in any of the following:

(A) Alberta Blanket Order 91-507 *Over-the-Counter Derivatives*;

(B) British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*;

(C) Manitoba Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(D) New Brunswick Local Rule 91-501 *Derivatives*;

(E) Nova Scotia Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(F) Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*.

APPENDIX A
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES DEALERS
(Section 38)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE TO FOREIGN DERIVATIVES DEALERS

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a foreign derivatives dealer despite compliance with the foreign jurisdiction's laws, regulations or instruments

[To be completed]

APPENDIX B
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

IIROC DEALER MEMBERS
(Section 39)

[To be completed]

APPENDIX C
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

CANADIAN FINANCIAL INSTITUTIONS
(Section 40)

[To be completed]

APPENDIX D
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES ADVISERS
(Section 43)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO FOREIGN DERIVATIVES ADVISERS

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a foreign derivatives adviser despite compliance with the foreign jurisdiction's laws, regulations or instruments

[To be completed]

ANNEX III
PROPOSED COMPANION POLICY 93-101
DERIVATIVES: BUSINESS CONDUCT

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PART 1
GENERAL COMMENTS

Introduction

This companion policy (the **Policy**) sets out the views of the Canadian Securities Administrators (the **CSA** or **we**) on various matters relating to National Instrument 93-101 *Derivatives: Business Conduct* (the **Instrument**) and related securities legislation.

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this Policy is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions* (**NI 14-101**). "Securities legislation" is defined in NI 14-101, and includes statutes and other instruments related to both securities and derivatives.

In this Policy,

"Product Determination Rule" means,

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

"regulator" means the regulator or securities regulatory authority in a jurisdiction.

Interpretation of terms defined in the Instrument

Section 1 – Definition of Canadian financial institution

The definition of "Canadian financial institution" in the Instrument is consistent with the definition of this term in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) with one exception. The definition of this term in NI 45-106 does not include a Schedule III bank (due to the separate definition of the term "bank" in NI 45-106), with the result that NI 45-106 contains certain references to "a Canadian financial institution or a Schedule III bank". The definition of this term in the Instrument includes a Schedule III bank.

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

Section 1 – Definition of commercial hedger

The concept of "commercial hedger" is meant to apply to a business entering into a transaction for the purpose of managing risks inherent in its business. This could include, for example, a commodity producer managing risks associated with fluctuations in the price of the commodity it produces or a company entering into an interest rate swap to hedge its interest rate risks associated with a loan obligation. It is not intended to include a circumstance where the commercial enterprise enters into a transaction for speculative purposes; there has to be a significant link between the transaction and the business risks being hedged.

Paragraphs (n) and (q) of the definition of "eligible derivatives party" provide that a commercial hedger will qualify as an eligible derivatives party if it meets the conditions in those paragraphs.

Section 1 – Definition of derivatives adviser and derivatives dealer

A person or company that meets the definition of "derivatives adviser" or "derivatives dealer" in a local jurisdiction is subject to the Instrument in that jurisdiction, whether or not it is registered or exempted from the requirement to be registered in that jurisdiction.

A person or company will be subject to the requirements of the Instrument if it is either of the following:

- in the business of trading derivatives or in the business of advising others in respect of derivatives;
- otherwise required to register as a derivatives dealer or a derivatives adviser as a consequence of engaging in certain specified activities set out in Proposed National Instrument 93-102 *Derivatives: Registration* (**NI 93-102**).

Factors in determining a business purpose – derivatives dealer

In determining whether a person or company is in the business of trading or in the business of advising in derivatives, a number of factors should be considered. Several factors that we consider relevant are described below. This is not a complete list and other factors may also be considered.

- *Acting as a market maker* – Market making is generally understood as the practice of routinely standing ready to transact derivatives by
  - responding to requests for quotes on derivatives, or
  - making quotes available to other persons or companies that seek to transact derivatives, whether to hedge a risk or to speculate on changes in the market value of the derivative.

  Market makers are typically compensated for providing liquidity through spreads, fees or other compensation, including fees or compensation paid by an exchange or a trading facility that do not relate to the change in the market value of the derivative transacted. A person or company that contacts another person or company about a transaction to accommodate its own risk management needs or to speculate on the market value of a derivative will not, typically, be considered to be acting as a market maker.

  A person or company will be considered to be "routinely standing ready" to transact derivatives if it is responding to requests for quotes or it is making quotes available with some frequency, even if it is not on a continuous basis. Persons or companies that respond to requests or make quotes available occasionally are not "routinely standing ready".

  A person or company would also typically be considered to be a market maker when it holds itself out as undertaking the activities of a market maker.

  Engaging in bilateral discussions relating to the terms of a transaction will not, on its own, constitute market making activity.

- *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person or company may be engaged in trading or advising for a business purpose. The activity does not have to be its sole or even primary endeavour for it to be in the business. We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose.

- *Facilitating or intermediating transactions* – The person or company provides services relating to the facilitation of trading or intermediation of transactions between third-party counterparties to derivatives contracts.

- *Transacting with the intention of being compensated* – The person or company receives, or expects to receive, any form of compensation for carrying on transaction activity. This would include any compensation that is transaction or value-based including compensation from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

- *Directly or indirectly soliciting in relation to transactions* – The person or company directly solicits transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This would include providing quotes to derivatives

parties or potential derivatives parties that are not provided in response to a request. This includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty, or a potential counterparty contacts them to enquire about a transaction, unless it is the person or company's intention or expectation to be compensated as a result of the contact. For example, a person or company that wishes to hedge a specific risk is not necessarily soliciting for the purpose of the Instrument if it contacts multiple potential counterparties to enquire about potential transactions to hedge the risk.

- *Engaging in activities similar to a derivatives adviser or derivatives dealer* – The person or company carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing agency.

- *Providing derivatives clearing services* – The person or company provides services to allow third parties, including counterparties to transactions involving the person or company, to clear derivatives through a clearing agency. These services are actions in furtherance of a trade conducted by a person or company that would typically play the role of an intermediary in the derivatives market.

In determining whether or not it is, for the purposes of the Instrument, a derivatives dealer, a person or company should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Factors in determining a business purpose – derivatives adviser

Under securities legislation, a person or company engaging in or holding itself out as engaging in the business of advising others in relation to derivatives is generally required to register as a derivatives adviser unless an exemption is available.

As with the definition of "derivatives dealer", the definition of "derivatives adviser" (and the definition of "adviser" in securities legislation generally) requires an assessment of whether the person or company is "in the business" of conducting an activity. In the case of derivatives advisers, it is necessary to determine whether a person or company is "advising others" in relation to derivatives.

As with derivatives dealers, a person or company that is determining whether or not it is a derivatives adviser should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

The definition of "derivatives adviser" also contains an additional element that the derivatives adviser should be in the business of "advising others" in relation to derivatives. Examples of persons and companies that may be considered to be in the business of advising others in relation to derivatives include the following:

- a registered adviser under securities or commodity futures legislation that provides advice to an investment fund or another person or company in relation to derivatives or derivatives trading strategies;

- a registered adviser under securities or commodity futures legislation that manages an account for a client and makes trading decisions for the client in relation to derivatives or derivatives trading strategies;

- an investment dealer that provides advice to clients in relation to derivatives or derivatives trading strategies;

- a person or company that recommends a derivative or derivatives trading strategy to investors as part of a general solicitation by an online derivatives trading platform.

A person or company that discusses the merits of a particular derivative or derivatives trading strategy in a newsletter or on a website may be considered to be advising others in relation to derivatives but would be exempt if it meets the conditions in section 42 [*Advising generally*].

Similarly, a derivatives dealer that recommends a particular derivative or derivatives trading strategy to a customer in connection with a proposed transaction may be considered to be advising the customer in relation to derivatives. However, so long as the derivatives dealer is appropriately registered and has the necessary proficiency to provide the advice (or is otherwise exempt from registration), the derivatives dealer does not need to also register as a derivatives adviser.

If the derivatives firm's trading or advising activity is incidental to the firm's primary business, we may not consider it to be for a business purpose. For example, appropriately licensed professionals, such as lawyers, accountants, engineers, geologists and teachers, may provide advice in relation to derivatives in the normal course of their professional activities. We would generally

not consider them to be advising on derivatives for a business purpose if such activities are incidental to their *bona fide* professional activities.

Factors in determining a business purpose – general

Generally, we would consider a person or company that engages in the activities discussed above in an organized and repetitive manner to be a derivatives dealer or, depending on the context, a derivatives adviser. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person or company being a derivatives dealer or, depending on the context, a derivatives adviser. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being considered to be a derivatives dealer for the purposes of the Instrument.

A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer or derivatives adviser in that jurisdiction. A derivatives dealer or a derivatives adviser in a local jurisdiction is a person or company that conducts the described activities in that jurisdiction. For example, this would include a person or company that is located in a local jurisdiction and that conducts dealing or advising activities in that local jurisdiction or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing or advising activities with a derivatives party located in the local jurisdiction.

Where dealing or advising activities are provided to derivatives parties in a local jurisdiction or where dealing or advising activities are otherwise conducted within a local jurisdiction, regardless of the location of the derivatives party, we would generally consider a person or company to be a derivatives dealer or derivatives adviser.

Section 1 – Definition of derivatives party assets

"Derivatives party assets" includes all assets of a derivatives party that are received or held by a derivatives firm for or on behalf of the derivatives party for any purpose relating to derivatives transactions.

Section 1 – Definition of derivatives party

The term "derivatives party is similar to the concept of a "client" in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**). We have used the term "derivatives party" instead of "client" to reflect the circumstance where the derivatives firm may not regard its counterparty as its "client."

Section 1 – Definition of eligible derivatives party

The term "eligible derivatives party" is intended to refer to those derivatives parties that have the requisite knowledge and experience to evaluate the information about derivatives that has been provided to the person or company by the derivatives firm. These persons or companies may not require the full set of protections that are provided to other derivatives parties that are not eligible derivatives parties.

Certain requirements of the Instrument do not apply where a derivatives firm is dealing with or advising a derivatives party that is an eligible derivatives party that is not an individual and is not a specified commercial hedger. If the derivatives firm is dealing with or advising a derivatives party who is an eligible derivatives party and is an individual or a specified commercial hedger, these requirements apply but may be waived in writing by the derivatives party. Section 7 of this Policy provides additional guidance relating to this waiver.

A derivatives firm should take reasonable steps to determine if a derivatives party is an eligible derivatives party. In determining whether the person or company that it transacts with, solicits or advises is an eligible derivatives party, the derivatives firm may rely on factual representations made in writing by the derivatives party, unless a reasonable person would have grounds to believe that such statements are false or it is otherwise unreasonable to rely on the representations.

Section 1 – Definition of eligible derivatives party – paragraphs (m) to (q)

Under paragraphs (m) to (q) of the definition of "eligible derivatives party", a person or company will only be considered to be an eligible derivatives party if it has made certain representations to the derivatives firm in writing.

If the derivatives firm has not received a written factual statement from a derivatives party, the derivatives firm should not consider the derivatives party to be an eligible derivatives party.

We expect that a derivatives firm would maintain a copy of each derivatives party's written representations that is relevant to its status as an eligible derivatives party and would have policies and procedures reasonably designed to ensure that the information relating to each derivatives party is up to date. Subsection 1(7) provides that a derivatives firm must not rely on such

a written representation if reliance on that representation would be unreasonable. See subsection 1(7) of this Policy for further guidance.

For the purposes of paragraphs (m) and (n), net assets must have an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, that are more than the prescribed threshold ($25 000 000 in paragraph (m) and $10 000 000 in paragraph (n)) or an equivalent amount in another currency. Unlike in paragraph (o), assets considered for the purposes of paragraphs (m) and (n) are not limited to "financial assets".

A person or company is only an eligible derivative party under paragraphs (n) and (q) if the person or company has, at the time the transaction occurs, represented to be a commercial hedger. The derivatives firm may rely on a written representation from the derivatives party that it is a commercial hedger for the derivatives it transacts with the derivatives firm unless a reasonable person would have grounds to believe that the statement is false or it is otherwise unreasonable to believe that the representation is accurate. This representation may be tailored by the eligible derivatives party and the derivatives firm to provide for specific derivatives or types of derivatives.

In the case of paragraph (o), the individual must beneficially own financial assets, as that term is defined in section 1.1 of NI 45-106, that have an aggregate realizable value before tax but net of any related liabilities of at least $5 000 000 (or an equivalent amount in another currency). "Financial assets" is defined to include cash, securities or a deposit, or an evidence of a deposit that is not a security for the purposes of securities legislation.

Paragraph (p) of the definition of "eligible derivatives party" provides that a derivatives firm may treat a derivatives party as an eligible derivatives party if the derivatives party represents to the derivatives firm that all of its obligations under a derivative are guaranteed or otherwise fully and unconditionally supported (under a letter of credit or credit support agreement) by one or more eligible derivatives parties, other than eligible derivatives parties qualifying as such under paragraph (n) or (o).

Subparagraph (q)(ii) of the definition of "eligible derivatives party" is similar to paragraph (p), but does not exclude qualifying guarantors or credit support providers that are eligible derivatives parties under paragraph (n).

Section 1 – Definition of permitted depository

In recognition of the international nature of the derivatives market, paragraph (e) of the definition of "permitted depository" permits a foreign bank or trust company with a minimum amount of reported shareholders' equity to act as a permitted depository and hold derivatives party assets, provided its head office or principal place of business is located in a permitted jurisdiction and it is regulated as a bank or trust company in the permitted jurisdiction.

Section 1 – Definition of permitted jurisdiction

Paragraph (a) of the definition of "permitted jurisdiction" captures jurisdictions where foreign banks authorized under the *Bank Act* to carry on business in Canada, subject to supervision by the Office of the Superintendent of Financial Institutions (**OSFI**), are located.[1] As of the time of the publication of this Instrument the following countries and their political subdivisions are permitted jurisdictions: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom, and the United States of America.

For paragraph (b) of the definition of "permitted jurisdiction," in the case of the euro, where the currency does not have a single "country of origin", the provision will be read to include all countries in the euro area[2] and countries using the euro under a monetary agreement with the European Union.[3]

Section 1 – Definition of segregate

While the term "segregate" means to separately hold or separately account for derivatives party assets or positions, consistent with the PFMI Report and National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**), accounting segregation is acceptable.

For the purpose of this section "PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructure (formerly

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1 For a list of authorized foreign banks regulated under the *Bank Act* and subject to OSFI supervision, see: Office of the Superintended of Financial Institutions, *Who We Regulate* (available: http://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=1&gc=1#WWRLink11).

2. European Union, Economic and Financial Affairs, *What is the euro area?*, May 18, 2015, online: European Union (http://ec.europa.eu/economy_finance/euro/adoption/euro_area/index_en.htm).

3 European Union, Economic and Financial Affairs, *The euro outside the euro area*, April 9, 2014, online: European Union (https://ec.europa.eu/info/business-economy-euro/euro-area/euro/use-euro/euro-outside-euro-area_en).

the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, as amended from time to time.

Section 1 – Definition of valuation

The term “valuation” is defined to mean the value of a derivative determined in accordance with accounting principles for fair value measurement that are consistent with accepted methodologies within the derivatives firm’s industry. Where market quotes or market-based valuations are unavailable, we expect the value to represent the current mid-market level derived from market-based metrics incorporating a fair value hierarchy. The mid-market level does not have to include adjustments incorporated into the value of a derivative to account for the characteristics of an individual counterparty.

Subsection 1(7) – Relying on a written representation unless unreasonable to do so

Whether it is reasonable for a derivatives firm to rely on a derivatives party’s written representation will depend on the particular facts and circumstances of the derivatives party and its relationship with the derivatives firm.

For example, in determining whether it is reasonable to rely on a derivatives party’s representation that it has the requisite knowledge and experience, a derivatives firm may consider factors such as

- whether the derivatives party enters into transactions with frequency and regularity,
- whether the derivatives party has staff who have experience in derivatives and risk management,
- whether the derivatives party has retained independent advice in relation to its derivatives, and
- publicly available financial information.

PART 2
APPLICATION

Section 2 – Application to registered and unregistered derivatives firms

The Instrument applies to “derivatives advisers” and “derivatives dealers” as defined in subsection 1(1) of the Instrument. These definitions include a person or company that, under securities legislation is

- registered as a “derivatives dealer” or “derivatives adviser”,
- exempt from the requirement to register as a “derivatives dealer” or “derivatives adviser”, and
- excluded from registration as a “derivatives dealer” or “derivatives adviser”.

Accordingly, derivatives firms that may be exempt from the requirement to register in a jurisdiction, such as Canadian financial institutions and individuals acting on their behalf in relation to transacting in, or providing advice in relation to, a derivative, will nevertheless be subject to the same standard of conduct towards their derivatives parties that apply to registered derivatives firms and their registered representatives.

Section 3 – Scope of instrument

Section 3 ensures that the Instrument applies to the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purposes of the Instrument.

Section 6 – Governments, central banks and international organizations

Section 6 provides that the Instrument does not apply to certain governments, central banks and international organizations specified in the section. Section 6 does not, however, exclude derivatives firms that deal with or advise these entities from the application of the Instrument.

Section 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party

We are of the view that, because of their nature, regulatory oversight, financial resources or experience, eligible derivatives parties do not require the full set of protections afforded to derivatives parties that are not eligible derivatives parties (we refer to them as **non-eligible derivatives parties**).

The obligations of a derivatives firm and the individuals acting on its behalf towards a derivatives party differ depending on whether the derivatives party is an eligible derivatives party and on the nature of the eligible derivatives party.

Dealing with or advising a derivatives party that is a non-eligible derivatives party

If a derivatives firm is dealing with or advising a non-eligible derivatives party, no exemption is available from the requirements in Parts 3, 4 and 5.

Dealing with or advising an eligible derivatives party that is not an individual or a specified commercial hedger

A derivatives firm is exempt from the requirements of the Instrument if it is dealing with or advising a derivatives party that is an eligible derivatives party that is not an individual or a specified commercial hedger, except for the following:

- in Part 3 [*Dealing with or advising derivatives parties*], all of the requirements in Division 1 [*General obligations towards all derivatives parties*]:
  - section 8 [*Fair dealing*],
  - section 9 [*Conflicts of interest*], and
  - section 10 [*Know your derivatives party*];

- in Part 4, Division 2 [*Derivatives party assets*]:
  - section 23 [*Interaction with other instruments*], and
  - section 24 [*Segregating derivatives party assets*];

- in Part 5 [*Compliance*]:
  - all of Division 1 – [*Compliance*], and
  - all of Division 2 – [*Recordkeeping*].

Dealing with or advising an eligible derivatives party that is an individual or a specified commercial hedger

Under subsection 7(2), a derivatives firm is exempt from certain requirements in the Instrument in respect of dealing with or advising an eligible derivatives party that is an individual or a specified commercial hedger if the eligible derivatives party waives, in writing, one or more of those requirements. Subsection 7(3) specifies certain requirements that cannot be waived by the eligible derivatives party for the purpose of the exemption in subsection 7(2). The eligible derivatives party that is an individual or a specified commercial hedger can waive specific requirements for a derivative, a type of derivatives or for all derivatives. For example a producer of a certain commodity may choose to waive certain requirements in relation to derivatives where the underlying asset is a commodity that they produce but may not want to waive protections in relation to other types of derivatives.

A written waiver contemplated under subsection 7(2) may be made by an eligible derivatives party that is an individual or a specified commercial hedger as part of account-opening documentation. For clarity, there is no obligation under the Instrument to update the waiver after it is made. However, it is always open to an eligible derivatives party that is an individual or a specified commercial hedger to withdraw, in whole or in part, any waiver it has made to a derivatives firm.

There is no prescribed form for the waiver contemplated by subsection 7(2). However, consistent with the derivatives firm's obligation to deal fairly, honestly and in good faith with derivatives parties, we expect the waiver to be presented to the derivatives party in a clear and meaningful manner in order to ensure the derivatives party understands the information presented and the significance of the protections being waived. We would consider it to be a breach of section 8 [*Fair Dealing*] to put unreasonable pressure on any derivatives party to waive any requirements. We would also expect the derivatives firm to remind the derivatives party that it has the option to obtain independent advice before signing the waiver.

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Section 8 – Fair dealing

The obligation in section 8 (the **fair dealing obligation**) is a principles-based obligation and is intended to be similar to the duty to act fairly, honestly and in good faith applicable to registered firms and registered individuals under securities legislation (the **registrant fair dealing obligation**).[1]

The fair dealing obligation should be interpreted flexibly and in a manner sensitive to context

We recognize that there are important differences between derivatives markets and securities markets. The fair dealing obligation under the Instrument may not always apply to derivatives market participants in the same manner as the registrant fair dealing obligation would apply to securities market participants. Accordingly, we believe that the fair dealing obligation in section 8, as a principles-based obligation, should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For this reason, prior CSA guidance and case law on the registrant fair dealing obligation may not necessarily be relevant in interpreting the fair dealing obligation under the Instrument. Similarly, the guidance in this Policy is not necessarily applicable to registrants in their conduct with securities market participants.

We take the view that the concept of fairness when applied to derivatives market participants is context-specific. Conduct that may be considered unfair when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, the fair dealing obligation may be interpreted differently if the derivatives party is an individual or small business than from how it would be interpreted if the derivatives party is a sophisticated market participant, such as a global financial institution. Similarly, conduct that may be considered to be unfair when acting as an agent to facilitate a derivatives transaction with a third-party may be considered fair when entering into a derivative as principal where it would be expected that each party negotiating the derivative is seeking to ensure favourable financial terms.

When a derivatives firm is dealing with or advising an eligible derivatives party, we generally interpret the fair dealing obligation in section 8 in a similar manner to the "fair and balanced communications" obligation as it is conceived in the context of similar rules in the United States.

Abusive practices, including fraud, price fixing, manipulation of benchmark rates, and front-running of trades are violations of securities legislation; we take the view that each of these would be a severe breach of the fair dealing obligation.

Derivatives firms have an obligation to transact with a derivatives party under terms that are fair. What constitutes "fair" will vary depending on the particular circumstances. Misrepresenting the nature of the product and related risks, or deliberately selling a derivative that is not suitable for a derivatives party, would not be considered to be "fair" and, in our view, would be a breach of the fair dealing obligation. We also expect the derivatives firm to provide a derivatives party with information about the implications of terminating a derivative prior to maturity, including potential exit costs. As part of the policies and procedures required under section 30, a derivatives firm is expected to be able to demonstrate that it has established and follows policies and procedures that are reasonably designed to achieve fair terms, in the context, for the derivatives firm's derivatives parties and that these policies and procedures are reviewed regularly and amended as required.

We interpret the fair dealing obligation to include determining prices for derivatives transacted with derivatives parties in a fair and equitable manner. We expect there to be a rational basis for a discrepancy in price where essentially the same derivative is transacted with different derivatives parties. Factors that indicate a rational basis could include the level of counterparty risk of a derivatives party, the derivatives party's trading activity, or relationship pricing. Lack of sophistication, knowledge or understanding about a derivatives product should never be a factor in providing less advantageous pricing. Both the compensation component and the market value or price component of the derivative are relevant in determining whether the price for a derivatives party is fair. A derivatives firm's policies and procedures under section 30 must address how both the

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[1] See section 14 of the Securities Rules, B.C. Reg. 194/97 **[B.C. Regulations]** under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 **[B.C. Act]**; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 **[Alberta Act]**; section 33.1 of *The Securities Act, 1988* (Saskatchewan), S.S. 1988-89, c. S-42.2 **[Saskatchewan Act]**; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 **[Manitoba Act]**; section 2.1 of OSC Rule 31-505 *Conditions of Registration* ; section 65 of the *Derivatives Act* (Québec), R.S.Q., c. 14.01 **[Québec Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 **[N.S. Act]**; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 **[N.B. Act]**; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 **[P.E.I. Act]**; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 **[Newfoundland Act]**; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 **[Nunavut Act]**; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 **[N.W.T. Act]**; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 **[Yukon Act]**.

price of the derivative as well as the reasonableness of compensation are determined. A derivatives party should be given an opportunity, at their option, to obtain independent advice before transacting in a derivative.

Derivatives firms are expected to obtain information from each derivatives party to allow them to meet their fair dealing obligation.

Section 9 – Conflicts of interest

We consider a conflict of interest to be any circumstance where the interests of a derivatives party and those of a derivatives firm or its representatives are inconsistent or divergent.

We believe that the conflict of interest provisions in section 9 should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For example, a derivatives firm and the derivatives party with which it transacts bilaterally hold opposing positions under the same derivative and this may represent an inherent conflict of interest in the narrow context of that specific derivative. We recognize, therefore, that it may not necessarily be appropriate to apply the conflict of interest provisions under the Instrument to derivatives market participants in the same manner as the relevant conflict of interest provisions would apply to securities market participants.

We take the view that a conflict of interest, when applied to derivatives market participants, is context-specific. Circumstances that may be considered to give rise to a conflict of interest when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, conflicts of interests may be viewed differently when dealing with a non-eligible derivative party that is an individual or a small business than they would be viewed if the derivatives party were an eligible derivatives party, which may be different again from how conflicts of interest would be viewed if the derivatives party were a sophisticated market participant such as a global financial institution.

In addition, the circumstances that may be considered to give rise to a conflict of interest when acting as an intermediary on behalf of an eligible derivatives party may not represent a conflict of interest when entering into a derivative as principal where the eligible derivatives party is reasonably aware that the derivatives firm is seeking terms favourable to its own interests.

Subsection 9(2) – Responding to conflicts of interest

We expect that a derivatives firm's policies and procedures for managing conflicts would allow the firm and its staff to

- identify conflicts of interest,
- determine the level of risk, to both the derivatives firm and a derivatives party, that a conflict of interest raises, and
- respond appropriately to conflicts of interest.

When responding to any conflict of interest, we expect the derivatives firm to consider the fair dealing obligation in section 8 as well as any other standard of care that may apply when dealing with or advising a derivatives party.

We are of the view that there are three methods that are generally reasonable to respond to a conflict of interest, depending on the circumstances: avoidance, control and disclosure.

We expect that if there is a risk of material harm to a derivatives party or the integrity of the markets, the derivatives firm will take all reasonable steps to avoid the conflict of interest. If there is not a risk of material harm and the derivatives firm does not avoid the conflict of interest, we expect that it will take steps to either control or disclose the conflict, or both. We would also expect the derivatives firm to consider what internal structures or policies and procedures it should implement to reasonably respond to such a conflict of interest.

Avoiding conflicts of interest

A derivatives firm must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, we expect the derivatives firm to avoid the conflict if it is sufficiently contrary to the interests of a derivatives party that there can be no other reasonable response. We are generally of the view that conflicts that have a lesser impact on the interests of a derivatives party can be managed through controls or disclosure.

Where conflicts of interest between a derivatives party and a derivatives firm cannot be managed using controls or disclosure, we expect the derivatives firm to avoid the conflict. This may require the derivatives firm to stop providing the service or stop transacting derivatives with, or providing advice in relation to derivatives to, the derivatives party.

Controlling conflicts of interest

We expect that a derivatives firm would design its organizational structures, lines of reporting and physical locations to, where appropriate, control conflicts of interest effectively. For example, the following situations would likely raise a potential conflict of interest that could be controlled in this manner:

- advisory staff reporting to marketing staff,
- compliance or internal audit staff reporting to a business unit, and
- individuals acting on behalf of a derivatives firm and investment banking staff in the same physical location.

Depending on the conflict of interest, a derivatives firm may be able to reasonably respond to the conflict of interest by controlling the conflict in an appropriate way. This may include

- assigning a different individual to provide a service to the derivatives party,
- creating a group or committee to review, develop or approve responses to a type of conflict of interest,
- monitoring trading activity, or
- using information barriers for certain internal communication.

Where a conflict of interest is such that no control is effective, we expect the conflict to be avoided.

Subsection 9(3) – Disclosing conflicts of interest

When disclosure is appropriate

We expect a derivatives firm to inform each derivatives party it transacts derivatives with, or provides advice in relation to derivatives to, about any conflicts of interest that could affect the services the firm provides to the derivatives party.

Timing of disclosure

Under subsection 9(3), a derivatives firm and individuals acting on its behalf must disclose a conflict of interest in a timely manner. We expect a derivatives firm and its representatives to disclose the conflict to a derivatives party before or at the time they recommend the transaction or provide the service that gives rise to the conflict.

Where this disclosure is provided to a derivatives party before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the derivative party's account-opening documentation months or years previously, we would expect that an individual acting on behalf of a derivatives firm to also disclose this conflict to the derivatives party shortly before the transaction or at the time the transaction is recommended.

When disclosure is not appropriate

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially-sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation. In these situations, a derivatives firm will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest. We would also expect a derivatives firm to have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

How to disclose a conflict of interest

Subsection 9(3) provides that a derivatives firm must provide disclosure about a material conflict of interest to a derivatives party. When a derivatives firm provides this disclosure, we expect that the disclosure would

- be prominent, specific, clear and meaningful to the derivatives party, and
- explain the conflict of interest and how it could affect the service the derivatives party is being offered.

We expect that a derivatives firm would not

- provide only generic disclosure,
- provide only partial disclosure that could mislead the derivatives party, or
- obscure conflicts of interest in overly detailed disclosure.

More specifically, we would generally expect that disclosures would be separated into two categories:

(i) general conflicts of interest disclosures applicable to all counterparties (those which affect all counterparties and transaction types, addressed in a written general disclosure) that could be disclosed to counterparties on an annual basis, and

(ii) disclosures specific to a counterparty or a specific contemplated transaction (i.e., disclosure regarding specific conflicts of interest that are material and specific to a counterparty or a particular transaction prior to entering into a transaction) by providing written notice of or disclosing the conflict to a trader of their derivatives party over a taped line prior to trading.

We recognize that it may be appropriate in some circumstances for a derivatives firm to disclose a conflict where it arises after the original transaction has taken place. This might arise, for example, in the case of an equity total return swap where subsequent to entering into a transaction with a derivatives party, the derivatives dealer becomes an a mergers and acquisitions adviser in respect of the equity underlier (where the proposed merger and acquisitions activity has been announced).

Examples of conflicts of interest

Specific situations where a derivatives firm could be in a conflict of interest and how to manage the conflict are described below.

Acting as both dealer and counterparty

When a derivatives firm enters into a transaction with or recommends a transaction to a derivatives party, and the derivatives firm or an affiliated entity of the derivatives firm is the counterparty to the derivatives party in the transaction, we expect that the derivatives firm would respond to the resulting conflict of interest by disclosing it to the derivatives party.

Competing interests of derivatives parties

If a derivatives firm deals with or provides advice to multiple derivatives parties, we would expect the derivatives firm to make reasonable efforts to be fair to all such derivatives parties. We expect that a derivatives firm will have internal policies and procedures to evaluate the balance of these interests.

Acting on behalf of derivatives parties

When a derivatives firm, or the individuals acting on its behalf, exercise discretionary authority over the accounts of its derivatives parties to enter into transactions on their behalf, we would expect the derivatives firm to have policies and procedures to address the potential conflicts of interest ensuing from the contractual relationship governing the exercise of discretionary authority.

Compensation practices

We expect that a derivatives firm would consider whether any benefits, compensation or remuneration practices are inconsistent with their obligations to derivatives parties, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission but may not be appropriate for the derivatives firm's derivatives parties, the derivatives firm may decide that it is not appropriate to offer that product.

Section 10 – Know your derivatives party

Derivatives firms act as gatekeepers of the integrity of the derivatives markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, derivatives firms are required to establish the identity of, and conduct due diligence on, their clients or counterparties under the know-your-derivatives party obligation in section 10 (the "**KYDP obligation**"). Complying with this obligation can help ensure that derivatives transactions are completed in accordance with securities laws.

The KYDP obligation requires derivatives firms to take reasonable steps to obtain and periodically update information about their derivatives parties.

Section 41 provides an exemption for derivatives firms from the obligations under this section for transactions that are executed on a derivatives trading facility and that are cleared.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is neither an individual nor a specified commercial hedger or an eligible derivatives party that is an individual or specified commercial hedger that has waived these obligations.

Section 11 – Derivatives-party-specific needs and objectives

Information on a derivatives party's specific needs and objectives (referred to below as "**derivatives-party-specific KYC information**") forms the basis for determining whether transactions are suitable for a derivatives party. The obligations in section 11 require a derivatives firm to take reasonable steps to obtain and periodically update information about their derivatives parties.

The derivatives-party-specific KYC information may also be relevant in complying with policies and procedures that are aimed at ensuring fair terms of a derivative for a derivatives party under subsection 8(1).

Derivatives parties may have a variety of execution priorities. For example, a derivatives party may have as their primary objective the objective of having the transaction executed as quickly as possible rather than trying to obtain the best available price. Factors to consider when evaluating execution include price, certainty, timeliness, and minimizing the impact of making a trading interest public.

Before transacting with a derivatives party, we expect a derivatives firm to have the appropriate information to assess the derivatives party's knowledge, experience and level of understanding of the relevant type of derivative, the derivative's party's objective in entering into the derivative and the risks involved, in order to assess whether the derivative is suitable for the derivatives party. The derivatives-party-specific KYC information is obtained with this goal in mind.

If the derivatives party chooses not to provide the necessary information that would enable the derivatives firm to assess suitability, or if the derivatives party provides insufficient information, we would expect the derivatives party to be notified. The derivatives firm would be expected to advise the derivatives party that

- this information is required to determine whether the derivative is suitable for the derivatives party, and
- without this information there is a strong risk that it will not be able to determine whether the derivatives party has the ability to understand the derivative and the risks involved with transacting the derivative.

Derivatives-party-specific KYC information for suitability depends on circumstances

The extent of derivatives-party-specific KYC information that a derivatives firm needs in order to determine the suitability of a transaction or a derivatives party's priorities when transacting in the derivative will depend on factors that include

- the derivatives party's circumstances and objectives,
- the type of derivative,
- the derivatives party's relationship to the derivatives firm, and
- the derivatives firm's business model.

In some cases, a derivatives firm will need extensive derivatives-party-specific KYC information, for example, where the derivatives party would like to enter into a derivatives strategy to hedge a commercial activity in a range of asset classes. In these cases, we would expect the derivatives firm to have a comprehensive understanding of the derivatives party's

- needs and objectives when entering into a derivative, including the derivatives party's time horizon for their hedging or speculative strategy,
- overall financial circumstances, and
- risk tolerance for various types of derivatives, taking into account the derivative party's knowledge of derivatives.

In other cases, a derivatives firm may need to obtain less derivatives-party-specific KYC information, for example, if the derivatives firm enters into a single derivative with a derivatives party who needs to hedge a loan that the derivatives firm extended to the derivatives party.

Section 12 – Suitability

Subsection 12(1) requires a derivatives firm to take reasonable steps to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.

Suitability obligation

To meet the suitability obligation, the derivatives firm should have in-depth knowledge of all derivatives that it transacts with or for, or recommends to, its derivatives party. This is often referred to as the “know your product” or KYP obligation.

We expect a derivatives firm to know each derivative well enough to understand and explain to the derivatives party the derivative’s risks, key features, and initial and ongoing obligations. The decision by a derivatives firm to include a type of derivative on its product shelf or approved list of products does not necessarily mean that the derivative will be suitable for each derivatives party. Individuals acting on behalf of a derivatives firm must still determine the suitability of each transaction for every derivatives party.

When assessing suitability, we expect a derivatives firm to take all reasonable steps to determine whether the derivatives party has the capability to understand the particular type of derivative and the risks involved.

In all cases, we expect a derivatives firm to be able to demonstrate a process for making suitability determinations that are appropriate under the circumstances.

Suitability obligations cannot be delegated

A derivatives firm should not

- delegate its suitability obligations to anyone other than an officer or employee of the derivatives firm, or

- satisfy the suitability obligation by simply disclosing the risks involved with a transaction.

Section 11 and 12 - Use of online services to determine derivatives party specific needs and objectives and suitability

The conduct obligations set out in the Instrument, including the derivatives-party-specific KYC and suitability obligations in sections 11 and 12, are intended to be “technology neutral”. This means that these obligations are the same for derivatives firms that interact with derivatives parties on a face-to-face basis or through an online platform.

Where the information necessary to fulfill a derivatives firms’ obligations pursuant to sections 11 and 12 is solicited through an online service or questionnaire, we expect that this process would amount to a meaningful discussion with the derivatives party.

An online service or questionnaire is expected to achieve this objective if it

- uses a series of behavioural questions to establish risk tolerance and elicit other derivatives-party-specific KYC information,

- prevents a derivatives party from progressing further until all questions have been answered,

- tests for inconsistencies or conflicts in the answers and will not let the derivatives party complete the questionnaire until the inconsistencies or conflicts are resolved,

- offers information about the terms and concepts involved, and

- reminds the derivatives party that an individual from the derivatives firm is available to help them throughout the process.

Section 13 – Permitted referral arrangements

Subsection 1(1) defines a “referral arrangement” in broad terms. Referral arrangement means an arrangement in which a derivatives firm agrees to pay or receive a referral fee. The definition is not limited to referrals for providing derivatives, financial

services or services requiring registration. It also includes receiving a referral fee for providing a derivatives party's name and contact information to an individual or a firm. "Referral fee" is also broadly defined. It includes any benefits received from referring a derivatives party, including sharing or splitting any commission resulting from a transaction.

Under section 13, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party's roles and responsibilities are made clear. This includes obligations for a derivatives firm involved in referral arrangements to keep records of referral fees. Payments do not necessarily have to go through a derivatives firm, but a record of all payments related to a referral arrangement must be kept.

We expect referral agreements to include

- the roles and responsibilities of each party,
- limitations on any party that is not a derivatives firm,
- the specific contents of the disclosure to be provided to referred derivatives parties, and
- who provides the disclosure to referred derivatives parties.

If the person or company receiving the referral is a derivatives firm or an individual acting on behalf of that derivatives firm, they would be responsible for carrying out all obligations of a derivatives firm towards the referred derivatives party in respect of the derivatives-related activities for which the derivatives party is referred and communicating with the referred derivatives party. However, if the referring person or company is a derivatives firm, the referring derivatives firm is still required to comply with sections 13 [*Permitted referral arrangements*], 14 [*Verifying the qualifications of the person or company receiving the referral*] and 15 [*Disclosing referral arrangements to a derivatives party*].

If a derivatives party is referred by or to an individual acting on behalf of a derivatives firm, we expect the derivatives firm to be a party to the referral agreement. This ensures that the derivatives firm is aware of these arrangements so it can adequately supervise the individuals acting on its behalf and monitor compliance with the agreements. It does not preclude the individual acting on behalf of the derivatives firm from also being a party to the agreement.

A party to a referral arrangement may need to be registered depending on the activities that the party carries out. A derivatives firm cannot use a referral arrangement to assign, contract out of or otherwise avoid its regulatory obligations.

In making referrals, a derivatives firm should ensure that the referral itself does not constitute an activity that the derivatives firm is not authorized to engage in.

Section 14 – Verifying the qualifications of the person or company receiving the referral

Section 14 requires the derivatives firm, or individual acting on its behalf, making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and, if applicable, is appropriately registered. The derivatives firm, or individual acting on its behalf, is responsible for determining the steps that are reasonable in the circumstances. For example, this may include an assessment of the types of derivatives parties that the referred services would be appropriate for.

Section 15 – Disclosing referral arrangements to a derivatives party

The disclosure of information to a derivatives party required under section 15 is intended to help the derivatives party make an informed decision about the referral arrangement and to assess any conflicts of interest. We expect the disclosure to be provided to a derivatives party before or at the time the referred services are provided. We would also expect a derivatives firm, and any individuals acting on behalf of the derivatives firm who is directly participating in the referral arrangement, to take reasonable steps to ensure that a derivatives party understands

- which entity it is dealing with,
- what it can expect that entity to provide to it,
- the derivatives firm's key responsibilities to it,
- if applicable, the limitations of the derivatives firm's registration category or exemptive relief,

- if applicable, any relevant terms and conditions imposed on the derivatives firm's registration or exemptive relief,
- the extent of the referrer's financial interest in the referral arrangement, and
- the nature of any potential or actual conflict of interest that may arise from the referral arrangement.

Section 16 – Handling complaints

General duty to document and respond to complaints

Section 16 requires a derivatives firm to document complaints and to effectively, fairly and promptly respond to them. We expect that a derivatives firm would document and respond to all complaints received from a derivatives party who has dealt with the derivatives firm (in this section, a "complainant").

Complaint handling

We are of the view that an effective complaint system would deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, we would expect the derivatives firm's compliance system to include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We expect a derivatives firm to take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant,
- the individual or individuals acting on behalf of the derivatives firm, and
- the derivatives firm.

We would also expect a derivatives firm to not limit its consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

We would expect a derivatives firm's complaint system to provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. We would also expect the derivatives firm to take appropriate measures to promptly address the cause of a problem that is the subject of a complaint, particularly a serious problem.

Responding to complaints

Types of complaints

We expect that all complaints relating to one of the following matters would be responded to by the derivatives firm by providing an initial and substantive response, promptly in writing:

- a trading or advising activity,
- a breach of the derivatives party's confidentiality,
- theft, fraud, misappropriation or forgery,
- misrepresentation,
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a derivatives party.

A derivatives firm may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if a derivatives party, acting reasonably, would expect a written response to its complaint.

Timeline for responding to complaints

We expect that a derivatives firm would

- promptly send an initial written response to a complainant within 5 business days of receipt of the complaint, and
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the derivatives firm's decision on the complaint.

A derivatives firm may also wish to use its initial response to seek clarification or additional information from the derivatives party.

We encourage derivatives firms to resolve complaints relating to the matters listed above within 90 days.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH CERTAIN DERIVATIVES PARTIES

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is neither an individual nor a specified commercial hedger or an eligible derivatives party that is an individual or a specified commercial hedger that has waived these obligations.

Section 17 – Tied selling

Section 17 prohibits a derivatives firm from imposing undue pressure on or coercing a person or company to obtain a product or service from a particular person or company, including the derivatives firm or any of its affiliates, as a condition of obtaining another product or service from the derivatives firm. These types of practices are known as "tied selling". In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a derivatives party on the condition that the derivatives party hedged their loan through the same financial institution. In this example, we would take the view that a derivatives firm would not contravene section 17 if it required the derivatives party to enter into an interest rate derivative in connection with a loan agreement as long as the derivatives party were permitted to transact in this derivative with the counterparty of their choice.

However, section 17 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain derivatives parties.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or a specified commercial hedger or an eligible derivatives party that is an individual or a specified commercial hedger that has waived these obligations.

Section 18 – Relationship disclosure information

Content of relationship disclosure information

The Instrument does not prescribe a form for the relationship disclosure information required under section 18. A derivatives firm may provide this information in a single document, or in separate documents, which together give the derivatives party the prescribed information.

We expect that relationship disclosure information would contain accurate, complete, and up-to-date information. We suggest that derivatives firms review their disclosures annually or more frequently, as necessary. A derivatives firm must take reasonable steps to notify a derivatives party, in a timely manner, of significant changes in respect of the relationship disclosure information that has been provided.

To satisfy their obligations under subsection 18(1), an individual acting on behalf of a derivatives firm must spend sufficient time with a derivatives party in a manner consistent with their operations to adequately explain the relationship disclosure information that is delivered to the derivatives party. We expect a derivatives firm to have policies and procedures that reflect the derivatives firm's practices when preparing, reviewing, delivering and revising relationship disclosure documents.

Disclosure should occur before entering into an initial transaction, prior to advising a derivatives party in respect of a derivative and when there is a significant change in respect of the information delivered to a derivatives party. We expect that the derivatives firm will maintain evidence of compliance with their disclosure requirements.

Paragraphs 18(1)(a) to (k) – Required relationship disclosure information

Description of the nature or type of the derivative party's account

Under paragraph 18(1)(a), a derivatives firm must provide derivatives parties with a description of the nature or type of account that the derivatives party holds with the derivatives firm. In particular, we expect that a derivatives firm would provide sufficient information to enable the derivatives party to understand the manner in which transactions will be executed and any applicable contractual obligations. We would also expect a derivatives firm to provide information regarding margin and collateral requirements, if applicable. Under paragraph 18(1)(n) the derivatives firm must disclose how the derivatives party assets will be held, used and invested.

We expect that the relationship disclosure information would also describe any related services that may be provided by the derivatives firm. If the firm is advising in derivatives, and the adviser has discretion over the derivatives party's account, we would also expect this to be disclosed.

Describe the conflicts of interest

Under paragraph 18(1)(b) a derivatives firm must provide a description of the conflicts of interest that the derivatives firm is required to disclose under securities legislation. One such requirement is in section 9, which provides that a firm must take reasonable steps to identify and then respond to existing and potential material conflicts of interest between the derivatives firm and the derivatives party. This includes disclosing the conflict, where appropriate.

Disclosure of charges, fees and other compensation

Paragraphs 18(1)(c), (d) and (e) require a derivatives firm to provide a derivatives party information on fees and costs they might be charged when entering into a transaction. These requirements ensure that a derivatives party receives all relevant information to evaluate the costs associated with the products and services they receive from the derivatives firm. We expect this disclosure to include information related to compensation or other incentives that the derivatives party may pay relating to a transaction.

We also expect a derivatives firm to provide the derivatives party with general information on any transaction and other charges that a derivatives party may be required to pay, including general information about potential break costs if a derivative is terminated prior to maturity, as well as other compensation the derivatives firms may receive from a third party as a result of their business relationship.

We recognize that a derivatives firm may not be able to provide all information about the costs associated with a particular derivative or transaction until the terms of the derivative have been agreed upon. However, before entering into an initial transaction, a derivatives firm must meet the applicable pre-transaction disclosure requirements in section 19.

Description of content and frequency of reporting

Under paragraph 18(1)(f) a derivatives firm is required to provide a description of the content and frequency of reporting to the derivatives party. Reporting to derivatives parties includes, as applicable

- daily reporting under section 20,
- transaction confirmations under section 27, and
- derivatives party statements under section 28.

Further guidance about a derivatives firm's reporting obligations to a derivatives party is provided in Division 3 of this Part.

Know your derivatives party information

Paragraph 18(1)(i) requires a derivatives firm to disclose the type of information that it must collect from the derivatives party. We expect this disclosure will also indicate how this information will be used in assessing and determining the suitability of a derivatives party transaction.

Section 19 – Pre-transaction disclosure

The Instrument does not prescribe a form for the pre-transaction disclosure that must be provided to a derivatives party under section 19. The derivatives firm may provide this information in a single document, or in separate documents, which together give the derivatives party the prescribed information.

The disclosure document required under subsection 19(1) must be delivered to the derivatives party at a reasonably sufficient time prior to entering into the first transaction with the derivatives firm to allow the derivatives party to assess the material risks and material characteristics of the type of derivative transacted. This disclosure document may be communicated by email or other electronic means.

Identify the derivatives-related products or services the derivatives firm offers

Under paragraph 19(1)(a), a derivatives firm must provide a general description of the derivatives products and services related to derivatives that the derivatives firm offers to a derivatives party. We would expect the relationship disclosure information to explain which asset classes the derivatives firm deals in and explain the different types of derivative products that the derivatives firm can transact with the derivatives party. The information required to be delivered under paragraph 19(1)(a) may be provided orally or in writing.

Describe the types of risks that a derivatives party should consider

Paragraph 19(1)(b)(i) requires a derivatives firm to provide an explanation of the risks associated with the derivatives products being transacted, including any specific risks relevant to the derivatives offered and strategies recommended to the derivatives party. The risks disclosed may include market, credit, liquidity, operational, legal and currency risks, as applicable.

The information required to be delivered under paragraph 19(1)(b) may be provided orally or in writing.

Describe the risks of using leverage to finance a derivative to a derivatives party

Paragraph 19(1)(c) contemplates that a derivatives firm will disclose the risk of leverage to all derivatives parties, regardless of whether or not the derivatives party uses leverage or the derivatives firm recommends the use of borrowed money to finance any part of a transaction. Using leverage means that derivatives parties are only required to deposit a percentage of the total value of the derivative when entering into a transaction. This effectively amounts to a loan by the derivatives firm to the derivatives party. However, the derivatives party's profits or losses are based on changes in the total value of the derivative. This means leverage magnifies a derivatives party's profit or loss on a transaction, and losses can exceed the amount of funds deposited.

Subsection 19(2) – Disclosure before transacting in a derivative

We understand that the use of the term "price" is not always appropriate in relation to a derivative or transaction in a derivative. Therefore, under paragraph 19(2)(b), disclosure with respect to spreads, premiums, costs, etc., could be more appropriate than the price.

Section 20 – Daily reporting

We do not expect a derivatives dealer to make the daily mid-market mark (or valuation) available to a derivatives party for a derivative that is cleared through a regulated clearing agency because we expect that derivatives parties will already be able to access valuation information from the clearing agency. However, we would expect the derivatives dealer to notify the derivatives party of its right to request and receive the clearing agency's daily mid-market mark.

Section 21 – Notice to derivatives parties by non-resident derivatives firms

The notice required under section 21 may be provided by a derivatives firm to a derivatives party in standard form industry documentation; a separate statement is not required to be provided to satisfy the obligations of this section.

DIVISION 2 – DERIVATIVES PARTY ASSETS

Section 23 – Interaction with other instruments

A derivatives firm is exempt from the requirements of this Division in respect of derivatives party assets if the derivatives firm is subject to and complies with or is exempt from sections 3 to 8 of NI 94-102 in respect of the derivatives party assets. The exemption from the requirements of this Division set out in paragraph (a) also extends to derivatives firms that rely on substituted compliance under NI 94-102.

A derivatives firm is exempt from the requirements of this Division in respect of derivatives party assets if the derivatives firm is subject to and complies with securities legislation relating to margin and collateral requirements or National Instrument 81-102 *Investment Funds* in respect of derivatives party assets. The exemption from the requirements of this Division on this basis extends to derivatives firms that rely on exemptions from the requirements under securities legislation relating to margin and collateral requirements.

Section 24 – Segregating derivatives party assets

A derivatives firm is required to segregate derivatives party assets from its own property and from the property of the firm's other derivatives parties either by separately holding or accounting for derivatives party assets.

Section 25 – Holding initial margin

We expect that a derivatives firm would take reasonable efforts to confirm that the permitted depository holding initial margin

- qualifies as a permitted depository under the Instrument,
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the derivatives party assets and minimize and manage the risks associated with the safekeeping and transfer of the derivatives party assets,
- maintains securities in an immobilized or dematerialized form for their transfer by book entry,
- protects derivatives party assets against custody risk through appropriate rules and procedures consistent with its legal framework,
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants and ,where supported by the legal framework, supports operationally the segregation of property belonging to a derivative party on the participant's books and facilitates the transfer of derivatives party assets,
- identifies, measures, monitors, and manages its risks from other activities that it may perform, and
- facilitates prompt access to initial margin, when required.

If a derivatives firm is a permitted depository, as defined in the Instrument, it may hold derivatives party assets itself and is not required to hold derivatives party assets at a third party depository. For example, a Canadian financial institution that acts as a derivatives firm would be permitted to hold derivatives party assets provided it did so in accordance with the requirements of the Instrument. Where a derivatives firm deposits derivatives party assets with a permitted depository, the derivatives firm is responsible for ensuring the permitted depository maintains appropriate books and records to ensure the derivatives party assets can be attributed to the derivatives party.

Section 26 – Investment or use of initial margin

Section 26 requires that a derivatives firm receive written consent from a derivatives party before investing or otherwise using collateral provided as initial margin. In order to provide consent a derivatives party needs to be made aware of and agree to any potential investment or use. If applicable, we would expect such disclosure to take the form of the disclosures contemplated by paragraph 18(1)(k) [*Relationship disclosure information*], which requires the derivatives firm to disclose the manner in which the assets are used or invested and to provide a description of the risks and benefits to the derivatives party that arises from the derivatives firm having access to use or invest derivatives party assets.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

The obligations in this Division, other than subsection 27(1) [*Content and delivery of transaction information*], do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or a specified commercial hedger or an eligible derivatives party that is an individual or a specified commercial hedger that has waived these obligations.

Section 27– Content and delivery of transaction information

The requirement to provide a written confirmation under subsection 27(1) can be satisfied by electronic confirmations (including SWIFT confirmations).

We are of the view that the written description of the derivative transacted required by paragraph 27(2)(a) would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest swap with CDOR as reference rate, single name credit default swap).

Section 28 – Derivatives party statements

We are of the view that the description of the derivative transacted required by paragraphs 28(2)(b) and 28(3)(a) would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest swap with CDOR as reference rate, single name credit default swap).

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

The objective of this Division is to further a culture of compliance and personal accountability within a derivatives firm. Section 31 imposes certain obligations on a senior derivatives manager, further discussed below, with respect to ensuring compliance by individuals performing activities relating to transacting in, or advising in relation to, derivatives within the area of the business the senior derivatives manager is responsible for, which is referred to in the Instrument and below as a “derivatives business unit”.

Sections 30 and 32 set out certain obligations on the derivatives firm regarding policies and procedures relating to compliance and responding to material non-compliance. We are of the view that a derivatives firm should be afforded flexibility with respect to who fulfills these obligations of the derivatives firm. The obligations on the derivatives firm under these sections may be carried out by, for example, one or more senior derivatives managers designated by the derivatives firm.

Section 29 – Definitions

The definition of “derivatives business unit” is not intended to dictate that a derivatives firm must organize its derivatives activity in any particular organizational structure. A derivatives business unit could relate to any of, or any combination of, a class of derivatives, an asset class or sub-asset class, a geographic territory, a business line or a division of the derivatives firm.

The definition of “senior derivatives manager” refers to the individual designated as primarily responsible for a particular derivatives business unit. This definition is intended to lead to the designation of the individual who is responsible for

- implementing, within the derivatives business unit, management business priorities within the risk parameters that have been established by the department that is responsible for the management of risk of the derivatives firm, and,

- operationalizing, within the derivatives business unit, policies and procedures relating to compliance established by the department that is responsible for compliance of the derivatives firm.

We generally expect that the individual designated as the senior derivatives manager of a derivatives business unit would have regular interactions with the individuals in the derivatives business unit. We interpret “regular” in this context to mean day-to-day and not to mean infrequent but regular, e.g., once per quarter. Therefore, our expectation is that a senior derivatives manager will be an individual informed of and, in some cases, involved with, the day-to-day activities within the derivatives business unit.

Depending on its size, level of derivatives activity and organizational structure, a derivatives firm may have a number of different derivatives business units. Further, the specific title or job description of the individual designated as “senior derivatives manager” for a derivatives business unit could vary between derivatives firms, depending once again on their size, level of derivatives activity and organizational structures.

Except in a small derivatives firm, we would not expect a senior derivatives manager to be the chief executive officer of the derivatives firm, or an individual registered under NI 93-102 (if applicable) as any of the derivatives ultimate designated person, derivatives chief compliance officer or derivatives chief risk officer of the derivatives firm. In a smaller firm, some of these roles may be assigned to the same individual or individuals.

In a large derivatives firm, we would also generally expect that a senior derivatives manager would not be the officer in charge of the division of the derivatives firm that conducts the activities that result in the firm meeting the definition of “derivatives dealer” or “derivatives adviser” in the Instrument.

It is the responsibility of the derivatives firm to identify within the organizational structure of their business the individual that should be designated as the senior derivatives manager of a derivatives business unit.

Section 30 – Policies, procedures and designation

Section 30 requires a derivatives firm to establish, maintain and apply policies and procedures and a system (i.e., a "**compliance system**") of controls and supervision sufficient to provide reasonable assurance that

- the derivatives firm and those acting for it, as applicable, comply with applicable securities legislation,
- the derivatives firm and each individual acting on its behalf manage derivatives-related risks prudently,
- individuals performing a derivatives-related activity on behalf of the firm, prior to commencing the activity and on an ongoing basis,
    - possess the experience, education and training that a reasonable person would consider necessary to perform these activities in a competent manner, and
    - conduct themselves with integrity.

We expect that the policies, procedures and controls referred to in section 30 would include internal controls and monitoring that are reasonably likely to identify non-compliance at an early stage and would allow the derivatives firm to correct non-compliance in a timely manner.

We do not expect that the policies, procedures and controls referred to in section 30 would be applicable to derivatives firm's activities other than its activities relating to transacting in, or advising in relation to, derivatives. For example, a derivatives dealer may also be a reporting issuer. The policies, procedures and controls established to monitor compliance with the Instrument would not necessarily reference matters related only to the derivatives firm's status as a reporting issuer. Nevertheless, a derivatives firm would not be precluded from establishing a single set of policies, procedures and controls related to the derivatives firm's compliance with all applicable securities laws.

We interpret "risks relating to its derivatives activities" in paragraph 30(1)(b) to include the risks inherent in derivatives trading (including credit risk, counterparty risk, and market risk) that relate to a derivatives firm's overall financial viability.

Paragraph 30(1)(c) – Policies and procedures relating to individuals

Paragraph 30(1)(c) establishes a reasonable person standard with respect to proficiency, rather than prescribing specific courses or other training requirements. However, we note that a derivatives firm and an individual transacting in, or providing advice in relation to, a derivative on behalf of the derivatives firm may be subject to more specific education, training and experience requirements, including under NI 93-102, if applicable.

Subparagraph 30(1)(c)(i) contemplates that industry experience can be a substitute for formal education and training. We are of the view that this is particularly relevant in respect of formal education and training prior to commencing an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative. However, we expect that all individuals who perform such activity receive appropriate training on an ongoing basis.

Subparagraph 30(1)(c)(iii) relates to integrity of the individuals who perform an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative. Prior to employing an individual in a derivatives business, we expect that a derivatives firm will assess the integrity of the individual by having regard to the following:

- references provided by previous employers, including any relevant complaint of fraud or misconduct against the individual;
- if the individual has been subject to disciplinary action by its previous employer or to any adverse finding or settlement in civil proceedings;
- whether the individual has been refused the right to carry on a trade, business or profession requiring a licence, registration or other professional designation;
- in light of the individual's responsibility, whether the individual's reputation may have an adverse impact on the firm for which the activity is to be performed.

Section 31 – Responsibilities of senior derivatives managers

Under paragraph 31(1)(b), an appropriate response to material non-compliance is a contextual determination, depending on the harm or potential harm, of the non-compliance. We are of the view that an appropriate response could include one or more of the following, depending on the circumstances:

- rectifying the non-compliance;
- disciplining one or more individuals who perform an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative;
- improving (or recommending improvements to) processes, policies and procedures aimed at ensuring compliance with the Instrument, applicable securities legislation and the policies and procedures required under section 30 [*Policies, procedures and designation*].

An appropriate response could include directing a subordinate to respond to the non-compliance.

A senior derivatives manager's responsibilities under this Division apply to the senior derivatives manager even in situations where that individual has delegated his or her responsibilities.

Subsection 31(2) – Senior derivatives manager's report

We consider non-compliance with the Instrument or applicable securities legislation to be material if the non-compliance creates a risk of material harm to a derivatives party or to capital markets or otherwise reflects a significant pattern of non-compliance. Whether the harm is "material" is dependent on the specific circumstances. For example, material harm to a small, unsophisticated derivatives party may differ from the material harm to a large, more sophisticated derivatives party.

We would expect that in complying with the requirement to submit a report under paragraph 31(3)(a) that reasonable care will be exercised in determining when and how often material non-compliance should be reported to the board. For example, in a case of serious misconduct, we would expect the board to be made aware promptly of the misconduct.

Section 32 – Responsibility of a derivatives firm to report material non-compliance

The requirement on a derivatives firm to make a report to the securities regulatory authority under section 32 will depend on whether the particular non-compliance would reasonably be considered by the derivatives firm to be material non-compliance with the Instrument or applicable securities legislation and create a risk of material harm to a derivatives party or to capital markets or otherwise reflect a significant pattern of non-compliance.

The derivatives firm should establish a standard for determining when there is a risk of material harm to a derivatives party of the firm or to the capital markets. Whether the harm is "material" is dependent on the specific circumstances. Material harm to a small, unsophisticated derivatives party may differ from the material harm to a large, more sophisticated derivatives party.

For registered derivatives firms, the expectation is that the report to the regulator could be provided by the derivatives chief compliance officer or the derivatives ultimate designated person. The term "ultimate designated person" means,

(a) the chief executive officer of the derivatives firm, or if the derivatives firm does not have a chief executive officer, an individual acting in a capacity similar to that of a chief executive officer;

(b) a partner or the sole proprietor of the registered derivatives firm;

(c) if the registered derivatives firm has other significant business activities, the officer in charge of the division of the derivatives firm that acts as a derivatives dealer or as a derivatives adviser.

DIVISION 2 – RECORDKEEPING

Subsection 33(2) – Derivatives party agreement must establish all material terms

Appropriate subject matter for the derivatives party agreement includes terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution. We would expect that the agreement would also cover other areas as appropriate in the context of the transactions into which the parties will enter. For example, where transactions will be subject to margin, we would expect the agreement to include terms that cover margin requirements, assets that are acceptable

as collateral, collateral valuation methods, investment and rehypothecation of collateral, and custodial arrangements for initial margin, if applicable.

Section 34 – Records

Section 34 imposes a general obligation on a derivatives firm to keep full and complete records relating to the derivatives firm's derivatives, transactions in derivatives, and all of its business activities relating to derivatives, trading in derivatives or advising in derivatives. This list of records is not intended to be exhaustive but rather sets out the minimum records that must be kept. We would expect a derivatives firm to consider the nature of its derivatives-related activity when determining the records that it must keep and the form of those records.

The principle underlying section 34 is that a derivatives firm must document, through its records,

- compliance with all applicable securities legislation (including the Instrument) for its derivatives-related activities,
- the details and evidence of each derivative which it has been a party or in respect of which it has been an agent,
- the circumstances surrounding the entry into and termination of those derivatives, and
- related post-transaction matters.

We would, for example, expect a derivatives firm to be able to demonstrate, for each derivatives party, the details of compliance with the obligations in section 10 [*Know your derivatives party*] and, if applicable, the obligations in section 11 [*Derivatives-party-specific needs and objectives*] and section 12 [*Suitability*] (and if sections 11 and 12 are not applicable, the reason as to why they are not).

If a derivatives firm wishes to rely on any exemption or exclusion in the Instrument or other related securities laws, it should be able to demonstrate that the conditions of the exemption or exclusion are met.

With respect to records required under paragraph 34(b), demonstrating the existence and nature of the derivatives firm's derivatives, and records required under paragraph 34(c) documenting the transactions relating to the derivatives, we expect a derivatives firm to accurately and fully document every transaction it enters into and to keep records to the extent that they demonstrate the existence and nature of the derivative. We expect a derivatives firm to maintain notes of communications that could have an impact on a derivatives party's account or its relationship with the derivatives firm. These records of communications kept by a derivatives firm may include notes of oral communications and all e-mail, regular mail, fax and other written communications.

While a derivatives firm may not need to save every voicemail or e-mail, or to record all telephone conversations with every derivatives party, we do expect a derivatives firm to maintain records of all communications with a derivatives party relating to derivatives transacted with, for or on behalf of the derivatives party.

Section 35 – Form, accessibility and retention of records

Paragraph 35(1)(a) requires derivatives firms to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential derivatives party and counterparty information. We would expect a derivatives firm to be particularly vigilant if it maintains books and records in a location that may be accessible by a third party. In this case, we would expect the derivatives firm to have a confidentiality agreement with the third party.

PART 6
EXEMPTIONS

The Instrument provides several exemptions from the requirements in the Instrument. If a firm is exempt from a requirement in the Instrument, the individuals acting on its behalf are likewise exempt.

DIVISION 1 – EXEMPTION FROM THIS INSTRUMENT

Section 37 – Exemption for certain derivatives end-users

Section 37 provides an exemption from the application of the Instrument for a person or company that does engage in the activities described in section 37 and not have the status described in section 36.

For example, a person or company that frequently and regularly transacts in derivatives to hedge business risk but that does not undertake any of the activities in paragraphs (a) to (e) of subsection (1) may qualify for this exemption. Typically, such a person

or company would transact with a derivatives dealer who itself may be subject to some or all of the requirements of the Instrument.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS INSTRUMENT

Section 38 – Foreign derivatives dealers

General principle

Section 38 contemplates an exemption from the Instrument for foreign derivatives dealers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. This exemption applies to the provisions of the Instrument where the derivatives dealer is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix A opposite the name of the foreign jurisdiction. The foreign jurisdictions specified in Appendix A are determined on a jurisdiction-by-jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

This exemption is only available where a foreign derivatives dealer is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix A. If a foreign derivatives dealer is not subject to the requirements in a foreign jurisdiction listed in Appendix A, including where it relies on an exclusion or an exemption (including discretionary relief) from those requirements in the foreign jurisdiction, the exemption in section 38 will not be available. If the foreign derivatives dealer relies on an exclusion or exemption in the foreign jurisdiction, it would need to apply to the relevant securities regulatory authorities for consideration of similar exemptive or discretionary relief from the Instrument

Conditions

This exemption in section 38 is available if the foreign derivative dealer is dealing only with persons or companies that are eligible derivatives parties. The foreign derivatives dealer must comply with each of the conditions set out in subsections (2), (3) and (4). Furthermore, there may be "residual" provisions of the Instrument listed in Appendix A which must be complied with even if the foreign derivatives dealer is in compliance with the laws of a foreign jurisdiction set out in Appendix A.

The disclosures contemplated in paragraph 38(3)(b) can be made by a derivatives firm in a master trading agreement with its derivatives party.

Section 41 – Derivatives traded on a derivatives trading facility that are cleared

Where a derivatives firm enters into a transaction with a derivatives party on an anonymous derivatives trading facility or an analogous platform (e.g., a swap execution facility), it may not be possible for the derivatives firm to establish the identity of the derivatives party prior to entering into the transaction. We understand that a trading platform would perform know-your-derivatives party diligence prior to accepting a derivatives party for trading on the platform; accordingly, this section of the Instrument includes an exemption for the derivatives firm in these circumstances.

We do not expect that derivatives trading facilities rules will permit non-eligible derivatives parties to transact anonymously on a derivatives trading facility.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Section 42 – Advising generally

Section 42 contains an exemption from the requirements applicable to a derivatives adviser if advice is not tailored to the needs of the recipient.

In general, we would not consider advice to be tailored to the needs of the recipient if it

- is a general discussion of the merits and risks of a derivative or class of derivatives,
- is delivered through newsletters, articles in general circulation newspapers or magazines, websites, e-mail, internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient.

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific transactions in specific derivatives or class of derivatives, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 42(3), if an individual or a firm relying on the exemption has a financial or other interest in the derivative or class of derivatives it recommends, or in an underlying interest of the derivative, it must disclose the interest to the recipient when it makes the recommendation.

Section 43 – Foreign derivatives advisers

General principle

Section 43 contemplates an exemption from the Instrument for foreign derivatives advisers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. This exemption applies to the provisions of the Instrument where the derivatives adviser is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix D opposite the name of the foreign jurisdiction. The foreign jurisdictions specified in Appendix D are determined on a jurisdiction-by-jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

This exemption is only available where a foreign derivatives adviser is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix D. If a foreign derivatives adviser is not subject to the requirements in a foreign jurisdiction listed in Appendix D, including where it relies on an exclusion or an exemption (including discretionary relief) from those requirements in the foreign jurisdiction, the exemption in section 43 will not be available. If the foreign derivatives adviser relies on an exclusion or exemption in the foreign jurisdiction, it will need to apply to the relevant securities regulatory authorities for consideration of similar exemptive or discretionary relief from the Instrument.

Conditions

This exemption is only available if the foreign derivative adviser is advising persons or companies that are eligible derivatives parties. The foreign derivatives adviser must also comply with each of the conditions set out in subsections (2), (3) and (4). Furthermore, there may be “residual” provisions of the Instrument listed in Appendix D which must be complied with even if a foreign derivatives adviser is in compliance with the laws of a foreign jurisdiction set out in Appendix D. The disclosures contemplated in paragraph 43(3)(b) can be made by a derivatives firm in account opening documentation.

PART 8
EFFECTIVE DATE

Section 45 – Effective Date

This Instrument comes into force on [●] and therefore any transaction entered into by a derivatives firm from this date forward is subject to the terms of the Instrument, except only section 8 [*Fair dealing*], section 20 [*Daily reporting*] and section 28 [*Derivatives party statements*] will apply to pre-existing transactions if the following conditions are met:

- the transaction was entered into before the in-force date; and
- the derivatives firm has taken reasonable steps to determine that its derivatives party is either (i) a “permitted client” under NI 31-103, (ii) an “accredited counterparty” under the *Derivatives Act* (Quebec), or (iii) a “qualified party” as that term is defined the relevant blanket orders in the provinces of Alberta, British Columbia, Manitoba, New Brunswick or Nova Scotia.

ANNEX IV

Alternative version of the definition of "affiliated entity"

In this Instrument, a person or company (the first party) is an affiliated entity of another person or company (the second party) if any of the following apply:

(a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with

(i) IFRS, or

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) neither the first party's nor the second party's financial statements, nor the financial statements of another person or company, were prepared in accordance with the principles or standards specified in subparagraphs (a)(i) or (ii);

(ii) the first party and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements prepared by the first party, the second party or the other person or company, if the consolidated financial statements were prepared in accordance with the principles or standards specified in subparagraphs (a)(i) or (ii);

(c) both parties are prudentially regulated entities that are supervised on a consolidated basis.

ANNEX V

LOCAL MATTERS

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE PROPOSED INSTRUMENT

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 1, 1.1 to 1.6, 2, 3, 4, 5, 5.1, 7, 8, 8.1, 8.2, 10, 10.1, 11, 13, 18, 19.1 to 19.7, 25, 33, 35, 39, 39.1, 40, 41, 43, 45, 49 and 56 of subsection 143(1) of the *Securities Act*.

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Chapter 7

Insider Reporting

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

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
BMO Aggregate Bond Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated June 11, 2018
Received on June 11, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
BMO Asset Management Inc.
Project #2711761

Issuer Name:
Desjardins Global Tactical Bond Fund
Desjardins Dividend Income Fund
Desjardins Overseas Equity Value Fund
Desjardins Global Dividend Fund
Desjardins Global Equity Value Fund
Desjardins Emerging Markets Funds
Principal Regulator – Quebec
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 7, 2018
Received on June 8, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Desjardins Investments Inc.
Project #2724968

Issuer Name:
Desjardins Global Equity Growth Fund
Principal Regulator – Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated June 7, 2018
Received on June 7, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Desjardins Investments Inc.
Project #2699498

Issuer Name:
FDP Short Term Fixed Income Portfolio
FDP US Dividend Equity Portfolio
FDP US Index Equity Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 6, 2018
Received on June 6, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Professionals' Financial – Mutual Funds Inc.
Promoter(s):
Professionals' Financial – Mutual Funds Inc.
Project #2748571

Issuer Name:
First Asset Enhanced Government Bond ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 6, 2018
NP 11-202 Preliminary Receipt dated June 7, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
First Asset Investment Management Inc.
Project #2783694

Issuer Name:
MD Precision Canadian Balanced Growth Fund (formerly MD Balanced Fund)
MD Bond Fund
MD Short-Term Bond Fund
MD Precision Canadian Moderate Growth Fund (formerly MD Dividend Income Fund)
MD Equity Fund
MD Growth Investments Limited
MD Dividend Growth Fund
MD International Growth Fund
MD International Value Fund
MD Money Fund (Series A and Series D units)
MD Select Fund
MD American Growth Fund
MD American Value Fund
MD Strategic Yield Fund
MD Strategic Opportunities Fund
MD Fossil Fuel Free Bond Fund
MD Fossil Fuel Free Equity Fund
MD Precision Conservative Portfolio
MD Precision Balanced Income Portfolio
MD Precision Moderate Balanced Portfolio
MD Precision Moderate Growth Portfolio
MD Precision Balanced Growth Portfolio
MD Precision Maximum Growth Portfolio
MDPIM Canadian Equity Pool
MDPIM US Equity Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 8, 2018
Received on June 11, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Financial Management Inc.
Project #2757613

Issuer Name:
MDPIM Canadian Bond Pool
MDPIM Canadian Long Term Bond Pool
MDPIM Dividend Pool
MDPIM Strategic Yield Pool
MDPIM Canadian Equity Pool
MDPIM US Equity Pool
MDPIM International Equity Pool
MDPIM Strategic Opportunities Pool
MDPIM Emerging Markets Equity Pool
MDPIM S&P/TSX Capped Composite Index Pool
MDPIM S&P 500 Index Pool
MDPIM International Equity Index Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 8, 2018
Received on June 11, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Financial Management Inc.
Project #2757644

Issuer Name:
PIMCO Canadian Total Return Bond Fund
PIMCO Monthly Income Fund
PIMCO Flexible Global Bond Fund (Canada) (Formerly PIMCO Global Advantage Strategy Bond Fund (Canada))
PIMCO Unconstrained Bond Fund (Canada)
PIMCO Investment Grade Credit Fund (Canada)
PIMCO Balanced Income Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated May 31, 2018
Received on June 5, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
PIMCO Canada Corp.
Project #2644394

Issuer Name:
Redwood Pension Class
Redwood Emerging Markets Dividend Fund
Redwood Behavioural Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated June 1, 2018
Received on June 6, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Redwood Asset Management Inc.
Promoter(s):
Redwood Asset Management Inc.
Project #2690436

Issuer Name:
Redwood Energy Credit Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 1, 2018
Received on June 6, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Redwood Asset Management Inc.
Project #2698318

Issuer Name:
Silver Bullion Trust
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated June 1, 2018
Received on June 6, 2018
Offering Price and Description:
ETF Non-Currency Hedged Units and ETF Currency Hedged Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2754404

Issuer Name:
Exemplar Canadian Focus Portfolio
Exemplar Diversified Portfolio
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 8, 2018
NP 11-202 Receipt dated June 11, 2018
Offering Price and Description:
Series A Shares, Series F Shares, Series L Shares, Series I Shares and Series R Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2769141

Issuer Name:
First Asset Health Care Giants Covered Call ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 4, 2018
NP 11-202 Receipt dated June 5, 2018
Offering Price and Description:
Common Units and Unhedged Common Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
First Asset Investment Management Inc.
Project #2764081

Issuer Name:
First Trust AlphaDEX European Dividend Index ETF (CAD-Hedged)
First Trust AlphaDEX U.S. Consumer Discretionary Sector Index ETF
First Trust AlphaDEX U.S. Consumer Staples Sector Index ETF
First Trust AlphaDEX U.S. Energy Sector Index ETF
First Trust AlphaDEX U.S. Financial Sector Index ETF
First Trust AlphaDEX U.S. Health Care Sector Index ETF
First Trust AlphaDEX U.S. Industrials Sector Index ETF
First Trust AlphaDEX U.S. Materials Sector Index ETF
First Trust AlphaDEX U.S. Technology Sector Index ETF
First Trust AlphaDEX U.S. Utilities Sector Index ETF
First Trust Dorsey Wright U.S. Sector Rotation Index ETF (CAD-Hedged)
First Trust Global Risk Managed Income Index ETF
First Trust Tactical Bond Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 7, 2018
NP 11-202 Receipt dated June 11, 2018
Offering Price and Description:
Units, Hedged Units, Common Units and Advisor Class Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2765752

Issuer Name:
LDIC North American Infrastructure Fund
LDIC North American Small Business Fund (Corporate Class)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 31, 2018
NP 11-202 Receipt dated June 6, 2018
Offering Price and Description:
Series A shares and Series F1 shares)
Underwriter(s) or Distributor(s):
LDIC Inc.
Promoter(s):
N/A
Project #2763598

Issuer Name:
Marijuana Opportunities Fund (formerly, Redwood Infrastructure Income Fund)
Purpose Best Ideas Fund
Purpose Core Dividend Fund
Purpose Duration Hedged Real Estate Fund
Purpose Global Innovators Fund (formerly, Redwood Global Opportunities Fund)
Purpose Global Resource Fund (formerly, Redwood Resource Growth and Income Fund)
Purpose MLP & Infrastructure Income Fund (formerly, Redwood MLP & Infrastructure Income Fund)
Purpose Monthly Income Fund
Purpose Multi-Asset Income Fund (formerly, Redwood High Income Fund)
Purpose Short Duration Tactical Bond Fund
Purpose Special Opportunities Fund (formerly, Redwood Special Opportunities Fund)
Purpose Managed Duration Investment Grade Bond Fund (formerly, Purpose Strategic Investment Grade Bond Fund)
Purpose Strategic Yield Fund (formerly, Redwood Strategic Yield Fund)
Purpose Tactical Bond Fund (formerly, Redwood Tactical Bond Fund)
Purpose Tactical Hedged Equity Fund
Purpose Total Return Bond Fund
Redwood Canadian Preferred Share Fund (formerly Redwood Floating Rate Preferred Fund)
Redwood Core Income Equity Fund (formerly Connected Wealth Core Income Class)
Redwood Equity Growth Fund (formerly Redwood Equity Growth Class)
Redwood Income Growth Fund (formerly Redwood Income Growth Class)
Redwood Tactical Asset Allocation Fund (formerly Connected Wealth Tactical Class)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 30, 2018
NP 11-202 Receipt dated June 7, 2018
Offering Price and Description:
ETF shares, ETF non-currency hedged shares, Series A shares, Series A non-currency hedged shares, Series F shares, Series F non-currency hedged shares, Series I shares, Series I non-currency hedged shares, Series D shares, Series XA shares, Series XA non-currency hedged shares, Series XF shares, Series XF non-currency hedged shares, Series XUA shares, Series XUA non-currency hedged shares, Series XUF shares and Series XUF non-currency hedged shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2764789

Issuer Name:
MLD Core Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 1, 2018
NP 11-202 Receipt dated June 7, 2018
Offering Price and Description:
Class F units
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Purpose Investments Inc.
Project #2767455

Issuer Name:
PowerShares 1-3 Year Laddered Floating Rate Note Index ETF
PowerShares 1-5 Year Laddered All Government Bond Index ETF
PowerShares 1-5 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares 1-10 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares LadderRite U.S. 0-5 Year Corporate Bond Index ETF
PowerShares Ultra Liquid Long Term Government Bond Index ETF
PowerShares Senior Loan Index ETF
PowerShares Fundamental High Yield Corporate Bond Index ETF
PowerShares Canadian Preferred Share Index ETF
PowerShares S&P/TSX REIT Income Index ETF
PowerShares Canadian Dividend Index ETF
PowerShares S&P 500 High Dividend Low Volatility Index ETF
PowerShares S&P Global ex. Canada High Dividend Low Volatility Index ETF
PowerShares S&P/TSX Composite Low Volatility Index ETF
PowerShares S&P 500 Low Volatility Index ETF
PowerShares S&P International Developed Low Volatility Index ETF
PowerShares S&P Emerging Markets Low Volatility Index ETF
PowerShares FTSE RAFI Canadian Fundamental Index ETF
PowerShares FTSE RAFI Canadian Small-Mid Fundamental Index ETF
PowerShares FTSE RAFI U.S. Fundamental Index ETF II
PowerShares FTSE RAFI U.S. Fundamental Index ETF
PowerShares FTSE RAFI Global+ Fundamental Index ETF
PowerShares DWA Global Momentum Index
PowerShares QQQ Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 29, 2018
NP 11-202 Receipt dated June 7, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Invesco Canada Ltd.
Project #2703193

Issuer Name:
PowerShares Tactical Bond ETF
PowerShares Low Volatility Portfolio ETF
PowerShares Global Shareholder Yield ETF
PowerShares FTSE RAFI Global Small-Mid Fundamental ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 29, 2018
NP 11-202 Receipt dated June 6, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Invesco Canada Ltd.
Project #2703174

Issuer Name:
ROMC Trust
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 4, 2018
NP 11-202 Receipt dated June 5, 2018
Offering Price and Description:
Series A Units and Series F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2760529

Issuer Name:
Silver Bullion Trust
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated June 1, 2018
NP 11-202 Receipt dated June 8, 2018
Offering Price and Description:
ETF Non-Currency Hedged Units and ETF Currency Hedged Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2754404

NON-INVESTMENT FUNDS

Issuer Name:
10674419 Canada Corporation
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated June 5, 2018
NP 11-202 Preliminary Receipt dated June 6, 2018
Offering Price and Description:
Minimum Offering: $200,000.00 (2,000,000 Common Shares)
Maximum Offering: $750,000.00 (7,500,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Peter Karos
Project #2783280

Issuer Name:
APPx Crypto Technologies Inc. (Formerly Appature Mobile Applications Inc.)
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated May 31, 2018
NP 11-202 Preliminary Receipt dated June 5, 2018
Offering Price and Description:
26,811,000 Common Shares on Exercise or Deemed Exercise of
26,811,000 Outstanding Special Warrants
Price Per Special Warrant: $0.10
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
Rahim Mohamed
Project #2782922

Issuer Name:
Ballard Power Systems Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated June 7, 2018
NP 11-202 Preliminary Receipt dated June 7, 2018
Offering Price and Description:
US$150,000,000.00
Common Shares
Preferred Shares
Warrants
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2783838

Issuer Name:
BTB Real Estate Investment Trust
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 5, 2018
NP 11-202 Preliminary Receipt dated June 5, 2018
Offering Price and Description:
5,435,000 Units
$4.60 per Unit
Price: $4.60 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
TD Securities Inc.
Echelon Wealth Partners Inc.
Laurentian Bank Securities Inc.
Raymond James Ltd.
Scotia Capital Inc.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2781687

Issuer Name:
Cassowary Capital Corporation Limited
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated June 8, 2018
NP 11-202 Preliminary Receipt dated June 8, 2018
Offering Price and Description:
$400,000.00 or 4,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
Stuart M. Olley
Project #2784321

Issuer Name:
Dream Global Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 11, 2018
NP 11-202 Preliminary Receipt dated June 11, 2018
Offering Price and Description:
$175,200,000.00
12,000,000 Units
Price: $14.60 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2783249

Issuer Name:
Gold Standard Ventures Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated June 8, 2018
Received on June 8, 2018
Offering Price and Description:
$300,000,000.00 – Common Shares, Subscription Receipts
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2784374

Issuer Name:
Horizon North Logistics Inc.
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus dated June 11, 2018
Received on June 11, 2018
Offering Price and Description:
$50,000,160.00
17,857,200 Common Shares
Price: $2.80 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Scotia Capital Inc.
Peters & Co. Limited
TD Securities Inc.
Cormark Securities Inc.
GMP Securities L.P.
Beacon Securities Limited
Clarus Securities Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Acumen Capital Finance Partners Limited
Altacorp Capital Inc.
Promoter(s):
–
Project #2784710

Issuer Name:
Hydro One Holdings Limited
Type and Date:
Preliminary Shelf Prospectus dated June 8, 2018
(Preliminary) Receipted on June 8, 2018
Offering Price and Description:
U.S.$3,000,000,000.00
Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2784216

Issuer Name:
Hydro One Limited
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated June 8, 2018
NP 11-202 Preliminary Receipt dated June 8, 2018
Offering Price and Description:
$4,000,000,000.00
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2784210

Issuer Name:
MAV Beauty Brands Inc.
Principal Regulator – Ontario
Type and Date:
Amendment dated June 7, 2018 to Preliminary Long Form Prospectus dated May 22, 2018
NP 11-202 Preliminary Receipt dated June 7, 2018
Offering Price and Description:
C$ *
* Common Shares
Price: C$ * per Offered Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Jefferies Securities, Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Promoter(s):
–
Project #2774580

Issuer Name:
Minto Apartment Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Amendment dated June 8, 2018 to Preliminary Long Form Prospectus dated May 23, 2018
NP 11-202 Preliminary Receipt dated June 8, 2018
Offering Price and Description:
$200,000,000.00
* Units
Price $ * per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Raymond James Ltd.
Industrial Alliance Securities Inc.
Promoter(s):
Minto Properties Inc.
Project #2775098

Issuer Name:
ADL Ventures Inc.
Principal Regulator – Ontario
Type and Date:
Final CPC Prospectus (TSX-V) dated June 6, 2018
NP 11-202 Receipt dated June 8, 2018
Offering Price and Description:
$300,000.00 – 3,000,000 OFFERED SHARES
Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Laurence Rose
Project #2759706

Issuer Name:
Avante Logixx Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated June 6, 2018
NP 11-202 Receipt dated June 6, 2018
Offering Price and Description:
18,750,000 Common Shares
$7,500,000.00
Price: $0.40 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Canaccord Genuity Corp.
Promoter(s):
–
Project #2775237

Issuer Name:
Crown Capital Partners Inc.
Principal Regulator – Alberta (ASC)
Type and Date:
Final Short Form Prospectus dated June 6, 2018
NP 11-202 Receipt dated June 6, 2018
Offering Price and Description:
$20,000,000.00 – 5 YEAR 6.00% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Altacorp Capital Inc.
CIBC World Markets Inc.
Cormark Securities Inc.
GMP Securities L.P,
Raymond James Ltd.
TD Securities Inc.
Promoter(s):
–
Project #2775988

Issuer Name:
IMV Inc. (formerly Immunovaccine Inc.)
Principal Regulator – Nova Scotia
Type and Date:
Final Shelf Prospectus dated June 5, 2018
NP 11-202 Receipt dated June 5, 2018
Offering Price and Description:
$150,000,000.00
Preferred Shares
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2781942

Issuer Name:
TeraGo Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated June 11, 2018
NP 11-202 Receipt dated June 11, 2018
Offering Price and Description:
$6,004,900.00 – 1,133,000 Common Shares
$5.30 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Cormark Securities Inc.
Desjardins Securities Inc.
Promoter(s):
–
Project #2778469

Issuer Name:
The Descartes Systems Group Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 6, 2018
NP 11-202 Receipt dated June 7, 2018
Offering Price and Description:
US$750,000,000.00 – Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2775873

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Amber Capital Management Inc.	Exempt Market Dealer	June 5, 2018
Suspended (Regulatory Action)	International Capital Management Inc.	Mutual Fund Dealer	April 2, 2018
Voluntary Surrender	Coxswain Row Capital Corporation	Exempt Market Dealer	May 25, 2018
New Registration	Indigoblue Capital Corporation	Exempt Market Dealer	June 6, 2018
New Registration	Slate Securities L.P.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	June 7, 2018
Consent to Suspension (Pending Surrender)	Callidus Capital Corporation	Investment Fund Manager and Exempt Market Dealer	June 6, 2018
Consent to Suspension (Pending Surrender)	KAIOG Capital Partners Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	June 6, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 TSX – Consultation Paper on Public Company Acquisitions

TORONTO STOCK EXCHANGE

CONSULTATION PAPER ON PUBLIC COMPANY ACQUISITIONS

Toronto Stock Exchange ("**TSX**") is publishing for consultation the following proposed amendments (the "**Amendments**") to Staff Notice 2012-0003 (the "**Staff Notice**"). While Staff Notices are generally not published for consultation or comment, TSX is publishing the Amendments due to the sensitive nature of the related rule and the proposed change of practice. The Amendments are being published for public consultation for a thirty (30) day period.

The Amendments will only become effective following public notice and comment. Comments should be in writing and delivered by July 16, 2018 to:

Joanne Sanci
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
300-100 Adelaide Street West
Toronto, Ontario M5H 1S3
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

Comments will be publicly available unless confidentiality is requested.

Background

TSX conducted public consultations and published two requests for comments in 2007 and 2009 regarding security holder approval requirements for dilutive acquisitions of public companies. Commentary through the public consultation process and more formal requests for comments was highly divisive with proponents voicing strong concerns either in favour or against an amendment imposing security holder approval for dilutive acquisitions of public companies. Effective November 24, 2009, TSX amended its rules to require security holder approval for securities issued or made issuable pursuant to an acquisition of a public company where dilution exceeded 25% of the listed issuer's issued and outstanding securities. These requirements were effected through an amendment to Section 611 of the TSX Company Manual (the "**Manual**"), an extract of which is attached as **Appendix A**.

In addition to the requirements under Section 611 of the Manual, TSX requires specific, prescribed disclosure whenever security holder approval is required in connection with transactions involving the issuance of securities such as private placements and acquisitions. The disclosure requirements for such security holder approval are set out in the Staff Notice, an extract of which is attached as **Appendix B**. The disclosure requirements include a description of the specific terms of the transaction and the maximum number of securities issuable pursuant to the transaction both as an absolute number and the percentage such number represents of the listed issuer's outstanding number of securities (pre-transaction), on a non-diluted basis. In addition, security holders must approve the maximum number of securities issuable in connection with the transaction. Listed issuers are not permitted to exceed the maximum number of securities approved for issuance without obtaining further security holder approval.

Although listed issuers may request security holder approval for any specified fixed number of securities, issuers generally will not request approval for more securities than the number of securities contemplated by the publicly announced transaction. In the context of an unsolicited offer, a request for the approval of an excess number of securities will signal that the bidder is willing to increase the share consideration under the bid which is generally undesirable from a tactical perspective.

Given the passage of time, TSX's general experience in reviewing acquisitions of public companies and the changes to the take-over bid regime adopted by the Canadian Securities Administrators ("**CSA**") in May 2016 (see National Instrument 62-104 *Take Over Bids and Issuer Bids* ("**NI 62-104**")), TSX is proposing to amend the Staff Notice to provide additional flexibility to listed issuers once security holder approval has been obtained.

The Amendments

The Amendments provide additional flexibility to listed issuers that have obtained security holder approval under Section 611(c) for the acquisition of widely held securities of a public company. Specifically, the Amendments allow issuers to increase the number of securities issuable pursuant to the transaction beyond the amount originally approved by its security holders up to an additional 25% of the number of securities originally approved by security holders of the listed issuer without obtaining further security holder approval.

For example:

Total number of issued and outstanding shares of issuer	10,000,000
Total number of shares approved by shareholders to be issued in connection with transaction (approval required where dilution exceeds 25% of the issued and outstanding shares)	3,000,000 (30% of 10,000,000)
Maximum number of additional shares issuable without obtaining further shareholder approval (no approval required for increase in amount of shares issuable up to 25% of the number of shares originally approved by shareholders)	750,000 (25% of 3,000,000)
Total number of shares permitted to be issued in connection with the transaction	3,750,000 (3,000,000 + 750,000)

The Amendments are limited in scope; the additional securities must be issuable to target security holders pursuant to an increase in the consideration under the transaction and cannot be issuable under any other circumstance.

Pursuant to the Amendments, listed issuers would not be required to disclose their intention with respect to an additional issuance of securities beyond the number originally approved by security holders for the transaction. Instead, the Amendments would require additional disclosure by the listed issuer stating that TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders for the transaction. Accordingly, listed issuers would be required to disclose the following in the materials provided for security holder approval:

"TSX will generally not require further security holder approval for the issuance of up to an additional [X] securities, such number being 25% of the number of securities approved by security holders for the transaction."

TSX believes that the inclusion of a mandatory standard statement in the listed issuer's disclosure does not put the listed issuer at a significant disadvantage in the acquisition process as it does not reveal to the target or others the listed issuer's willingness or intention to increase the share consideration being offered in the transaction. In addition, given the disclosure required, TSX believes that the security holders of the listed issuer will be provided with sufficient information to make a reasonably informed decision and can vote accordingly.

The full text of the Amendments is attached as **Appendix C** and a blacklined version of the Amendments is attached as **Appendix D**.

Rationale

At the time of the public consultations in 2007 and 2009, in opposition of the implementation of the security holder approval requirement, the following concerns were raised with TSX:

1. *Heightened Execution Risk* – The added risk associated with another condition (i.e. security holder approval) would increase execution risk and break fees, adversely affecting the economics of the deal.

2. *Tactical Disadvantage* – The requirement to obtain security holder approval is a tactical disadvantage in a competitive situation and would negatively stifle TSX listed issuers' global competitiveness. Specific security holder approval also makes it more difficult to vary an offer if more share consideration was necessary to compete with another offer.

These concerns persisted following the implementation of the security holder approval requirements and increasing challenges and burdens for Canadian public companies competing globally. We also considered the CSA initiatives to reduce regulatory burdens for non-investment fund reporting issuers. Finally, we considered the impact of the changes to the takeover bid regime under NI 62-104, including:

1. The minimum 105 day initial deposit period (instead of 35 days under the previous regime); and

2. The minimum tender requirement of at least 50% of the outstanding securities (instead of no minimum tender requirement under the previous regime).

In the context of an unsolicited offer, a bidder will generally have a longer exposure period given the increased minimum initial deposit period. In addition, the bidder must obtain a deposit of at least 50% of the voting securities it does not already own. These changes may expose a bidder offering its own securities to fluctuations tied to commodity prices, volatility in the target's securities, general volatility in the market place, as well as changes in the target's business and other general environmental changes.

The changes may provide additional opportunities for another party to make a competing offer. The initial bidder may have difficulty reacting to a competing offer where security holder approval has already been sought or obtained. Based on the current TSX practices, the bidder would need to amend its information circular if security holder approval had not yet been obtained or if security holder approval had already been obtained, a subsequent security holder vote would be required for any additional dilution.

By way of background, there have been 108 hostile transactions in Canada since 2002. 85 (79%) of these transactions resulted in a change of control, of which initial hostile bidders were successful in 54 (50%) of these transactions. In 91% of these transactions, the consideration was increased by 25% on average and 15% by median from the initial offer. White knights were successful in 31 (29%) of these transactions and offered a premium to the initial hostile bid of 29% on average and 19% by median. The average premium was 66% to the pre-announcement price. The median premium was 43% to the pre-announcement price. 23 (21%) of the total number of hostile transaction were not successful and the target remained independent.

TSX is re-considering the requirements and practices for security holder approval for take-over bids, as well as plans of arrangement and amalgamations due to similar timing issues. In addition, a board's fiduciary obligations apply to transactions beyond take-over bids in considering superior proposals that may be made prior to completion of a transaction. TSX is proposing the Amendments to provide flexibility for all of these transactions regardless of the form they may take.

Provided that security holder approval has been obtained, the Amendments would allow the listed issuer to compete with superior proposals. Overall, providing additional flexibility to allow listed issuers to compete with other parties by increasing security consideration within certain limits should strike an appropriate balance. Listed issuers requiring additional flexibility will continue to be able to seek security holder approval for the issuance of any fixed number of securities.

Alternatives Considered

TSX considered the following alternatives to the Amendments:

1. General Security Holder Approval

TSX considered continuing to require the prescribed disclosure for security holder approval pursuant to the Staff Notice while permitting the approval sought from security holders to be more general in nature, thereafter providing the board of directors with the ability to vary the consideration fully at its discretion. As noted above, the current TSX practice is to require approval of a specific number of securities to be made issuable pursuant to a transaction and generally, listed issuers are prohibited from making issuable any additional securities beyond the maximum number of securities that security holders have specifically approved.

Under this alternative, TSX would continue to require disclosure based on the announced terms of the transaction with a reasonable estimate of the maximum number of securities issuable.

Overall, TSX felt that this alternative did not provide sufficient information for security holders to make a reasonably informed decision and that providing unlimited discretion to the listed issuer's board of directors was too significant a departure from TSX's general approach to security holder approval.

2. Maintain Current Requirements

TSX considered continuing to maintain the current requirements for disclosure and security holder approval.

TSX understands that security holder approval of a specific number of securities to be issued for any transaction is required by both the New York Stock Exchange and NASDAQ. However, since the framework for tender offers in the US is significantly different from the Canadian requirements, TSX believes that a comparison would not be directly relevant or meaningful. The US exchanges, however, provide broader relief provisions for issuers to comply with home country practices as compared to TSX's interlisted relief.

Given the passage of time, our experience with acquisitions of public companies, practical considerations with calling another securityholder meeting and the changes in the take-over bid regime, all as described above, TSX felt that some additional flexibility was warranted and reasonable provided that there were limitations associated with the flexibility.

Other Exchange Requirements

TSX reviewed other published exchange requirements that generally apply to issuers listed on those exchanges. This review included the following exchanges: Alternative Investment Market ("AIM"), American Stock Exchange ("AMEX"), Australian Securities Exchange ("ASX"), Johannesburg Stock Exchange ("JSE"), London Stock Exchange ("LSE"), NASDAQ National Market ("NASDAQ"), New York Stock Exchange ("NYSE"), Stock Exchange of Hong Kong ("HKSE") and TSX Venture Exchange ("TSXV"). These exchanges were selected because of geographical proximity, the number of interlisted issuers and/or the similar nature of listed issuers.

Notwithstanding that the other exchanges reviewed did have not have published guidance with respect to their practices regarding the issuance of any excess securities in connection with public company acquisitions, TSX is proposing the Amendments given the size and sectors of our listed issuers, the global competition for target companies and assets, and the Canadian take-over bid regime.

The following is a summary overview of other exchange requirements:

Exchange	Requirement
AIM	No requirement for security holder approval for arm's length acquisitions, other than in connection with reverse takeovers. (See sections 12 and 14 of the AIM Rules for Companies) However, corporate laws that apply to the issuer must be followed, many of which in European countries require security holder approval for significant dilution.
NYSE American (formerly, AMEX)	Security holder approval is required for the issuance or potential issuance of common stock that could result in an increase in outstanding common shares of 20% or more. (See Section 712(b) of the NYSE American LLC Company Guide)
ASX	Security holder approval is required for issuances of equity securities resulting in more than 15% dilution, but there is an exemption for issuances under a takeover bid or under a merger by way of scheme of arrangement, any issuances to fund the cash consideration payable under a takeover bid of under a merger by way of scheme of arrangement completed in accordance with the Australian Corporations Act. Eligible entities may also seek shareholder approval by special resolution at an annual general meeting to have the additional capacity to issue equity securities. (See Sections 7.1, 7.1A, 7.1B, and 7.2 of ASX Listing Rules)
JSE	Security holder approval is required for a transaction with 30% or more dilution (measuring market capitalization, equity dilution and cash consideration). (See Sections 9.5, 9.6 and 9.20 of the JSE Limited Listing Requirements)
LSE	Security holder approval is required for a transaction with 25% or more dilution. (See Sections 10.2 and 10.5 of the London Stock Exchange's Listing Rules)
NASDAQ	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance, or where the number of stock will be upon issuance equal to or in excess of 20% of the number of stock outstanding before the issuance. (See Section 5635 of the Nasdaq Marketplace Rules)
NYSE	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance, or where the number of stock will be upon issuance equal to or in excess of 20% of the number of stock outstanding before the issuance. (See Section 312.03 of the NYSE Listed Company Manual)
HKSE	Security holder approval is required for a transaction or series of transactions with 25% or more dilution (measuring assets, profits, revenue, consideration and equity capital ratios). (See Sections 14.06, 14.07, 14.33 and 14.40 of the HKEX Main Board Listing Rules)
TSX	Security holder approval is required for acquisitions resulting in more than 25% dilution. (See Section 611 of the TSX Company Manual)

Exchange	Requirement
TSX Venture	No requirement for security holder approval for arm's length acquisitions. Shareholder approval generally required for any transaction which results in the creation of a new control person, any transaction where the number of securities issued or issuable to non-arm's length parties that exceeds 10% of the number of outstanding securities (on a non-diluted basis) prior to the closing date of the transaction, and a reviewable disposition. (See Section 5.14 of Policy 5.3 – Acquisitions and Dispositions of Non-Cash Assets of the TSX Venture Exchange Corporate Finance Manual)

Questions

In responding to any of the questions below, please explain your response.

1. Are the Amendments an appropriate balance in terms of providing flexibility to compete with superior proposals and security holder approval? If not, why not?

2. Are either of the alternatives more appropriate? If so, why?

3. If TSX varies the disclosure and approval requirements as proposed in the Amendments, should the amended more flexible requirements be limited to formal take-over bids subject to the full 105 day initial deposit period? Should the relief be available to friendly deals where the initial deposit period is 35 days? Should it be available for all public company acquisitions (i.e. plans of arrangement, amalgamations, etc.)?

4. Should TSX consider expanding the Amendments to other security holder approval requirements under TSX rules, such as private placements and acquisitions more generally (i.e. asset acquisitions and private company acquisitions)? If so, why?

5. Is the additional 25% limit based on the number of securities approved for issuance an appropriate threshold? Is there a lower or higher number that would be more appropriate? Is it appropriate to base the limitation on the number of securities subject to security holder approval?

APPENDIX A

SECTION 611(C) OF THE TSX COMPANY MANUAL

Sec. 611. Acquisitions

[…]

(c) Security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

[…]

APPENDIX B

CURRENT VERSION OF STAFF NOTICE EXTRACT

[…]

Security Holder Approval — Disclosure Requirements

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under Subsection 501(c) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under Subsection 613(d) of the Manual.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under Subsection 604(d) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under Subsection 604(e) of the Manual; or iii) using the 90% control block exemption under Subsection 604(f) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.

2. If security approval is required under Subsection 501(c) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under Subsection 501(c)(ii).

3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).

4. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

5. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

6. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

7. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as a absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

8. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

9. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

10. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

11. If the financial hardship exemption in Subsection 604(e) of the Manual is being relied on, the press release must include the specific disclosure that is required under Subsections 604(e) (i), (ii), (iii) and (iv) of the Manual.

12. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with Section 604(c) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

[…]

APPENDIX C
BLACKLINE VERSION OF AMENDED STAFF NOTICE EXTRACT

Staff Notice 2018-000•

[…]

This Staff Notice replaces TSX Staff Notice 2012-0003, which is repealed in its entirety. Other than the section entitled "Security Holder Approval – Disclosure Requirement & Other Guidance", all sections of this Staff Notice remain unchanged from TSX Staff Notice 2012-0003. The Security Holder Approval – Disclosure Requirements & Other Guidance has been amended as set forth in the Consultation Paper on Public Company Acquisitions published on •, 2018.

[…]

Security Holder Approval — Disclosure Requirements & Other Guidance

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under Subsection 501(c) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under Subsection 613(d) of the Manual.

If security holder approval is required under Section 611(c) for the acquisition of widely held securities of a reporting issuer (or equivalent) pursuant to a formal take-over bid, plan of arrangement, amalgamation or similar transaction ("Public Company Acquisition"), TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders, provided that the securities are issued or made issuable to target security holders pursuant to an increase in the consideration under the transaction.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under Subsection 604(d) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under Subsection 604(e) of the Manual; or iii) using the 90% control block exemption under Subsection 604(f) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.

2. If security holder approval is required under Subsection 501(c) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under Subsection 501(c)(ii).

3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).

4. If security holder approval is required under Section 611(c) for a Public Company Acquisition, the following must be included in the issuer's disclosure document:

"TSX will generally not require further security holder approval for the issuance of up to an additional [X] securities, such number being 25% of the number of securities approved by security holders for the transaction."

5. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

~~5.~~6. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

~~6.~~7. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

~~7.~~8. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as an absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

~~8.~~9. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

~~9.~~10. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

~~10.~~11. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

~~11.~~12. If the financial hardship exemption in Subsection 604(e) of the Manual is being relied on, the press release must include the specific disclosure that is required under Subsections 604(e) (i), (ii), (iii) and (iv) of the Manual.

~~12.~~13. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with Section 604(c) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

[…]

APPENDIX D

CLEAN VERSION OF AMENDED STAFF NOTICE

Staff Notice 2018-000•

[date]

Section 604
Subsection 501 (c)
Security Holder Approval:
Disclosure requirements

Section 355
Stock Symbol Reservations

STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS

Toronto Stock Exchange ("TSX") is providing guidance with respect to: (i) disclosure and other related requirements where a transaction is subject to security holder approval pursuant to the *TSX Company Manual* (the "Manual"); and (ii) procedures relating to stock symbol reservations.

This Staff Notice replaces TSX Staff Notice 2012-0003, which is repealed in its entirety. Other than the section entitled "Security Holder Approval – Disclosure Requirement & Other Guidance", all sections of this Staff Notice remain unchanged from TSX Staff Notice 2012-0003. The Security Holder Approval – Disclosure Requirements & Other Guidance has been amended as set forth in the Consultation Paper on Public Company Acquisitions published on •, 2018.

Security Holder Approval — Disclosure Requirements & Other Guidance

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under Subsection 501(c) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under Subsection 613(d) of the Manual.

If security holder approval is required under Section 611(c) for the acquisition of widely held securities of a reporting issuer (or equivalent) pursuant to a formal take-over bid, plan of arrangement, amalgamation or similar transaction ("Public Company Acquisition"), TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders, provided that the securities are issued or made issuable to target security holders pursuant to an increase in the consideration under the transaction.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under Subsection 604(d) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under Subsection 604(e) of the Manual; or iii) using the 90% control block exemption under Subsection 604(f) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.

2. If security holder approval is required under Subsection 501(c) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under Subsection 501(c)(ii).

3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).

4. If security holder approval is required under Section 611(c) for a Public Company Acquisition, the following must be included in the issuer's disclosure document:

"TSX will generally not require further security holder approval for the issuance of up to an additional [x] [securities], such number being 25% of the number of securities approved by security holders for the transaction."

5. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

6. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

7. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

8. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as an absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

9. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

10. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

11. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

12. If the financial hardship exemption in Subsection 604(e) of the Manual is being relied on, the press release must include the specific disclosure that is required under Subsections 604(e) (i), (ii), (iii) and (iv) of the Manual.

13. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with Section 604(c) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

Stock Symbol Reservations

Applicants and listed issuers may request a specific stock symbol when applying to list or in the context of a name change, corporate reorganization or similar transaction. Applicants and listed issuers must provide a request in writing to the applicable listing manager and such request should include: i) up to three symbols (ranked in order of preference) composed of not more than three letters of the alphabet; and ii) the name of the issuer.

Only one symbol may be reserved per issuer. TSX will confirm which symbol has been reserved for the issuer. If none of the symbols requested are available, the applicant or listed issuer will be provided with a list of available symbols in the requested alphabetical range. Applicants and listed issuers must promptly confirm their choice in order to ensure that the symbol does not become unavailable. The chosen symbol will be allocated to the applicant or listed issuer, assuming that it is still available at the time the choice is provided to TSX. Upon confirmation from TSX of the allocated symbol, the symbol will remain reserved for an initial period of 90 days, and upon request in writing by the issuer, such period may be extended for up to two additional 90-day periods, for an aggregate maximum period of 270 days. The issuer is responsible for requesting an extension in writing before the end of any reservation period. If a reservation is not extended by the issuer by the end of any reservation period, the reserved symbol will automatically be released and may not be reserved by or for the same issuer for a period of 10 days.

At any time, ETF providers, fund families and other entities issuing multiple securities (each considered a separate issuer) may reserve up to 15 symbols for the initial reservation period of 90 days and up to 10 symbols for any second renewal of a reservation beyond the 180 days for an additional 90-day period, for an aggregate maximum period of 270 days.

Currently reserved symbols which have been reserved for 270 days or more as of October 1, 2012 may be extended for no more than an additional 180 days from October 1, 2012. Currently reserved symbols which have been reserved for less than 270 days as of October 1, 2012 may be extended for no more than an additional 270 days from October 1, 2012.

If you have any questions about this Staff Notice, please contact your listings manager.

13.3 Clearing Agencies

13.3.1 CDS – Technical Amendments to CDS Procedures – Housekeeping Changes – Notice of Effective Date

NOTICE OF EFFECTIVE DATE

TECHNICAL AMENDMENTS TO CDS PROCEDURES – HOUSEKEEPING CHANGES

MAY 2018

The Ontario Securities Commission is publishing Notice of Effective Date – Technical Amendments to CDS Procedures – Housekeeping Changes – May 2018. The CDS procedure amendments were reviewed and non-disapproved by CDS's strategic development review committee (SDRC) on May 24, 2018.

A copy of the CDS Notice is on our website http://www.osc.gov.on.ca

13.3.2 CDS – Material Amendments to CDS Rules Related to the Elective System Operating Cap for Extenders of Credit – Notice of Commission Approval

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES RELATED TO THE ELECTIVE SYSTEM OPERATING CAP FOR EXTENDERS OF CREDIT

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on June 08, 2018 Material Amendments to CDS Rules Related to the Elective System Operating Cap for Extenders of Credit.

A copy of the CDS notice was published for comment on November 23, 2017 on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

13.3.3 CDS – Proposed Amendments to the CDS Fee Schedule – New York Link/DTC Direct Link Services – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

PROPOSED AMENDMENTS TO THE CDS FEE SCHEDULE – NEW YORK LINK/DTC DIRECT LINK SERVICES

The Ontario Securities Commission is publishing for a 30 day public comment period proposed amendments to the CDS fee schedule related to the Depository Trust and Clearing Corporation (DTCC) Mark-up and New York and DTC Direct Link Liquidity Services Premium.

The comment period ends on July 14, 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 Peregrine 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, with no 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).

June 8, 2018

McMillan LLP
Brookfield Place
181 Bay Street
Suite 4400
Toronto, ON M5J 2T3

Attention: Shahen Mirakian

Dear Sirs/Mesdames:

Re: Peregrine Investment Management Inc.

Application under Clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as Trustee

Application No. 2018/0209

Further to your application dated April 23, 2018 (the **Application**) filed on behalf of Peregrine Investment Management Inc. (the **Applicant**), and based on the facts set out in the Application and the representation by the Applicant that the assets of Peregrine Investment Management Trust 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 Peregrine Investment Management Trust 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,

"William Furlong"
Commissioner
Ontario Securities Commission

"Janet Leiper"
Commissioner
Ontario Securities Commission

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