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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 Notice of Correction – CSA Staff Notice 45-308 (Revised) Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions

**CSA Staff Notice 45-308 (Revised) Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions was published at (2018), 41 OSCB 5811. A title was incorrectly added on page 5825 following Question 14 in Annex 3 Frequently Asked Questions. Question 14 should have read:**

#### 14. The type of security distributed by the issuer is not on the list of security codes in Instruction 12 of the report. What security code should the filer provide in Item 7(d) of the report?

The list of security codes in Instruction 12 of the report captures most types of securities distributed under a prospectus exemption triggering the filing of a report in Canada. If the security being distributed is not listed, enter “OTH” (for other) as the security code in Item 7(d) and include a description of the security in the box provided. Examples are provided below.

Security code			CUSIP number (if applicable)	Description of security
N	O	T	555555555	6.26% medium term notes
C	E	R	555555556	Commercial mortgage pass-through certificates
U	B	S		Units comprised of one common share and one-half of one non-transferrable share purchase warrant
O	T	H		Managed joint venture interest

**[Editor’s Note: The incorrect title was deleted here.]**

#### 14.1 When should the “DCT” security code be used?

Businesses that distribute digital coins or tokens, either directly or indirectly through a convertible or exercisable feature in any instrument, should first consider whether they are distributing securities. One way of determining whether they are distributing securities is to consider the four-prong investment contract test and the guidance outlined in CSA Staff Notice 46-307 *Cryptocurrency Offerings (CSA Staff Notice 46-307)* and CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens (CSA Staff Notice 46-308)*. CSA Staff Notice 46-307 indicates that many initial coin offerings (ICOs) and initial token offerings (ITOs) involve distributions of securities, including because they are investment contracts and CSA Staff Notice 46-308 provides examples of situations and their possible implications on one or more of the elements of an investment contract. Filers should consider CSA Staff Notice 46-307, CSA Staff Notice 46-308 and any other relevant guidance published by the CSA.

**1.1.2 OSC Staff Notice 11-783 Encouraging Retirement Planning through Behavioural Insights**

OSC Staff Notice 11-783 *Encouraging Retirement Planning through Behavioural Insights* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

# OSC Staff Notice 11-783

## *Encouraging Retirement Planning through Behavioural Insights*

**July 27, 2018**

### **Introduction**

As part of the Ontario Securities Commission's (OSC or we) strategy and action plan to respond to the needs and priorities of Ontario seniors, described in OSC Staff Notice 11-779, *Seniors Strategy* (the Seniors Strategy), we are publishing *Encouraging Retirement Planning through Behavioural Insights*, a research report that identifies behaviourally informed ways that government, regulators, employers, and financial institutions can encourage retirement planning. The report, which is appended to this Notice, also includes the results of a randomized experiment that evaluated several of the approaches proposed in the report.

### **Purpose**

As discussed in the Seniors Strategy, the OSC's vision is a stronger and more secure financial future for all Ontario seniors. Promoting retirement planning contributes to this vision: It can provide individuals with greater certainty and peace of mind as to their financial lives and lead to higher levels of wealth accumulation.<sup>1</sup>

Prior OSC research revealed that many Ontarians are not planning for retirement: Its 2017 *Investing As We Age* study found that 54 per cent of pre-retired Ontarians aged 45 or older have no retirement plan, and that only 14 per cent have a formal, written plan. Understanding the barriers preventing more Ontarians from planning for retirement will help us better serve the public interest and work towards the vision described in the Seniors Strategy. It also reflects our commitment, outlined in our 2018-19 Statement of Priorities,<sup>2</sup> to:

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<sup>1</sup> Annamaria Lusardi, *Planning for Retirement: The Importance of Financial Literacy*, 19(3) Public Policy and Aging Report 7, at p. 9, <http://www.dartmouth.edu/~alusardi/Papers/PPAR09.pdf>.

<sup>2</sup> OSC Notice 11-781, *Notice of Statement of Priorities for Financial Year to End March 31, 2019* (2018), 41 OSCB 5425.

- conducting and publishing research that provides insights into retail investor knowledge, attitudes and behaviours to design better policies and programs as part of our evidence-based approach;
- developing tailored solutions to reach the broad range of investor groups, including seniors, millennials and new Canadians; and
- expanding and modernizing our efforts in investor engagement, research, education and outreach to help investors build their knowledge, understanding and confidence in planning for their investment goals and retirement finances.

## **Background**

Behavioural insights examine how people are often neither deliberate nor rational in their decisions in the way that traditional models, strategies and policies assume. Applying behavioural insights to the OSC’s activities is an area of focus for the OSC Investor Office.<sup>3</sup>

Accordingly, the OSC Investor Office partnered with the Behavioural Insights Team (BIT) to engage in research aimed at identifying the barriers that Ontarians experience in retirement planning and the opportunities that exist to implement simple, low-cost interventions that can help mitigate these barriers. In addition, a randomized experiment testing several of the tactics proposed in the report was conducted with support from partners at the Government of Ontario (including its Behavioural Insights Unit) and Government of Canada. Our objective in engaging in this type of research is to provide stakeholders with behaviourally-informed approaches to designing programs, products, and services to respond to the needs of older Ontarians.

BIT is a social purpose company part-owned by the UK Government. Initially formed as the “nudge unit” within the UK Government, BIT was the world’s first government institution dedicated to the application of behavioural sciences.

## **Substance**

### ***Proposed Initiatives and Tactics***

The findings of the research are described in greater depth in the full *Encouraging Retirement Planning through Behavioural Insights* report. The report proposes 30 different initiatives and tactics that could be implemented by a variety of stakeholders to encourage retirement planning. The report organizes these interventions around four primary challenges people face in moving from having the intention to create a retirement plan to the action of making a plan: (1) it’s hard to start, (2) it’s easy to put

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<sup>3</sup> See, e.g., OSC Staff Notice 11-778, *Behavioural Insights: Key Concepts, Applications and Regulatory Considerations* (2017), 40 OSCB 2773; OSC Staff Notice 11-782, *Getting Started: Human-Centred Solutions to Engage Ontario Millennials in Investing* (2018), 41 OSCB 5567.



off, (3) it's easy to get overwhelmed and drop out, and (4) it's hard to get the right advice.

### ***Results from the Experiment***

Several of the potential approaches identified in the report were tested using a randomized control trial (RCT), the results of which are discussed in the report. An RCT introduces an "intervention" (e.g., a message encouraging individuals to plan for retirement) into the real world to test its effects on individuals' behaviour.<sup>4</sup>

In this RCT, five different messages prompting people to use an online retirement income calculator were included in a weekly newsletter emailed to over 70,000 Ontario Public Service employees. Each employee received one of these five messages; the experiment tested how effective each of the messages was in prompting employees to (1) access the calculator and (2) begin completing the calculator.

The experiment found that helping people imagine their social selves in retirement by evoking time spent with friends and family can be highly effective. It also found that messages focused on the simplicity of retirement planning can be effective in motivating individuals to start the retirement planning process.

### ***Looking Forward***

The research project generated valuable evidence about what messages resonate most with people and motivate them to engage in the retirement planning process. By enhancing traditional approaches to retirement planning with behavioural insights, the OSC learned more about how different types of retirement framing help people think about the future and take action.

The OSC encourages all stakeholders to identify opportunities to test the potential approaches to behaviour change identified in the report, as well as other interventions informed by the findings of the report and behavioural insights more broadly. The OSC will integrate the research findings into its policymaking activities and education and outreach programs, and continue collaborating with stakeholders to test and develop interventions that address the barriers identified in the research.

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<sup>4</sup> In an RCT, some participants will experience the intervention, with a "control group" experiencing a *status quo* control condition. Because an RCT includes a control group, it is possible to determine whether it is the intervention that achieves a desired effect (e.g., greater likelihood of planning for retirement) and not some other factor.

## Questions

If you have any questions or comments about this Notice or the report, please contact:

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# Encouraging Retirement Planning through Behavioural Insights

Prepared by the Behavioural Insights Team  
on behalf of the Ontario Securities Commission Investor Office

July 27, 2018



ONTARIO  
SECURITIES  
COMMISSION

INVESTOR OFFICE

THE  
BEHAVIOURAL  
INSIGHTS TEAM 

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## Introduction

The Investor Office of the Ontario Securities Commission (OSC) leads the OSC's efforts in investor engagement, education, outreach, and research, and brings the investor perspective to its policymaking activities. The OSC Investor Office is committed to developing evidence-based policy and programs, identifying opportunities to apply behavioural insights to policy creation, and engaging with Ontarians to better understand their needs. Improving the financial security of older Ontarians is an OSC priority, with the Investor Office recently leading the development of the OSC Seniors Strategy.<sup>1</sup>

As discussed in the OSC Seniors Strategy, improving the financial security of older Ontarians is a complex goal, requiring collaboration and information-sharing among government and regulatory bodies, financial institutions, employers, and other organizations. In addition to the important role played by organizations, there are steps that Ontarians themselves can take to improve their financial security, like saving more or developing a financial plan for their retirement. Even though retirement planning can lead to higher levels of wealth accumulation<sup>2</sup> and there is an appetite for information about retirement, 54% of pre-retired Ontarians aged 45 or older have no retirement plan, with only 14% having a formal, written plan.<sup>3</sup>

This research report, prepared by the Behavioural Insights Team (BIT) in collaboration with the Investor Office, identifies ways that government, regulators, employers, and financial institutions can promote retirement planning among Ontarians. It draws on research from behavioural science to present a picture of the barriers that Ontarians experience in retirement planning and the opportunities that exist to implement simple, low-cost interventions that can help overcome these barriers. This focus on low-cost interventions informed by behavioural science supports the Investor Office's focus on investor education, outreach, and evidence-based policy development. Our research focuses on retirement planning because of its potential value to Ontarians, and because there is substantially less existing behavioural science research on retirement planning than other related topics (e.g. increasing savings, pension enrolment).

This report also includes the results of a randomized experiment that BIT conducted with support from OSC and partners at the Government of Ontario and Government of Canada. The experiment tested several of the ideas proposed in this report, and the results offer a powerful demonstration of the role that behavioural science can play in promoting retirement planning. See Appendix B for a full description of the experiment and the results.

Behavioural science offers policymakers a more realistic understanding of how people make decisions and behave. It reveals how human psychology can limit people's ability to make choices that are in their own best interest. While we believe that most people want to make a retirement plan, a number of barriers frequently explored in behavioural science research and "nudge theory" can get in the way: planning requires that people focus on the future, it offers mostly intangible benefits in the present, it can seem (and is) complicated, assistance can be hard to come by for some, and the retirement planning process is full of small moments of friction. These seemingly small roadblocks can add up and have a paralyzing effect. This report investigates these barriers and identifies promising, evidence-based approaches for addressing them to help people follow through on their intention to make a financial plan for their retirement.

This report provides recommendations that should be relevant to a variety of stakeholders, and potentially helpful to a broad cross-section of Ontarians. The barriers to retirement planning that we address are experienced—to greater or lesser degrees—across gender, ethnicity and socio-economic status. However, we believe this work will be most effective in supporting the needs of middle-income Ontarians. Higher income people tend to have access to specialized financial experts who can assist with retirement planning, reducing the barriers they experience. For people with very limited incomes (e.g. below the low-income cut-off), other financial concerns are likely to—and perhaps should—take precedence over retirement planning. The research participants we spoke with who had or were currently experiencing significant financial challenges indicated that making ends meet each month or developing a small emergency savings fund was as far as their resources could possibly stretch, reinforcing this point. These individuals may also achieve a higher degree of income replacement from government pensions and other programs.<sup>4</sup>

Our research findings and recommendations were developed on the basis of a literature review, BIT’s relevant experience, and qualitative research with pre-retirement Ontarians and financial advisors. The literature review was the primary input—we’ve drawn heavily from the rich behavioural science literature on saving, making decisions about the future, and planning. To supplement our literature review, we conducted qualitative interviews with several pre-retired Ontarians aged 45 or older and two financial advisors. The interviews were conducted to add nuance to our understanding of how Ontarians think about retirement and to illuminate some of the challenges they face. We did not draw conclusions or make recommendations based on these interviews, given the limited scale, but they were invaluable in pointing to new research questions and opportunities. For example, the interviews suggested that the term “retirement plan” can be understood in very different ways. In this report, a “retirement plan” is defined as a description of one’s estimated expenses post-retirement and how one will pay for them (e.g. through pensions, savings, or part-time employment), but some of the interviewees understood a “retirement plan” as referring to a pension plan. We sought to address the considerations raised in qualitative interviews with further research wherever possible, and they also helped us identify compelling areas for further research, which we note in the conclusion.

This report is organized around the primary challenges people experience in moving from the intention to create a retirement plan to actually having a plan: *it’s hard to start, it’s easy to put off, it’s easy to get overwhelmed and drop out, and it’s hard to get the right advice for me.* In each section, we describe the barriers people experience and the opportunities for government and regulatory bodies, employers, financial institutions and practitioners, and others to help remove those barriers through simple, low-cost interventions.

## It’s hard to start

Starting the retirement planning process is perhaps the most challenging part. Inertia is a powerful force in people’s lives. We can all understand the draw of putting off a task, particularly one that might be time consuming, emotionally or intellectually difficult, and for which there’s no impending deadline. On the other hand, if we can overcome this inertia and take an initial step in the retirement planning process, it will generate momentum for completing it.

There are two key barriers people need to overcome to get started: 1) the default option is not to have a plan, and 2) making a plan is perceived to be complex. The following sections describe these barriers and promising or proven interventions to address them.

### ***We go with the flow (i.e. the default option)***

Default options—the choices people make when they do not actively choose at all—are incredibly powerful. For example, far more people are organ donors in countries where people need to opt-out than in countries where people need to opt-in.<sup>5</sup> There are myriad other examples, but even so, the power of defaults is generally underestimated.<sup>6</sup> When it comes to retirement planning, the default option is not to make a plan at all, and we believe this is a significant factor limiting the extent of retirement planning in Ontario and other jurisdictions.

Our research uncovered two sets of potential opportunities to address this significant challenge. First, find ways to make planning for retirement the default option. Pension plan administrators have had great success in boosting pension plan enrollment by switching from an opt-in model to an opt-out model so that when people start a new job they have to choose to unenroll rather than choose to enroll, thereby harnessing inertia for their own good.<sup>7</sup> One company saw the enrollment rate of new employees in their 401(k) plan more than double, just by switching the default.<sup>8</sup> Finding a way to mirror this change for retirement planning may have striking effects. Second, take away the default option entirely. In particular, requiring people to make an “active choice” rather than giving them a default can be effective, even where one of the choices is to do nothing.<sup>9</sup> Research on the benefits of active choice framing show that it is particularly effective in situations where people tend to procrastinate and where different people have different preferences, meaning that no single default will work for everyone.<sup>10</sup> Both of these conditions are present in retirement planning; it’s something people tend to put off and there’s no good “one-size-fits-all” plan to recommend.

The table below summarizes these barriers and opportunities and suggests evidence-based interventions to address them.

#### ***Barrier:***

**People tend to go with the default option, and the default is not to plan for retirement.**

#### ***Opportunity 1:***

**Make planning for retirement the default option.**

#### ***Intervention 1A:***

Employers could **integrate retirement planning into their onboarding process for new employees**. For example, employers could ask new employees to draft a retirement plan, providing them with a standardized tool or template. Even better, employers could also pre-book an appointment with a qualified retirement planner to review that plan. This approach would make the development of a financial plan for retirement feel like a typical, default activity. Employers might benefit from employees feeling like their company is invested in their long-term financial wellbeing.

## Opportunity 2:

**Eliminate or mitigate the impact of the default option by requiring people to actively choose to make a retirement plan or not to.**

## Intervention 2A:

Organizations seeking to encourage retirement planning could prompt people to make a retirement plan through “active choice” framing. This could involve a communication that would present two options: “**Yes, I will create a retirement plan**” or “**No, I don’t want to help prepare for my retirement by making a retirement plan.**” The Behavioural Insights Team used this framing in Scottsdale, Arizona to encourage donations to “Scottsdale Cares” and found it increased donation rates by 125% (Fig. 1).

Similar to intervention 1A, employers could also pre-book a meeting for their current employees with a financial advisor during the workday. Employees would then have to choose to turn down the meeting rather than choose to schedule one themselves. This type of intervention may be particularly effective for people as they get closer to retirement and the consequences of their choice become more salient.

Would you like to join your neighbors and donate to Scottsdale Cares?



Fig. 1: BIT’s Intervention to Encourage Donations to “Scottsdale Cares” in Scottsdale, Arizona.

## We are put off by complexity

Our literature review and qualitative research revealed that retirement planning can be perceived as a complex and lengthy process. These perceptions make the inertia described above even more difficult to overcome. Our natural tendency to procrastinate is deepened when we are presented with something we perceive to be difficult.

To address this challenge, we present two interventions that organizations could implement to reduce the perceived difficulty of the retirement planning process. The first capitalizes on the “head start effect,” which presents a task as being already partially accomplished. This makes people feel like the goal (i.e. completing the task) is closer, leading them to exert more effort.<sup>11</sup> The second explores how to use “chunking,” which refers to presenting information or instructions as a series of small, manageable steps. This helps people conceptualize those tasks more easily.<sup>12</sup> More broadly, presenting the retirement planning process as quicker and simpler may help people first put pen to paper and make a plan.



**Barrier:**

People will avoid making a retirement plan because of the perceived length and complexity of the process.

**Opportunity 3:**

Frame retirement planning in ways that reduce the perceived challenges, making it feel more concrete and attainable.

**Intervention 3A:**

Government, regulatory bodies, or employers could provide people with a template to make a retirement plan that includes information about their pension already filled in. These organizations could then prompt people to *finish* making their retirement plan. The crux of this intervention would be to **make the planning process feel quicker and simpler by providing people with a “head start”** in making their plan.

**Intervention 3B:**

Organizations could prompt people to complete a retirement plan in a way that breaks the retirement planning process down into a series of simpler, smaller “chunks.” **Instead of suggesting that people “make a retirement plan,” ask them to follow 3-4 more concrete, comprehensible steps.** E.g. 1) estimate how much money you’ll need to spend each month when you retire, 2) subtract your government (e.g. CPP) pension, and any workplace pension, 3) use the calculator provided to see how much you’ll need to save and when you might be able to retire.

***We often experience strong, negative emotions when we think about retirement planning***

People may view retirement planning as an emotionally taxing or unpleasant task. Retirement planning involves thinking about eventualities such as failing health and mortality. Retirement planning can also be especially difficult for those who worry that they have not saved enough and who may feel guilt or anxiety about how they will make ends meet. The financial advisors and pre-retired Ontarians we interviewed drove this point home, with one participant noting that looking at her finances would mean that she could no longer hope she had a financial buffer, despite limited savings and a small government pension. Ignorance can be bliss, at least temporarily.

When people are confronted with decisions about the future while in emotionally charged or “hot” states, their decision-making is clouded to an extent they fail to appreciate or account for.<sup>13</sup> Thinking about retirement planning may put some Ontarians into a negative emotional state they wish to avoid, leading them to overlook the value of the activity and put it off.

Organizations that want to encourage retirement planning should avoid highlighting the emotional or negative aspects of the process and should try to prompt people to make a retirement plan when they are in more of a “cold state” (i.e. less prone to deeply felt emotions). For example, inserting retirement planning into a workplace setting, as suggested in the previous section of this report, may be a promising avenue.

### **Barrier:**

The idea of retirement planning can bring on strong negative emotions and people may put it off to avoid those emotions.

### **Opportunity 4:**

Ask people to complete a retirement plan at times when they are less likely to have strong negative emotions about their retirement finances.

### **Intervention 4A:**

Organizations could prompt people to make a retirement plan at times when they're likely to feel more positive about their financial situation (e.g. after receiving a tax refund, a raise or bonus, or a windfall). People may feel more in control and less concerned about their financial future during these moments.

## **It's easy to put off**

Retirement planning is all about the future, which makes it very tempting to put off in the present. First, we don't tend to think about the future all that much. We focus on our immediate concerns and priorities and only rarely step outside of our routine to think about the long term. Second, when we do think about the future, we do not value future outcomes as much as we should. We're willing to forgo significant long-term benefits to save ourselves some short-term costs. Third, even when we do think hard about the future, we tend to be too optimistic. This optimism reduces our perceived need to plan—who needs a plan if things will work out for the best?

### ***We are focused on the present, not the future***

It's advisable to develop a retirement plan well in advance of retiring. People often need time to start saving more or make other changes necessary to achieve their plan. The problem is that humans have a strong inclination to focus on what's urgent, and retirement planning fits squarely into the category of "important, but not urgent." As a result, people put off retirement planning in favour of immediate needs and concerns. This tendency is exacerbated when people are busy. When time is scarce, they "tunnel," doubling down on what's urgent at the expense of other priorities.<sup>14,15</sup>

We recommend testing the use of planning prompts to counter the tendency to put off retirement planning. Planning prompts ask people to define when and how they will complete a task. Putting together a plan helps people think through all of the steps they'll need to complete to achieve a goal, how long each of those steps will take, and the barriers they may need to overcome along the way.<sup>16</sup> As a result, people are more likely to follow through on an action if they've planned for it.<sup>17</sup> For example, get-out-the-vote calls with plan making questions are more than twice as effective as more traditional calls.<sup>18</sup> Some organizations may be able to go further than simply prompting people to plan by helping them build that plan into their schedules. By prompting people to make a plan, or by making a plan for them, we reduce the need for people

to think about the future as an impetus for retirement planning. We bring retirement planning into the present.

Another promising strategy is to capitalize on the “fresh start effect,” encouraging people to plan when they are more likely to be thinking about the future. Events like birthdays, holidays, or the start of a new year can lead people to step back from their day-to-day and consider the bigger picture.<sup>19</sup> People are more likely to change their habits or tackle ambitious goals in these moments. They mark the passage of time and allow people to relegate their bad choices to a time in the past and see a new period of time stretch in front of them ripe for better decisions.<sup>20</sup> Because retirement planning requires people to step back, look at the big picture, and make the choice to engage in a “good” behaviour they haven’t done in the past, it is important to take advantage of the points in time when that behaviour change is more likely. However, institutions are often focused on their own calendars and timelines, and don’t always communicate at the right moments.

The following table summarizes these opportunities and describes how they might be captured in more specific terms:

**Barrier:**

**People tend to ignore the future. They prioritize the urgent over the important, especially when they are busy. As a result, they are likely to put off retirement planning, which does not feel urgent until it is too late.**

**Opportunity 5:**

**Help people follow through with their intention to make a retirement plan by helping them build it into their schedule.**

**Intervention 5A:**

Organizations could provide access to a retirement planning tool and prompt people to make a specific plan for when and how they will use it. For example, have people fill out the following card or email: **“I will make a financial plan for my retirement on [date]. I’ll start by sitting down with [family member/significant other]. I will build and document my plan using [name of planning tool].”**

**Intervention 5B:**

**Employers could put time in their employees’ calendars for the express purpose of making a retirement plan.** They could also break the retirement planning process into several concrete steps and put each step in their employees’ calendars as a separate event, so that it seems less daunting.

**Opportunity 6:**

**Capitalize on moments people think about the future more, and communicate with people at those key points to encourage them to make a retirement plan.**

**Intervention 6A:**

Government, regulatory bodies, financial institutions, or employers could **send people prompts on their birthday** (particularly on “round number” birthdays or the year before these milestones), when they may already be thinking about the future and the passage of time, urging them to use a provided resource to make a retirement plan.

## **Intervention 6B:**

Government, regulatory bodies, or financial institutions could **prompt parents to start thinking about retirement when their kids first start drawing down from their Registered Education Savings Plan**. At this point parents may feel like they have tackled one major savings goal (for their children's education) and may be receptive to financially planning for their next goal and stage of life.

## **We undervalue the future**

When people make a retirement plan, they invest time and effort in the present in exchange for (hopefully) better outcomes in the future. This type of trade-off is common, but often difficult. People struggle to choose healthy food over the less healthy options they crave. They tend to spend now instead of saving for later.<sup>21</sup> In general, when faced with this type of decision, people act as though what happens in the future matters much less than what happens in the present.<sup>22</sup> This fundamental concept in behavioural science is called “present bias”; we discount future outcomes far more than we should. There are two promising ways to combat this challenge and encourage retirement planning: 1) make the future feel less distant so that people discount it less, and 2) emphasize the near-term benefits of retirement planning (or create a near-term incentive).

### **Barrier:**

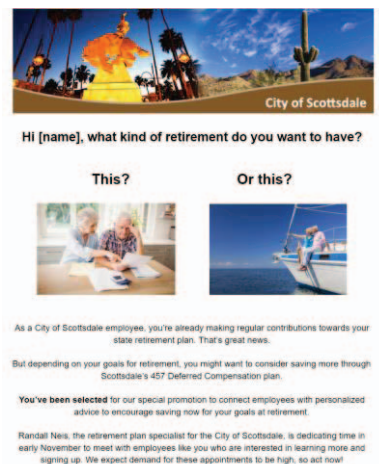
**The primary benefits of retirement planning accrue in the future, but people discount long-term outcomes compared to short-term outcomes.**

### **Opportunity 7:**

**Prompt people to plan for their retirement using methods that make the future seem close or salient.**

### **Intervention 7A:**

Government, regulatory bodies, or employers could send a communication aimed at making retirement feel more real by **including pictures of different ways that someone might be able to spend their retirement** and prompting people to take action for the retirement they want. The Behavioural Insights Team adopted this approach to encourage retirement planning in Scottsdale, Arizona and found a 75% increase in the number of people who signed up for a meeting with a financial advisor as a result of the intervention (Fig. 2).<sup>23</sup>



*Fig. 2: BIT's intervention to encourage use of retirement planning service in Scottsdale, Arizona.*

### ***Intervention 7B:***

Organizations developing retirement planning tools or assisting with retirement planning may wish to send a communication **asking people to picture their future selves**. Questions could include: “picture yourself in retirement, what are you doing? Who are you with?” To make these prompts more impactful, people could also be shown an aged picture of themselves.<sup>24</sup> Alternatively, organizations could ask people to write out a diary style entry depicting a day in retired life. These strategies would help make the future feel more salient and concrete, increasing the proportion of people who complete their retirement plan.

*Refer to Appendix B for results of a randomized experiment testing a similar intervention.*

### ***Intervention 7C:***

Organizations encouraging retirement planning could prompt people to plan with visualizations that help people feel like the future is close at hand. For example, they could **show people what the trajectory of their lives would look like if it took place over the course of 100 days, highlighting the day they’re on now and the day their retirement would start to make retirement feel more immediate**.

### ***Opportunity 8:***

**Prompt people to plan for their retirement by emphasizing the short-term benefits of doing so or by creating a near-term incentive to do so.**

### ***Intervention 8A:***

Government, regulatory bodies, or employers could **highlight the short-term psychological benefits of having a plan in place** in communications encouraging retirement planning. Employing this framing would help people focus on benefits they could receive in the present, like peace of mind, rather than the benefits they could receive in the future and might highly discount.<sup>25</sup>

*Refer to Appendix B for results of a randomized experiment testing results of this intervention.*

### ***Intervention 8B:***

Organizations could offer a lottery or prize draw in which people are automatically entered but must have completed a retirement plan in order to claim their prize. Lotteries are an effective incentive because people tend to overestimate small probabilities.<sup>26</sup> This type of lottery, called a **regret lottery**, is even more effective because it capitalizes on our aversion to losing something we could have.<sup>27</sup> In Gresham, Oregon the Behavioural Insights Team found that using a regret lottery more than doubled the number of utilities customers who signed up for automatic payments (Fig. 3).<sup>28</sup>

**Dear Danielle,**

Congratulations, you've been selected to participate in a drawing for a \$100 credit to your utility account! Your account number will serve as your drawing number. **But there's a twist: if you win, you will only be eligible to claim your prize if you have set up automatic bill payments (AutoPay) by the time of the drawing.**

[Sign up for AutoPay](#) before the drawing at 9 a.m. on November 30 to make sure you don't lose out on your chance at a prize!

*Fig. 3: Example of a "regret lottery", BIT's intervention to encourage AutoPay sign up in Gresham, Oregon.*

### **Intervention 8C:**

As an alternative incentive, employers could create a **team-based competition**. For example, if a whole team of employees creates retirement plans, they could win a modest prize (like a team lunch). This would create a short-term benefit for people to focus on and will motivate them further through social pressure.

## ***We are too optimistic about what the future will hold***

In addition to discounting future outcomes, people tend to be too optimistic about what the future will hold. We underestimate the probability of negative events or fail to think about them altogether.<sup>29</sup> This optimism bias limits retirement planning: we think that planning is less important because we assume that things will work out, and that we'll have as much as we need. Optimism bias can also lead to retirement plans being insufficiently conservative. We may assume that our savings rates or investment gains will be high, or that our post-retirement expenses will be low.

We've identified two promising opportunities for combatting optimism bias. First, by getting people to think about the details of their post-retirement lifestyle, we may be able to increase the perceived value of planning. Once they have a clearer, more detailed picture of what they would like their life to look like, they may be more interested in figuring out exactly how they'll pay for it. Second, to counteract the impact of optimism bias in developing retirement plans, we can give people relevant benchmarks about other people's plans and outcomes. By giving people a benchmark about how much other people save, earn on their investments or spend in retirement, we can counteract the tendency to be overly optimistic when developing our own estimates. This approach is called "reference class forecasting."<sup>30</sup> Each of these opportunities is outlined further in the table below:

### ***Barrier:***

**People tend to be overly optimistic about the future and may assume that current savings will be sufficient for retirement, limiting the perceived value of retirement planning. Optimism bias may also lead to retirement plans that are insufficiently conservative.**

### ***Opportunity 9:***

### ***Intervention 9A:***

**Combat optimism bias by engaging people in the details of their post-retirement lives.**

Optimism bias may lead people to minimize the need for a retirement plan. To counteract this, organizations can **prompt people to think about the details of their desired post-retirement lives** (i.e. their retirement goals and priorities). However, people struggle to develop a list of goals from scratch, finding it much easier to rank a list of goals provided to them.<sup>31</sup> **Providing people with a list of common retirement goals** (and associated costs) may be an effective way to help people overcome optimism bias and get people engaged in retirement planning.

**Opportunity 10:**

**Combat optimism bias by providing relevant benchmarks.**

**Intervention 10A:**

**Benchmarks could be included throughout a retirement planning process or integrated into a retirement planning tool** as a way of overcoming our tendency to be too optimistic. For example, people could be provided with appropriate benchmarks for savings rates, investment returns and post-retirement expenses. For expenses, we recommend providing a detailed list of common expenses (including “one-offs”), as our interviews with retirement planners and pre-retired Ontarians indicated that people often forget about major categories of expenses.

**Intervention 10B:**

Similarly, **warnings to avoid making common assumptions could be integrated into a retirement planning tool**. For example, people tend to pick Target Retirement Funds that end in a year ending in zero.<sup>32</sup> (People have a bias for “round” numbers.) Reminding people to check and see if they meant to make that choice may help them reassess their options. These warnings could also remind people about inflation and other factors people often forget to account for when making a plan.

## **It’s easy to get overwhelmed and drop out**

After people overcome the challenges in getting started on a retirement plan, they will continue to face barriers in completing the planning process. In this section, we discuss the behavioural and practical challenges people face in working through their retirement plan, including gathering their financial information and making decisions and assumptions about their post-retirement future. These challenges can be daunting, but behavioural insights suggest a number of potential interventions that could mitigate them.

## ***Even small friction costs can lead us to quit a process***

Even small roadblocks can be enough to convince us to put tasks off for another day or to abandon them altogether. The interventions that BIT designs often focus on making it easier for people to access or get through a government service. Removing even minor friction costs can significantly shift behaviour. One of BIT's simplest but most telling interventions was to change a link on a letter that asked people to file their taxes using an online form. The link was sending people to a website, which required one more click to get to the form. By changing the link so that it went directly to the form (saving people a single click), we were able to increase use of the form by four percentage points (from 19% to 23%) at no cost.<sup>33</sup>

One of the biggest friction points in the retirement planning process is collating all the financial information people need to create their plan (e.g. government and workplace pension information, RRSP and TFSA investments, information on current or future living costs). It's an intimidating amount of information, particularly because people don't necessarily know where to find all of it. For example, one research participant mentioned that she wanted to know how much money she would get from the government in retirement so that she could anticipate how much of a gap she might have to fill in with other income but did not know how to access that information despite searching online.

Reducing friction costs is likely to help more people complete their retirement plans. In support of this opportunity, one financial advisor we spoke to noted that she used to ask people to fill out a 15-page needs assessment to start the retirement planning process. However, asking for so much information all at once overwhelmed many people, and she has now simplified the process significantly. Financial institutions, governments, regulatory bodies, and employers can make retirement planning a lot easier by either directly providing the information (e.g. pre-populating retirement plans) or providing clear guidance on how to access it.

### ***Barrier:***

**It is difficult to gather the necessary financial information to complete a retirement plan, and even small friction costs can lead people to abandon important tasks.**

### ***Opportunity 11:***

**Provide easy, consolidated access to the financial information people need to build their retirement plans.**

### ***Intervention 11A:***

The government, regulatory bodies, financial institutions, and employers could collaborate to **make it easy for Ontarians to find all the information they need to build their retirement plan in one place** (e.g. pension income, investments, current or projected living expenses). Even better, this information could be provided in a way that makes it easy to automatically populate a retiring planning tool (e.g. through an application programming interface (API)).

We recognize that this is an extremely ambitious idea that would run into a variety of practical and commercial constraints. Unlike most of the interventions we recommend, it is not easy or low-cost. However, it can function as a "north



star” for finding ways to reduce friction costs associated with finding and compiling financial information. Partial solutions based on this model could include banks compiling spending information so that their clients could more easily determine their expenses (and be provided with benchmarks for how expenses tend to shift post-retirement), or government / employers providing easier access to pension information.

This type of intervention is particularly compelling because in addition to reducing friction costs, it would enable greater personalization of generic retirement planning tools (they would be populated with an individual’s information).

### **Opportunity 12:**

**Make it easier for people to find the financial information they need to complete their retirement plan.**

### **Intervention 12A:**

If it is not possible to directly provide the financial information people need to complete a retirement plan, organizations can help people understand what information they will need and where to find it. For example, they could **create a checklist of what information people will need to make a retirement plan and encourage people to gather it all before beginning to make a plan**. This checklist could also include direct links or simple instructions on how to access the necessary information and how much time the plan will take to complete. Helping establish these needs before someone really gets into making a plan will reduce the chance they get frustrated and give up.

*Refer to Appendix B for results of a randomized experiment testing a similar intervention.*

## ***We get overwhelmed when presented with a lot of information and choices***

In building a financial plan for retirement, people need to make a wide range of choices and process a lot of information. They need to consider how much they will save, when they will retire, what investment returns they can expect, and how much they will need to spend post-retirement, among other considerations. The volume of choices and information presents a barrier to completing a retirement plan. When people need to make choices from a long list of options, or make a large number of choices, they have a tendency to put off making a decision altogether. This tendency is exacerbated when people are given too much information or don’t know how to weigh the different options they are presented with.<sup>34</sup> For example, for every 10 additional investment fund options, people are 2 percentage points less likely to complete the process of enrolling in a pension plan and selecting their investment choices.<sup>35</sup>

Rather than asking people to build a financial plan from the ground up, organizations should look to reduce the “cognitive bandwidth” people need to expend in retirement planning. Behavioural insights suggest a number of potentially effective approaches to reduce the risk of people being cognitively overwhelmed and giving up the planning process. Rather than presenting interventions, the table below presents a number of tactics that can be integrated into a wide range of interventions related to retirement planning tools, resources and processes.

### Barrier:

When people are presented or asked to provide a lot of information, or required to make a lot of choices, they can experience cognitive “overload” and are more likely to abandon the retirement planning process altogether.

### Opportunity 13:

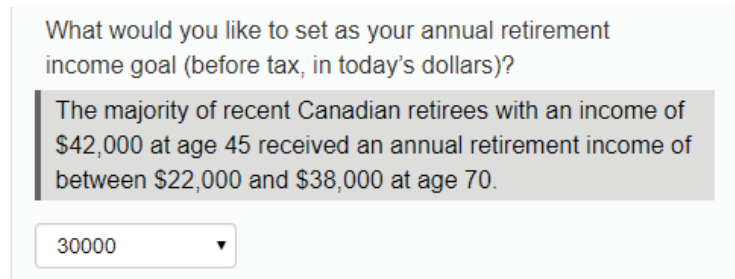
Reduce the cognitive burden imposed by retirement planning by simplifying and structuring the process as well as providing supporting tools and resources.

#### Tactic 13A:

**Provide directed prompts to people filling out retirement plans instead of open-ended questions.** For example, instead of asking people to list and estimate post-retirement living expenses, ask a series of clearly worded questions like “how much will your mortgage payment be each month?” Directed questions can also use qualifiers like “around how much” to help people not feel like they need to provide exact figures. Further, these questions can be accompanied with reassuring statements about the value of having a plan even if each input isn’t perfectly precise.

#### Tactic 13B:

**Provide sample inputs for people to customize rather than having them start from scratch.** For example, people could be presented with four sample post-retirement expense scenarios and asked to select which one is most like them. They could then customize elements of this sample budget to make it more accurate and reflective.



What would you like to set as your annual retirement income goal (before tax, in today's dollars)?

The majority of recent Canadian retirees with an income of \$42,000 at age 45 received an annual retirement income of between \$22,000 and \$38,000 at age 70.

30000 ▾

Fig. 4: Example of including a sample reference point, screenshot from the government of Canada’s Canadian Retirement Income Calculator.<sup>36</sup>

#### Tactic 13C:

Where people are completing a retirement plan and are asked to make an estimate, **provide them with simple guidelines or rules of thumb.** For example, provide the historical returns for suitable investment portfolios over an appropriate time horizon.

#### Tactic 13D:

**Use plain language to the greatest extent possible.** Financial jargon can demotivate and intimidate people. For example, instead of asking people about their “savings rate,”

ask them to indicate “about how much money they plan to save each year.”

***Tactic 13E:***

**“Chunk” the retirement planning process into a series of simple, understandable steps.** We discussed the use of “chunking” in framing the retirement planning process above. This technique should also be used for how the actual retirement planning process is structured.

***Tactic 13F:***

Where people have to make a lot of choices, have them **rank their preferences by comparing two options at a time** rather than having to consider every option at once.<sup>37</sup> For example, people could compare different lifestyle trade offs two at a time to determine their priorities before budgeting for them.

***Tactic 13G:***

**As an additional form of support, ask people to nominate their friends or family members** to get text message reminders to check in on their progress in making a plan. BIT employed a similar strategy asking students to nominate “study supporters” and saw that students with these supporters were 27% more likely to pass certain exams.<sup>38</sup>

## It’s hard to get the right advice for me

Even if you’ve convinced yourself to put pen to paper and start the process, have gathered all your financial information, and have made difficult choices about your future, there’s a good chance you’ll run into some part of the planning process where you’ll want advice. But it can be hard to find advice that fits a person’s unique circumstances and motivations.

People want their advice to be personalized, but professional advice that’s personalized can be inaccessible unless you have high income or assets. Advice from friends and family can be personalized, but taboos often limit the opportunities for discussions about money with these informal advisors. Last, any kind of personalized advice requires starting a conversation, and many people just don’t know what to ask.

### ***We want personalized advice***

General retirement advice can be extremely valuable; there are certain principles and considerations that apply to a large majority of Ontarians. However, many people discount general advice, or incorrectly assume that it does not apply to them. Adding even small elements of personalization, which can often be done at scale, may encourage people to make full use of the advice they can already access but are undervaluing.

The Ontarians we interviewed expressed concerns with the idea of using generalized advice to plan for their retirement. They recounted negative experiences with advice that did not resonate with their experience or circumstances. One research participant we spoke to was frustrated by advice like “cut your daily coffee and save for retirement,” as her financial situation already didn’t allow for those kinds of indulgences. Another research participant went to a bank and was told she needed to save half a million dollars for retirement: “I became depressed after that,” she explained, noting that it was simply not a feasible goal for her. Now she says that if she ever got financial advice again, she’d want it to be from someone who would work with her and focus on her specific circumstances because “each case is a unique case.” Interviewees tended to focus on the uniqueness of their lifestyles, families, and jobs. One participant was a freelance music composer whose initial reaction to the idea of retirement itself was “impossible” and “irrelevant.” She viewed retirement as something only people who didn’t like their work looked forward to. A disassociation with the idea of retirement could translate into feeling like generalized advice doesn’t hold any personal relevance.

The views of our research participants reflect findings from the behavioural science literature. People respond to personalization, and it is an effective tactic for increasing engagement.<sup>39</sup> However, professional advice that’s personalized can be prohibitively expensive. Financial advisors indicated that one often needs \$250,000 or more in financial assets to qualify as a potential client.

However, personalization does not necessarily require a one-to-one relationship with an advisor. Even personalization as simple as including someone’s name on an otherwise generic communication can have outsized effects on engagement.<sup>40</sup> One of BIT’s highest impact trials in the retirement space, redesigning pension “wake-up” packs, involved personalization at scale (Fig. 5). The UK government had introduced changes to workplace pension rules and wanted to encourage citizens to take up a pension advice service. Simplifying this communication by summarizing 100 pages of information into a personalized one page “pensions passport” increased engagement over tenfold.<sup>41</sup> Personalization can encourage people to make use of otherwise generic advice and complements valuable resources by driving engagement with them.

Another way that people can get personalized advice is by talking to their friends or family. People get a lot of financial advice from their peers and other informal advisors.<sup>42</sup> However, finding someone to talk to about their finances can be difficult; many people have an aversion to talking about money with those close to them. One research participant told us that if she needed advice she probably wouldn’t go to friends because, “finances are kind of

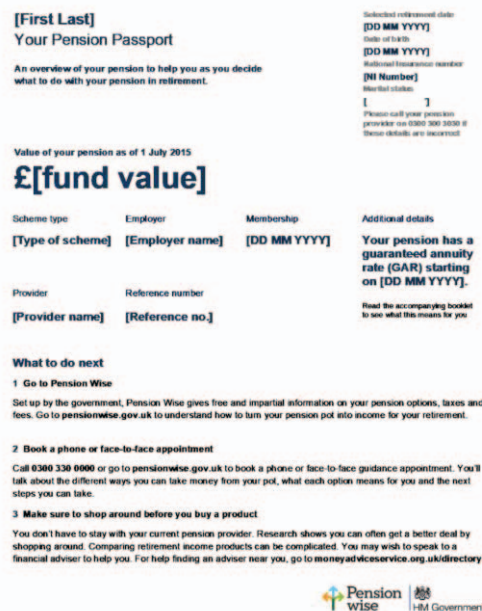


Fig. 5: BIT’s simplified and personalized “Pension Passport”

personal.” If she did get a friend’s advice it would have to be a friend in a similar financial situation “because you don’t want to go to the person that lives in the mansion and ask them about their financial plan.” Another participant told us that she made a point to talk with her children about her finances because she could never do so with her own parents and she felt that had put a significant strain on her.

### ***We don’t know what to ask***

Finally, even if people are able to face the taboo of talking about money and find informal advisors they’re comfortable with, they also have to discuss a topic they might not have much experience talking about. People may not know what to expect or what to ask, and may be unable to answer basic questions about their finances. Not knowing what to ask can also feed into a negative emotional state (e.g. feeling unintelligent that one does not know what to ask), further dissuading people from engaging in a discussion. One financial advisor described a client who cried as she noted that she had been too embarrassed to sit down with a financial advisor or anyone else because she didn’t feel like she knew enough about her own investments.

#### ***Barrier:***

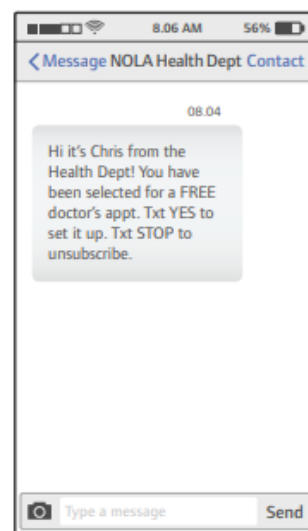
**People want personal advice, but personalized professional advice can be out of reach to many and taboos limit discussion with friends and family. Even when people have ready access to an advisor, they may be intimidated by not knowing what to ask.**

#### ***Opportunity 14:***

**Ensure that the information and communications sent to people are as personalized as possible.**

#### ***Intervention 14A:***

In prompting people to make a retirement plan, organizations should **test messaging that feels personally relevant or appeals to ego**. BIT has had success in several different contexts by using the key message, “you have been selected.” In New Orleans, a message including this line increased take up rates of a free doctor’s appointment by 40% as compared to the same message without it (Fig. 6).<sup>43</sup> Organizations offering retirement planning resources could frame their support by saying “you have been selected to receive this free retirement planning tool / resource / service.”



*Fig. 6: BIT’s Intervention to Encourage Sign Up for Doctor’s Appointments in New Orleans by Making People Feel Specially Selected.*

### ***Intervention 14B:***

Government, regulatory bodies, or employers should **personalize communications and resources**. For example, they could include the recipient's name on retirement planning prompts. Personalizing more deeply, such as by pre-populating a retirement planning tool with relevant financial information, as recommended in an earlier intervention, would be even better.

### ***Opportunity 15:***

**Help people build confidence and comfort talking about their finances by providing a structure for these conversations.**

### ***Intervention 15A:***

Government, regulatory bodies, or employers could **create a list of questions to help people start conversations** about their finances. These questions could cover interactions ranging from when you're by yourself on the computer and need to know what to start looking for to when you're talking to your friends, family, bank, or financial advisor. Giving people a structured guide might help them gain confidence before starting these conversations and normalize an otherwise taboo interaction.

## **Conclusion**

Ontarians face an array of barriers to making a financial plan for their retirement. It's hard to start and easy to put off. It's easy to get overwhelmed and drop out, and it can be hard to find the right advice for me. For the most part, these are not systemic barriers that require complex or costly interventions. Our research identified a range of promising "nudges" that can help remove, work around, or mitigate the impact of these barriers. Few of these ideas have been tested in a retirement planning context, but they have proven successful in similar circumstances and are well worth testing. To support the development of this body of research, we tested several of the interventions proposed in this report through a randomized experiment. The experiment found that email prompts asking people to reflect on who they would spend time with in retirement and emphasizing that retirement planning is easier than one might think were the most impactful in getting people to engage with retirement planning. For a detailed summary of the trial, see Appendix B. We strongly encourage employers, governments and regulatory bodies, and financial institutions to continue testing ideas and sharing insight into what works.

Our work also raised several important empirical questions regarding retirement planning that could not be addressed within the scope of this research but that could also add important nuance to the topic. For example, as mentioned in the introduction, the term "retirement plan" is understood in very different ways. Several participants thought that a "retirement plan" was identical to a pension plan. "Rebranding" retirement planning may encourage more Ontarians to make a plan. We found that the term "post-retirement budget" was effective in explaining what we meant by a retirement plan, although the term "budget" can have a negative association.

As our qualitative research revealed, we need to reflect further on the idea of retirement as a fixed stage in life given significant shifts in employment and retirement trends (e.g., stopping work entirely versus merely reducing hours). Regardless, we believe that most people

will continue to see reductions in their employment income as they age, and that there is substantial value in having a financial plan to understand the implications of this reduction, regardless of whether it is considered “retirement.”

Retirement planning is an important activity that can help Ontarians make better decisions and improve their financial security as they get older. However, retirement planning is only one lever for improving financial security, and one with limitations. Sticking to a retirement plan and revisiting that plan as circumstances change are perhaps more important than making the plan itself. We believe that many of the barriers and interventions outlined in this report will be relevant to sticking to a plan, but we recognize that the context is different and encourage further research in that direction.

The most significant limitation of our research is that it will not help solve the financial challenges of people with very low incomes and assets. This issue extends beyond the OSC’s jurisdiction; it is a whole-of-government challenge, which we note has been an area of focus for multiple levels of government in recent years. As noted in the OSC’s Seniors Strategy, addressing the full spectrum of financial security challenges experienced by older Ontarians will require collaboration among different government entities as well as stakeholders more broadly.

## Appendix A: Opportunities and Interventions

<p><b>Barrier:</b></p> <p>People tend to go with the default option, and the default is not to plan for retirement.</p>	
<p><b>Opportunity 1:</b></p> <p>Make planning for retirement the default option.</p>	<p><b>Intervention 1A:</b></p> <p>Employers could <b>integrate retirement planning into their onboarding process for new employees</b>. For example, employers could ask new employees to draft a retirement plan, providing them with a standardized tool or template. Even better, employers could also pre-book an appointment with a qualified retirement planner to review that plan. This approach would make the development of a financial plan for retirement feel like a typical, default activity. Employers might benefit from employees feeling like their company is invested in their long-term financial wellbeing.</p>
<p><b>Opportunity 2:</b></p> <p>Eliminate or mitigate the impact of the default option by requiring people to actively choose to make a retirement plan or not to.</p>	<p><b>Intervention 2A:</b></p> <p>Organizations seeking to encourage retirement planning could prompt people to make a retirement plan through “active choice” framing. This could involve a communication that would present two options: “<b>Yes, I will create a retirement plan</b>” or “<b>No, I don’t want to help prepare for my retirement by making a retirement plan.</b>” The Behavioural Insights Team used this framing in Scottsdale, Arizona to encourage donations to “Scottsdale Cares” and found it increased donation rates by 125%.</p> <p>Similar to intervention 1A, employers could also pre-book a meeting for their current employees with a financial advisor during the workday. Employees would then have to choose to turn down the meeting rather than choose to schedule one themselves. This type of intervention may be particularly effective for people as they get closer to retirement and the consequences of their choice become more salient.</p>



<p><b>Barrier:</b></p> <p>People will avoid making a retirement plan because of the perceived length and complexity of the process.</p>	
<p><b>Opportunity 3:</b></p> <p>Frame retirement planning in ways that reduce the perceived challenges, making it feel more concrete and attainable.</p>	<p><b>Intervention 3A:</b></p> <p>Government, regulatory bodies, or employers could provide people with a template to make a retirement plan that includes information about their pension already filled in. These organizations could then prompt people to <i>finish</i> making their retirement plan. The crux of this intervention would be to <b>make the planning process feel quicker and simpler by providing people with a “head start”</b> in making their plan.</p>
	<p><b>Intervention 3B:</b></p> <p>Organizations could prompt people to complete a retirement plan in a way that breaks the retirement planning process down into a series of simpler, smaller “chunks.” <b>Instead of suggesting that people “make a retirement plan,” ask them to follow 3-4 more concrete, comprehensible steps.</b> E.g. 1) estimate how much money you’ll need to spend each month when you retire, 2) subtract your government (e.g. CPP) pension, and any workplace pension, 3) use the calculator provided to see how much you’ll need to save and when you might be able to retire.</p>
<p><b>Barrier:</b></p> <p>The idea of retirement planning can bring on strong negative emotions and people may put it off to avoid those emotions.</p>	
<p><b>Opportunity 4:</b></p> <p>Ask people to complete a retirement plan at times when they are less likely to have strong negative emotions about their retirement finances.</p>	<p><b>Intervention 4A:</b></p> <p>Organizations could <b>prompt people to make a retirement plan at times when they’re likely to feel more positive about their financial situation</b> (e.g. after receiving a tax refund, a raise or bonus, or a windfall). People may feel more in control and less concerned about their financial future during these moments.</p>

**Barrier:**

People tend to ignore the future. They prioritize the urgent over the important, especially when they are busy. As a result, they are likely to put off retirement planning, which does not feel urgent until it is too late.

**Opportunity 5:**

Help people follow through with their intention to make a retirement plan by helping them build it into their schedule.

**Intervention 5A:**

Organizations could provide access to a retirement planning tool and prompt people to make a specific plan for when and how they will use it. For example, have people fill out the following card or email: “**I will make a financial plan for my retirement on [date]. I’ll start by sitting down with [family member/significant other]. I will build and document my plan using [name of planning tool].**”

**Intervention 5B:**

**Employers could put time in their employees’ calendars for the express purpose of making a retirement plan.** They could also break the retirement planning process into several concrete steps and put each step in their employees’ calendars as a separate event, so that it seems less daunting.

**Opportunity 6:**

Capitalize on moments people think about the future more, and communicate with people at those key points to encourage them to make a retirement plan.

**Intervention 6A:**

Government, regulatory bodies, financial institutions, or employers could **send people prompts on their birthday** (particularly on “round number” birthdays or the year before these milestones), when they may already be thinking about the future and the passage of time, urging them to use a provided resource to make a retirement plan.

**Intervention 6B:**

Government, regulatory bodies, or financial institutions could **prompt parents to start thinking about retirement when their kids first start drawing down from their Registered Education Savings Plan.** At this point parents may feel like they have tackled one major savings goal (for their children’s education) and may be receptive to financial planning for their next goal and stage of life.

**Barrier:**

The primary benefits of retirement planning accrue in the future, but people discount long-term outcomes compared to short-term outcomes.

**Opportunity 7:**

**Prompt people to plan for their retirement using methods that make the future seem close or salient.**

**Intervention 7A:**

Government, regulatory bodies, or employers could send a communication aimed at making retirement feel more real by **including pictures of different ways that someone might be able to spend their retirement** and prompting people to take action for the retirement they want. The Behavioural Insights Team adopted this approach to encourage retirement planning in Scottsdale, Arizona and found a 75% increase in the number of people who signed up for a meeting with a financial advisor as a result of the intervention.<sup>44</sup>

**Intervention 7B:**

Organizations developing retirement planning tools or assisting with retirement planning may wish to send a communication **asking people to picture their future selves**. Questions could include: “picture yourself in retirement, what are you doing? Who are you with?” To make these prompts more impactful, people could also be shown an aged picture of themselves.<sup>45</sup> Alternatively, organizations could ask people to write out a diary style entry depicting a day in retired life. These strategies would help make the future feel more salient and concrete, increasing the proportion of people who complete their retirement plan.

*Refer to Appendix B for results of a randomized experiment testing a similar intervention.*

**Intervention 7C:**

Organizations encouraging retirement planning could prompt people to plan with visualizations that help people feel like the future is close at hand. For example, they could **show people what the trajectory of their lives would look like if it took place over the course of 100 days, highlighting the day they’re on now and the day their retirement would start to make retirement feel more immediate.**

<p><b>Opportunity 8:</b></p> <p><b>Prompt people to plan for their retirement by emphasizing the short-term benefits of doing so or by creating a near-term incentive to do so.</b></p>	<p><b>Intervention 8A:</b></p> <p>Government, regulatory bodies, or employers could <b>highlight the short-term psychological benefits of having a plan in place</b> in communications encouraging retirement planning. Employing this framing would help people focus on benefits they could receive in the present, like peace of mind, rather than the benefits they could receive in the future and might highly discount.<sup>46</sup></p> <p><i>Refer to Appendix B for results of a randomized experiment testing this intervention.</i></p>
	<p><b>Intervention 8B:</b></p> <p>Organizations could offer a lottery or prize draw in which people are automatically entered but must have completed a retirement plan in order to claim their prize. Lotteries are an effective incentive because people tend to overestimate small probabilities.<sup>47</sup> This type of lottery, called a <b>regret lottery</b>, is even more effective because it capitalizes on our aversion to losing something we could have.<sup>48</sup> In Gresham, Oregon the Behavioural Insights Team found that using a regret lottery more than doubled the number of utilities customers who signed up for automatic payments.<sup>49</sup></p>
	<p><b>Intervention 8C:</b></p> <p>As an alternative incentive, employers could create a <b>team-based competition</b>. For example, if a whole team of employees creates retirement plans, they could win a modest prize (like a team lunch). This would create a short-term benefit for people to focus on, and will motivate them further through social pressure.</p>
<p><b>Barrier:</b></p> <p><b>People tend to be overly optimistic about the future and may assume that current savings will be sufficient for retirement, limiting the perceived value of retirement planning. Optimism bias may also lead to retirement plans that are insufficiently conservative.</b></p>	
<p><b>Opportunity 9:</b></p> <p><b>Combat optimism bias by engaging people in the details of their post-retirement lives.</b></p>	<p><b>Intervention 9A:</b></p> <p>Optimism bias may lead people to minimize the need for a retirement plan. To counteract this, organizations can <b>prompt people to think about the details of their desired post-retirement lives</b> (i.e. their retirement goals and priorities). However, people struggle to develop a list of goals from scratch, finding it much easier to rank a list of goals provided to them.<sup>50</sup> <b>Providing people with a list of common retirement goals</b> (and associated costs) may be an effective way to help people overcome optimism bias and get people engaged in retirement planning.</p>

<p><b>Opportunity 10:</b></p> <p><b>Combat optimism bias by providing relevant benchmarks.</b></p>	<p><b>Intervention 10A:</b></p> <p><b>Benchmarks could be included throughout a retirement planning process or integrated into a retirement planning tool</b> as a way of overcoming our tendency to be too optimistic. For example, people could be provided with appropriate benchmarks for savings rates, investment returns and post-retirement expenses. For expenses, we recommend providing a detailed list of common expenses (including “one-offs”), as our interviews with retirement planners and pre-retired Ontarians indicated that people often forget about major categories of expenses.</p>
	<p><b>Intervention 10B:</b></p> <p>Similarly, <b>warnings to avoid making common assumptions could be integrated into a retirement planning tool.</b> For example, people tend to pick Target Retirement Funds that end in a year ending in zero.<sup>51</sup> (People have a bias for “round” numbers.) Reminding people to check and see if they meant to make that choice may help them reassess their options. These warnings could also remind people about inflation and other factors people often forget to account for when making a plan.</p>
<p><b>Barrier:</b></p> <p><b>It is difficult to gather the necessary financial information to complete a retirement plan, and even small friction costs can lead people to abandon important tasks.</b></p>	
<p><b>Opportunity 11:</b></p> <p><b>Provide easy, consolidated access to the financial information people need to build their retirement plans.</b></p>	<p><b>Intervention 11A:</b></p> <p>The government, regulatory bodies, financial institutions, and employers could collaborate to <b>make it easy for Ontarians to find all the information they need to build their retirement plan in one place</b> (e.g. pension income, investments, current or projected living expenses). Even better, this information could be provided in a way that makes it easy to automatically populate a retiring planning tool (e.g. through an application programming interface (API)).</p> <p>We recognize that this is an extremely ambitious idea that would run into a variety of practical and commercial constraints. Unlike most of the interventions we recommend, it is not easy or low-cost. However, it can function as a “north star” for finding ways to reduce friction costs associated with finding and compiling financial information. Partial solutions based on this model could include banks compiling spending information so that their clients could more easily determine their expenses (and be provided with benchmarks for how expenses tend to shift post-retirement), or government / employers providing easier access to pension information.</p> <p>This type of intervention is particularly compelling because in addition</p>

	<p>to reducing friction costs, it would enable greater personalization of generic retirement planning tools (they would be populated with an individual’s information).</p>
<p><b>Opportunity 12:</b></p> <p><b>Make it easier for people to find the financial information they need to complete their retirement plan.</b></p>	<p><b>Intervention 12A:</b></p> <p>If it is not possible to directly provide the financial information people need to complete a retirement plan, organizations can help people understand what information they will need and where to find it. For example, they could <b>create a checklist of what information people will need to make a retirement plan and encourage people to gather it all before beginning to make a plan.</b> This checklist could also include direct links or simple instructions on how to access the necessary information and how much time the plan will take to complete. Helping establish these needs before someone really gets into making a plan will reduce the chance they get frustrated and give up.</p> <p><i>Refer to Appendix B for results of a randomized experiment testing a similar intervention.</i></p>
<p><b>Barrier:</b></p> <p><b>When people are presented or asked to provide a lot of information, or required to make a lot of choices, they can experience cognitive “overload” and are more likely to abandon the retirement planning process altogether.</b></p>	
<p><b>Opportunity 13:</b></p> <p><b>Reduce the cognitive burden imposed by retirement planning by simplifying and structuring the process as well as providing supporting tools and resources.</b></p>	<p><b>Tactic 13A:</b></p> <p><b>Provide directed prompts to people filling out retirement plans instead of open-ended questions.</b> For example, instead of asking people to list and estimate post-retirement living expenses, ask a series of clearly worded questions like “how much will your mortgage payment be each month?” Directed questions can also use qualifiers like “around how much” to help people not feel like they need to provide exact figures. Further, these questions can be accompanied with reassuring statements about the value of having a plan even if each input isn’t perfectly precise.</p> <hr/> <p><b>Tactic 13B:</b></p> <p><b>Provide sample inputs for people to customize rather than having them start from scratch.</b> For example, people could be presented with four sample post-retirement expense scenarios and asked to select which one is most like them. They could then customize elements of this sample budget to make it more accurate and reflective.</p>

	<p><b>Tactic 13C:</b></p> <p>Where people are completing a retirement plan and are asked to make an estimate, <b>provide them with simple guidelines or rules of thumb</b>. For example, provide the historical returns for suitable investment portfolios over an appropriate time horizon.</p> <p><b>Tactic 13D:</b></p> <p><b>Use plain language to the greatest extent possible.</b> Financial jargon can demotivate and intimidate people. For example, instead of asking people about their “savings rate,” ask them to indicate “about how much money they plan to save each year.”</p> <p><b>Tactic 13E:</b></p> <p><b>“Chunk” the retirement planning process into a series of simple, understandable steps.</b> We discussed the use of “chunking” in framing the retirement planning process above. This technique should also be used for how the actual retirement planning process is structured.</p> <p><b>Tactic 13F:</b></p> <p>Where people have to make a lot of choices, have them <b>rank their preferences by comparing two options at a time</b> rather than having to consider every option at once.<sup>52</sup> For example, people could compare different lifestyle trade offs two at a time to determine their priorities before budgeting for them.</p>
	<p><b>Tactic 13G:</b></p> <p><b>As an additional form of support, ask people to nominate their friends or family members</b> to get text message reminders to check in on their progress in making a plan. BIT employed a similar strategy asking students to nominate “study supporters” and saw that students with these supporters were 27% more likely to pass certain exams.<sup>53</sup></p>

**Barrier:**

People want personal advice, but personalized professional advice can be prohibitively expensive and taboos limit discussion with friends and family. Even when people have ready access to an advisor, they may be intimidated by not knowing what to ask.

**Opportunity 14:**

**Ensure that the information and communications sent to people are as personalized as possible.**

**Intervention 14A:**

In prompting people to make a retirement plan, organizations should **test messaging that feels personally relevant or appeals to ego**. BIT has had success in several different contexts by using the key message, “you have been selected.” In New Orleans, a message including this line increased take up rates of a free doctor’s appointment by 40% as compared to the same message without it.<sup>54</sup> Organizations offering retirement planning resources could frame their support by saying “you have been selected to receive this free retirement planning tool / resource / service.”

**Intervention 14B:**

Government, regulatory bodies, or employers should **personalize communications and resources**. For example, they could include the recipient’s name on retirement planning prompts. Personalizing more deeply, such as by pre-populating a retirement planning tool with relevant financial information, as recommended in an earlier intervention, would be even better.

**Opportunity 15:**

**Help people build confidence and comfort talking about their finances by providing a structure for these conversations.**

**Intervention 15A:**

Government, regulatory bodies, or employers could **create a list of questions to help people start conversations** about their finances. These questions could cover interactions ranging from when you’re by yourself on the computer and need to know what to start looking for to when you’re talking to your friends, family, bank, or financial advisor. Giving people a structured guide might help them gain confidence before starting these conversations and normalize an otherwise taboo interaction.



## Appendix B: Results from Experiment to Promote Use of the Canadian Retirement Income Calculator

### Context and purpose of the trial

We conducted a randomized controlled trial (RCT) in order to test the effect of messaging inspired by interventions 7B, 8A, and 12A above. In partnership with OSC Investor Office and the Government of Ontario's Behavioural Insights Unit (BIU), we designed five different messages prompting people to use the Canadian Retirement Income Calculator, a tool built and hosted by Employment and Social Development Canada (ESDC). The effectiveness of these messages was tested through emails to Ontario Public Service (OPS) employees. The aim of the study was to contribute to the research on effective ways to generate engagement with retirement planning.

### Intervention and rationale

The 5 messages we tested each encouraged recipients to start making a retirement plan by working through the Government of Canada's [online retirement income calculator](#). The messages were included in the weekly Ontario Public Service (OPS) newsletter, which is sent to all OPS employees. Each message provided a link to the online calculator.

Four of the five messages included language informed by behavioural science, developed based on the research outlined in this report. One, which served as our "control," simply provided information on the benefit of retirement planning.

Each version of the message is described below:

#### *1. Information Only*

This message was designed to reflect a traditional government communications approach. It provided basic information and indicated the benefit of having a retirement plan. This message did not apply behavioural insights.

#### **[Prepare for your retirement](#)**

A retirement plan helps you understand how much you will need to save for retirement based on your anticipated expenses, your pensions and your current savings. The Government of Canada provides a free retirement calculator to help you through the process.

#### *2. Short Term Benefits*

Rather than focusing on the future benefits of retirement, this message emphasized the immediate benefits of retirement planning. By bringing the focus to near-term benefits, we hoped to mitigate "present bias," which causes people to undervalue the future and leads to putting off retirement planning.

#### **[Gain confidence today, prepare for your retirement](#)**

Planning for your retirement can help build your financial confidence and security. Start preparing for your retirement today with the Government of Canada's free retirement calculator.

### 3. *Saliency of Future Self - Social*

This message also focused on reducing the impact of present bias, but aimed to do so by making the future seem more tangible. Our qualitative research revealed that people are often excited about the idea of spending more time with their friends and family when they retire, so this message sought to tap into the saliency of social life post-retirement.

#### [Picture who you'll spend time with in retirement](#)

Think about yourself the day after you retire. Will you be spending more time with your friends and family? Start preparing for your retirement with the Government of Canada's free retirement calculator.

### 4. *Saliency of Future Self - Individual*

Also aimed at making the future more salient, this message emphasized another concrete aspect of retirement that came up in our qualitative research: the activities that people plan on doing. Unlike the socially-framed message above, this message focused on the things an individual might do during retirement.

#### [Picture what you'll spend time doing in retirement](#)

Think about yourself the day after you retire. Will you be traveling, volunteering in your community, or mastering a new hobby? Start preparing for your retirement with the Government of Canada's free retirement calculator.

### 5. *Simple Message*

Our research showed that because people tend to be put off by complexity, it's hard to start the retirement planning process. To overcome this barrier, we emphasized that retirement planning can be easy. We also helped people more easily plan to complete the calculator by telling them how long it would take and what information they would have to provide.

#### [Prepare for your retirement, it's easier than you think](#)

Use the Government of Canada's free retirement calculator. In less than 30 minutes, the calculator will help you understand how much you will need to save for retirement based on your anticipated expenses, your pensions and your current savings.

## **Trial design**

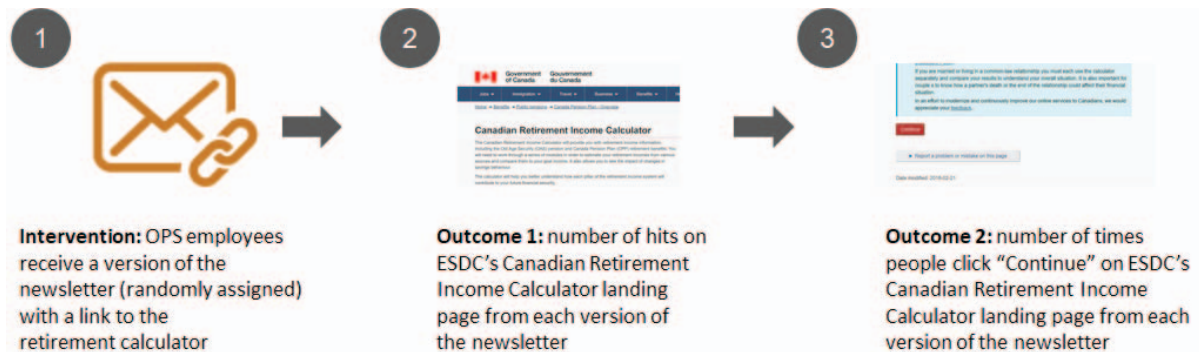
We conducted a randomized experiment to better understand how effective each of the five messages might be on encouraging retirement planning. With the support of the BIU, we randomly divided 76,565 OPS employees into 5 groups and assigned a different version of the message to each group. The newsletters were sent by the Treasury Board Secretariat's Communications Branch on May 23, 2018 and data was collected until June 13, 2018.

To increase engagement with retirement planning, we hoped that recipients of the emails would read them, be interested enough to click on the link to the retirement income calculator, and then be motivated to work through the calculator.

To determine the relative success of each email, we measured two outcomes:

1. The proportion of recipients who clicked through from the newsletter to the Government of Canada's retirement calculator landing page (the link provided in the headline of each message) within a week of the newsletter being sent; and

- The proportion of recipients who clicked from the landing page into the calculator itself, demonstrating a higher level of engagement.



ESDC, which developed and maintains the calculator, provided us with data on both outcomes. Unfortunately, it was not possible to track the number of recipients of each email who completed the calculator.

## Results

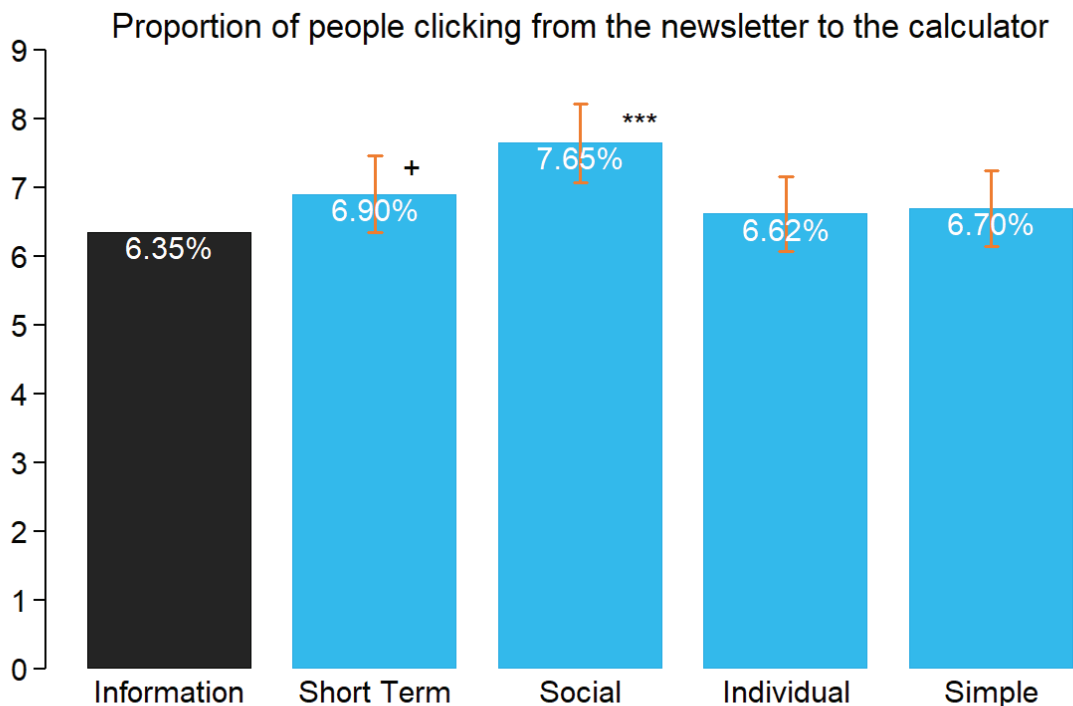
### *Outcome 1: Clicks from the newsletter to the calculator webpage*

One week after the newsletter was sent, we saw that the email had generated 5,237 clicks to the online retirement calculator, which equates to about 6.8% of recipients engaging.<sup>1</sup>

The "Salience of Future Self - Social" message was the most effective message in getting people to engage. Recipients who received this message were 20.5% (1.3 percentage points) more likely to click through than recipients of the "Information Only" message. If everyone had received this email, approximately 995 more people would have clicked on the link to the retirement income calculator than if everyone had received the more traditional, "Information Only" message.<sup>2</sup> This finding alone illustrates the powerful effect that small changes informed by behavioural science can have on behaviour.

<sup>1</sup> The true number of OPS employees clicking on a link may be a bit lower, as we expect some people clicked more than once.

<sup>2</sup> This estimate is based on the assumption that each "click" represented a unique email recipient. As a result, we are likely to be slightly overestimating the effect.



n=76,565

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$

The success of the “Salience of Future Self - Social” message demonstrates that we may be able to increase interest in retirement planning by emphasizing opportunities for spending time with friends and family. This socially-oriented frame appears to be a more effective way of making the future salient than emphasizing the activities individuals might like to spend their time on (which is more individually-oriented). We cannot say with certainty why the social message is so effective, but this result suggests there is value in further exploration of this type of framing.

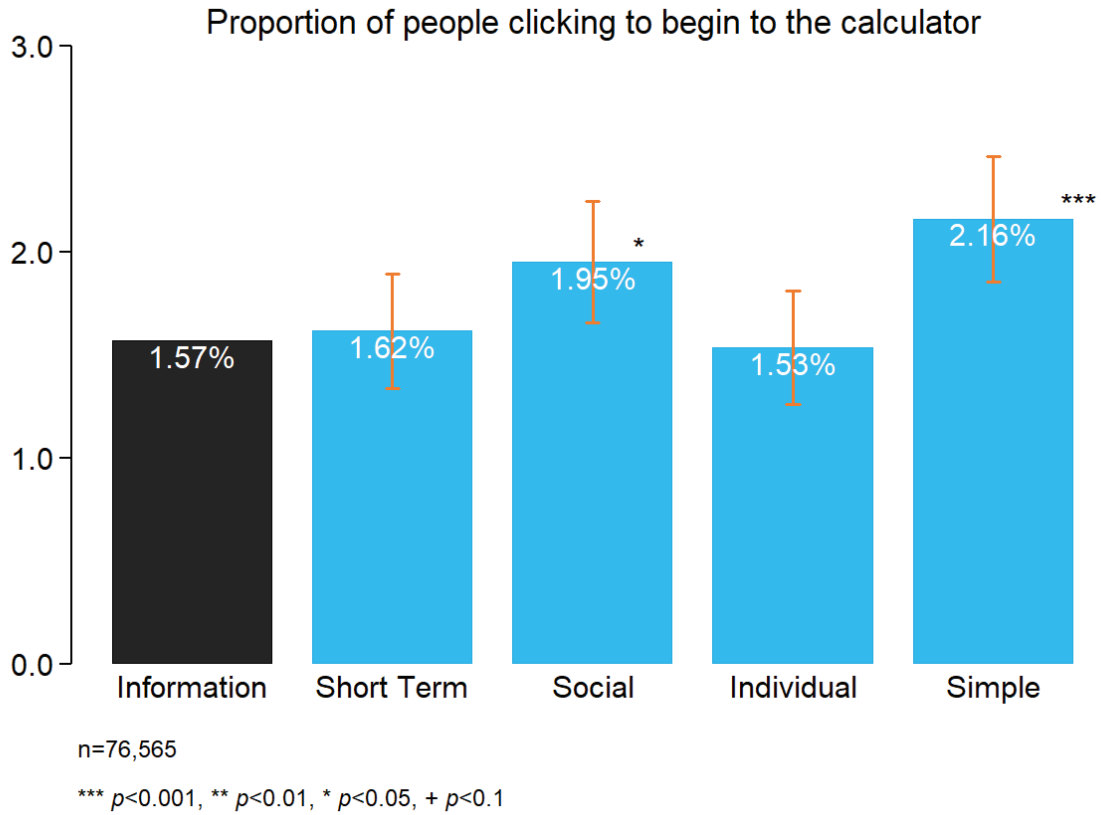
The “Short Term Benefits” message also generated more engagement than the “Information Only” message. However, the effect was smaller and we cannot be as certain that it was not the result of chance. While the “Salience of Future Self - Individual” and “Simple” messages did a bit better than the “Information Only” message, the differences were small and not statistically significant.

#### *Outcome 2: Clicks to begin the calculator*

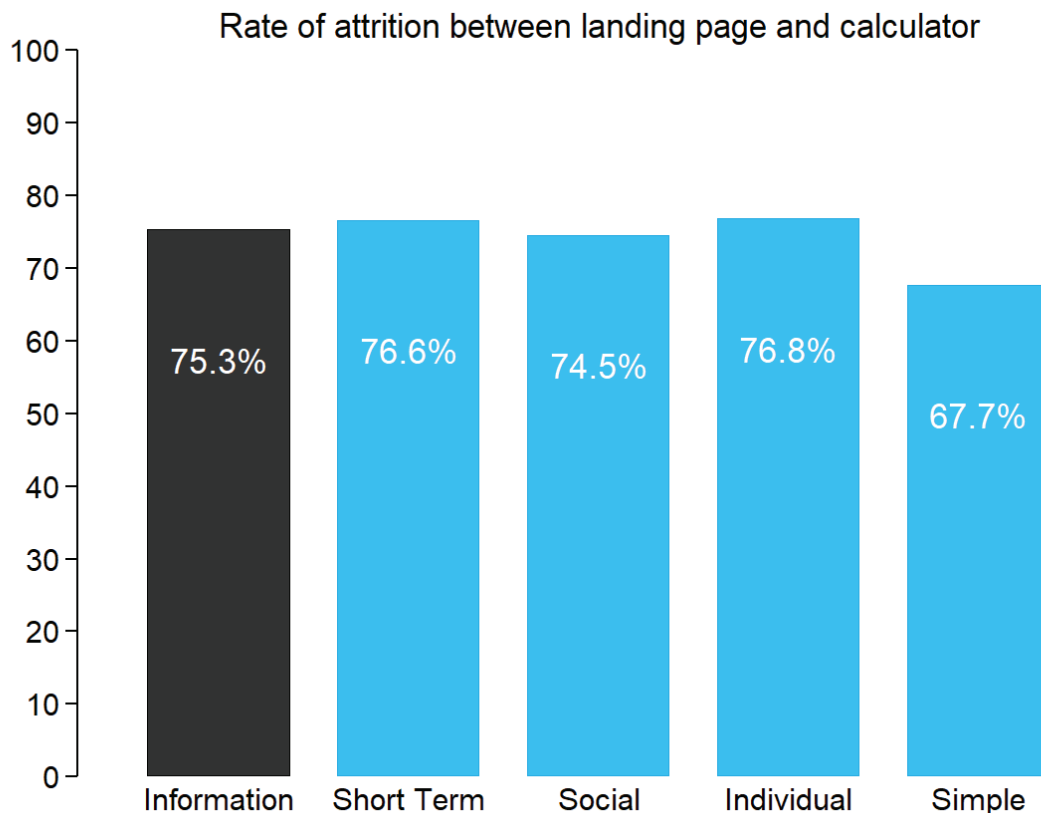
There were 1,352 clicks to continue from the landing page to the calculator, equating to 1.8% of all recipients. Continuing into the retirement calculator from the landing page demonstrates a deeper level of engagement with retirement planning than Outcome 1.

Compared to the “Information Only” message, the “Salience of Future Self - Social” message increased the likelihood of a recipient clicking to begin the calculator by 24.2% (0.38 percentage

points). The “Simple” message improved the chance of clicking to continue even more, by 37.6% (0.59 percentage points).



While the “Salience of Future Self - Social” message was the most effective for Outcome 1, the “Simple” message was the most effective message in motivating people to engage more deeply by clicking from the landing page to the retirement planning calculator itself. This difference in impact across the two outcomes derives from the “Simple” message having a substantially lower rate of attrition in moving from the landing page to the calculator (see chart below).



We hypothesize that while social framing garnered the initial attention required to overcome present bias, the “Simple” message was a more effective cue to drive action -- starting to work through the retirement calculator. The “Simple” message underscored the relative ease of using the calculator and helped people prepare for the task (e.g. by providing a time estimate and indicating what information would be required).

### **Recommendations**

Retirement planning is an essential, yet often understudied, step in the journey towards retirement security. We often assume that the main step in preparing for retirement is accumulating savings, but knowing how much savings are needed for a financially secure retirement requires planning. Retirement plans enable people to make better decisions on savings, investments and labour market participation. By developing evidence on how to boost engagement with retirement planning, we hope to enable governments, financial institutions, employers, and other organizations to more effectively help people enjoy the lives they want to lead in retirement.

Our trial with over 70,000 OPS employees generated valuable evidence about what messages resonate most with people and motivate them to engage in the retirement planning process. By enhancing traditional, informational approaches with behavioural insights, we learned more about how different types of retirement framing help people think about the future and take action. In particular, **we found that helping people imagine their social selves in retirement**

**by evoking time spent with friends and family can be highly effective.** It may be an effective emotional “binding agent” that connects present to future self and helps to make people’s post-retirement future feel more concrete and salient.

We also learned that **messages focused on the simplicity of retirement planning can be quite effective in moving people from an initial spark of interest into more concrete action.** Organizations who are interested in helping people make a retirement plan should consider preparing participants with checklists and time estimates to help them complete each step of a plan and reassure them that these steps won’t be overly complex or time-consuming. Of course, this requires that retirement planning tools should be made as simple as possible!

The results of this trial also suggest opportunities for further research and innovation. This RCT was conducted with OPS employees, who may respond differently than other Ontarians. For example, a higher proportion of OPS employees have a workplace pension than Ontarians in general. We hypothesize that having a pension may decrease propensity to engage in retirement planning as it may feel less necessary or important. The messages we test might be more effective for those without a workplace pension. Similarly, the OSC and other organizations tend to focus on people 45 or older (closer to retirement), while our study included people under that age. We think that older people may also respond to the messages we developed at higher rates.

We encourage other organizations to continue testing these ideas and others informed by behavioural science to encourage retirement planning. We also suggest that using RCTs or other experimental methods to generate high-quality evidence about what works is well worth the (modest) investment required.

### ***Acknowledgement***

*As indicated throughout this report, this trial would not have been possible without the support of a number of partners: the Investor Office at the Ontario Securities Commission, the Behavioural Insights Unit and Treasury Board Secretariat Communications Branch in the Government of Ontario, and Employment and Social Development Canada. The Behavioural Insights Team thanks each of these partners for their collaboration, expertise, and effort.*

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1.5 Notices from the Office of the Secretary

1.5.1 Donna Hutchinson et al.

**FOR IMMEDIATE RELEASE**  
July 25, 2018

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

**TORONTO** – The Commission issued its Reasons for Decision on Motion for Severance in the above named matter.

A copy of the Reasons for Decision on Motion for Severance dated July 24, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

For investor inquiries:

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

1.5.2 Majd Kitmitto et al.

**FOR IMMEDIATE RELEASE**  
July 25, 2018

**MAJD KITMITTO,  
STEVEN VANNATTA,  
CHRISTOPHER CANDUSSO AND  
CLAUDIO CANDUSSO,  
File No. 2018-9**

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

A copy of the Order dated July 25, 2018 is available at <http://www.osc.gov.on.ca>.

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

For investor inquiries:

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

**1.5.3 Omega Securities Inc.**

**FOR IMMEDIATE RELEASE  
July 30, 2018**

**OMEGA SECURITIES INC.,  
File No. 2017-64**

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

A copy of the Order dated July 30, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

For investor inquiries:

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

**1.5.4 Omega Securities Inc.**

**FOR IMMEDIATE RELEASE  
July 30, 2018**

**OMEGA SECURITIES INC.,  
File No. 2017-66**

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

A copy of the Order dated July 30, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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For investor inquiries:

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416-593-8314  
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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 Desjardins Investments Inc.

##### Headnote

Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions: Relief from subsection 4.1(2) of Regulation 81-102 to permit mutual funds to purchase securities of related entities on primary and secondary market, subject to conditions.

##### Applicable Legislative Provisions

Regulation 81-102 respecting Investment Funds, ss. 4.1(2), 19.1.

[TRANSLATION]

May 29, 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  
DESJARDINS INVESTMENTS INC.  
(the Filer)

AND

THE DESJARDINS FUNDS  
(as defined below)

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), pursuant to section 19.1 of *Regulation 81-102 respecting Investment Funds* (chapter V-1.1, r.39) (Regulation 81-102), exempting the Desjardins Funds from the restriction contained in subsection 4.1(2) of Regulation 81-102 to permit the Desjardins Funds to purchase non-exchange-traded debt securities of Related Issuers (as defined below) having a designated rating within the meaning of that term in Regulation 81-102, in a Primary Offering (as defined below) and in the secondary market (the Exemption Sought).

Under the process of 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 each of the jurisdictions of Canada other than the Jurisdictions (the Other 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 81-102 have the same meaning if used in this decision, unless otherwise defined.

**Desjardins Funds** means all investment funds subject to Regulation 81-102 and any investment fund subject to Regulation 81-102 subsequently established in the future for which the Filer or an affiliate of the Filer acts, or will act, as investment fund manager.

**IRC** means the independent review committee established in accordance with *Regulation 81-107 Respecting Independent Review Committee for Investment Funds* (chapter V-1.1, r. 43) (Regulation 81-107).

**Primary Offering** means a primary distribution or treasury offering of non-exchange-traded debt securities of a Related Issuer.

**Operation** means a purchase of securities made in a Primary Offering or in the secondary market pursuant to this decision.

**Related Issuer** means an issuer of which a partner, director, officer or employee of the dealer manager of the Desjardins Funds, or of an affiliate or associate of the dealer manager is a partner, director or officer.

**Representations**

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

***The Filer and DSI***

1. The Filer's head office is located in Montréal, Québec
2. The Filer is registered as an investment fund manager in the Provinces of Québec, Ontario and Newfoundland and Labrador.
3. The Filer is currently an affiliate of Desjardins Securities Inc. (DSI), and may become an associate or affiliate of additional dealers in the future.
4. DSI is a member of the Investment Industry Regulatory Organization of Canada (IIROC) and is registered as an investment dealer in each of the jurisdictions of Canada, as a futures commission merchant in both provinces of Ontario and Manitoba and as a derivatives dealer in the province of Québec.
5. DSI is not in default of securities legislation in any jurisdiction of Canada.
6. The Filer is not in default of securities legislation in any jurisdiction of Canada.

***The Desjardins Funds***

7. The Filer is the investment fund manager of the existing Desjardins Funds. The Filer or an affiliate of the Filer may, in the future, become the investment fund manager of future Desjardins Funds.
8. Each Desjardins Fund, has, or will have, a simplified prospectus and an annual information form prepared in accordance with *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure* (chapter V-1.1, r. 38).
9. Each Desjardins Fund is, or will be, qualified for distribution in each of the jurisdictions of Canada and is, or will be, a reporting issuer under the securities legislation of each of the jurisdictions of Canada.
10. Either an associate of the Filer, an affiliate of the Filer or a third-party portfolio manager or sub-adviser is, or will be, the portfolio manager or sub-adviser to each of the Desjardins Funds.

11. Currently, Desjardins Global Asset Management Inc. (DGAM) acts as portfolio manager of the existing Desjardins Funds. DGAM is registered as a portfolio manager in each of the jurisdictions of Canada and as an exempt market dealer in the Jurisdictions and in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, and Nova Scotia.
12. DGAM is not in default of securities legislation in any jurisdiction of Canada.
13. None of the existing Desjardins Funds are in default of securities legislation in any jurisdiction of Canada.

***The Exemption Sought***

14. The principal shareholder of DSI holds directly or indirectly more than 10% of the total votes attaching to the securities of DGAM.
15. Based on the facts above, all of the Desjardins Funds may be dealer managed investment funds within the meaning of Regulation 81-102, as the portfolio manager of the Desjardins Funds may be a dealer manager within the meaning of Regulation 81-102.

***Reasons supporting the Exemption Sought***

16. A director, officer or employee of the Filer that acts as the investment fund manager of a Desjardins Fund, or a director, officer or employee of an associate or an affiliate of the Filer that acts as the portfolio manager of a Desjardins Fund, may also be a director or officer of a Related Issuer of the Filer.
17. Subsection 6.2(2) of Regulation 81-107 provides an exemption from the investment fund conflict of interest investment restrictions as defined in Regulation 81-102 for purchases of Related Issuers securities if the purchase is made on an exchange. The Desjardins Funds are permitted to invest in exchange-traded securities of Related Issuers pursuant to subsection 6.2(2) of Regulation 81-107. However, subsection 6.2(2) of Regulation 81-107 does not provide an exemption from subsection 4.1(2) of Regulation 81-102 and it does not provide an exemption for purchases of non-exchange-traded debt securities.
18. The Related Issuers are or may be significant issuers of investment grade quality fixed income securities in the debt market. The Filer considers that it would be in the best interest of the Desjardins Funds to have access, on the terms and conditions described herein, to non-exchange-traded debt securities of the Related Issuers with a designated rating by a designated rating organization as defined in Regulation 81-102, for the reasons set out below:
  - (a) there is a limited supply of non-government debt securities which have a designated rating by a designated rating organization as defined in Regulation 81-102; and
  - (b) diversification is reduced to the extent that a Desjardins Fund is limited with respect to investment opportunities; and
  - (c) investing in debt securities of Related Issuers is a fundamentally distinct investment and cannot simply be replicated by investing in other securities of similarly situated issuers that are unrelated to the Desjardins Funds. A Desjardins Fund may be prejudiced if it cannot purchase, in either a Primary Offering or the secondary market, non-exchange-traded debt securities of a Related Issuer that are consistent with the Desjardins Fund's investment objectives.

**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. At the time of each transaction, the transaction is consistent with or necessary to meet the investment objectives of the Desjardins Fund, and represents the business judgment of the portfolio manager of the Desjardins Fund uninfluenced by considerations other than the best interests of the Desjardins Fund or in fact is in the best interests of the Desjardins Fund.
2. The Filer or an affiliate of the Filer, acting as manager of the Desjardins Funds, complies with section 5.1 of Regulation 81-107 and the Filer or an affiliate of the Filer and the IRC of the Desjardins Funds comply with section 5.4 of Regulation 81-107 for any standing instructions the IRC provides in connection with the Operations.

## Decisions, Orders and Rulings

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3. The IRC of the Desjardins Fund has approved the transaction in accordance with subsection 5.2(2) of Regulation 81-107.
4. The IRC of the Desjardins Funds complies with the obligation provided by section 4.5 of Regulation 81-107 for any Operation.
5. No later than the time a Desjardins Fund files its annual financial statements, the Filer or an affiliate of the Filer, as manager of the Desjardins Funds, files with the securities regulatory authority the particulars of any such Operation.
6. If the Operation is made in a Primary Offering:
  - (i) the debt securities are non-exchange-traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more and is purchase in a Primary Offering where the terms, such as the size and the pricing are a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document;
  - (ii) the size of the Primary Offering is at least \$100 million;
  - (iii) at least two purchasers who are independent and at arm's-length, which may include an independent underwriter as defined in Regulation 33-105 respecting Underwriting Conflicts (chapter V-1.1, r. 11) purchase collectively at least 20% of the Primary Offering;
  - (iv) no Desjardins Fund shall participate in the Primary Offering, if following its Operation, the Desjardins Fund would have more than 5% of its net assets invested in non-exchange-traded debt securities of the Related Issuer;
  - (v) no Desjardins Fund shall participate in the Primary Offering, if following its Operation, the Desjardins Fund, together with other Desjardins Funds will hold more than 20% of the securities issued under the Primary Offering;
  - (vi) the price paid for the non-exchange-traded debt securities by the Desjardins Fund in the 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; and
  - (vii) the non-exchange-traded debt security has been given and continues, at the time of the Operation, to have a designated rating by a designated rating organization within the meaning of those terms in Regulation 81-102;
7. If the Operation occurs in the secondary market:
  - (i) the price payable for the security is not more than the ask price of the security;
  - (ii) the ask price of the security is determined as follows:
    - (A) if the Operation occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
    - (B) if the Operation does not occur on a marketplace:
      - (I) the Desjardins Fund may pay the price for the security, at which an independent, arm's-length seller is willing to sell the security, or
      - (II) if the Desjardins Fund does not purchase the security from an independent, arm's-length seller, the Desjardins Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the Operation, at least one quote from an independent, arm's-length purchaser or seller and not pay more than that quote; and,
  - (iii) the security has been given and continues, at the time of the Operation, to have a designated rating by a designated rating organization as defined in Regulation 81-102; and
  - (iv) the transaction complies with any applicable market integrity requirements as defined in paragraph 6.1(1)(b) of Regulation 81-107.

"Hugo Lacroix"  
Senior Director, Investment Funds  
Autorité des marchés financiers

2.1.2 FT Portfolios Canada Co.

**Headnote**

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to Fundata FundGrade A+ Awards and relief from paragraph 15.3(4)(c) to permit references to FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ 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.

July 25, 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  
FT PORTFOLIOS CANADA CO.  
(FT Portfolios)

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from FT Portfolios and any future affiliates (together, the **Filer**) on behalf of existing exchange-traded mutual funds and future exchange-traded mutual funds of which the Filer is or 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 both the FundGrade A+ Awards and the FundGrade Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ 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;
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 and the FundGrade 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) FT Portfolios has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System (MI 11-102)* is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

### **Interpretation**

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

### **Representations**

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

#### ***The Filer and the Funds***

1. FT Portfolios is a corporation formed by amalgamation pursuant to a certificate of amalgamation dated November 29, 2001 under the federal laws of Nova Scotia.
2. FT Portfolios is, or will be, the investment fund manager of the Funds and is registered as an investment fund manager under the securities legislation in Ontario, Québec and Newfoundland and Labrador and is also registered in Ontario as a mutual fund dealer. The head office of FT Portfolios is in Toronto, Ontario.
3. Each of the Funds is, or will be, an exchange traded fund organized and governed by the laws of the province of Ontario. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each of the Jurisdictions.
4. Each of the Funds is, or will be, subject to NI 81-102 (including Part 15 of NI 81-102 which governs sales communications), subject to any exemptions therefrom that may be granted by the securities regulatory authorities.
5. Each of the Funds is, or will be, a reporting issuer in each of the Jurisdictions.
6. Neither FT Portfolios nor any of the Funds are in default of the securities legislation in any of the Jurisdictions.

#### ***Fundata FundGrade Ratings and FundGrade A+ Awards Program***

7. The Filer wishes to include in sales communications for the Funds references to the FundGrade Ratings and the FundGrade A+ Awards, where such Funds have been awarded a FundGrade A+ Award.
8. Fundata Canada Inc. (**Fundata**) is a ‘mutual fund rating entity’ as that term is defined in NI 81-102 and is not a member of the organization of the Funds. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

***Sales Communication Disclosure***

15. 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+ Award 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+ Award Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
16. 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).
17. 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 its sales communications.
18. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied on 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). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) 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, accordingly, the exemption in subsection 15.3(4.1) is not available to the Funds. Relief from paragraph 15.3(4)(c) is, therefore also, required in order for a Fund to reference the FundGrade A+ Awards in its sales communications.
19. 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.
20. 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 only permits 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.
21. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

22. The Filer submits that the FundGrade A+ Awards and the FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. The FundGrade A+ Awards and the FundGrade Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata in fund analysis that alleviates any concern that references to them in sales communications 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 and the FundGrade 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;
  - (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+ Awards or the FundGrade Rating is based;
  - (e) a statement that FundGrade Ratings are subject to change every month;
  - (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;
  - (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;
  - (h) 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); and
  - (i) reference to Fundata's website ([www.fundata.com](http://www.fundata.com)) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings.
2. The FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and
3. The FundGrade A+ Awards and the FundGrade 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).

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



### 2.1.3 Anglo Pacific Group plc

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 43-101 Standards of Disclosure for Mineral Projects, section 9.1 – filer seeks relief from requirements of subsection 2.2 with respect to the use of mineral resource and mineral reserve categories of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code in disclosure relating to properties underlying royalty interests – relief subject to conditions including that disclosure must be extracted from publicly available information disclosed by an issuer whose securities trade on a specified exchange, and must be accompanied by proximate cautionary language.

#### Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 2.2, 9.1.

July 26, 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  
ANGLO PACIFIC GROUP PLC  
(the Filer)

DECISION

#### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to subsection 9.1(1) of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects (NI 43-101)* that the Filer be exempt from the requirements of section 2.2 of NI 43-101 that the Filer must not disclose any information about a mineral resource or mineral reserve unless it uses only the applicable mineral resource and mineral reserve categories ascribed to those terms by the Canadian Institute of Mining, Metallurgy and Petroleum (the **CIM Standards**), which exemption only applies with respect to the Filer's use of mineral resource or mineral reserve categories ascribed under the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code, as applicable (each as defined in NI 43-101, collectively the **Foreign Codes**) in "disclosure" (as defined in NI 43-101) made by the Filer relating to properties underlying the Royalty Portfolio (as defined below) and the Royalty Options (as defined below) (collectively, the **Foreign Code Disclosure**) (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 (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 British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

#### Interpretation

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

## Representations

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

- 1 The Filer is a public limited company, which was incorporated and registered in England and Wales on February 7, 1967 under the UK *Companies Act, 1948* under the name "Diversified Bank Shares Limited". The Company subsequently underwent a number of name changes and on November 11, 1997 the Company changed its name to "Anglo Pacific Group plc". The Filer's head and registered office is located in London, England, United Kingdom.
- 2 The issued share capital of the Filer consists of 181,418,939 Ordinary Shares with nominal par value per Ordinary Share of £0.02 issued and outstanding as at June 26, 2018.
- 3 The Filer is a London, United Kingdom based global natural resources royalties company. The Filer's business consists of:
  - (a) passive (non-operating) royalty interests in mining projects and operations, including coal, iron ore, gold, chromite and uranium projects (**Royalty Portfolio**);
  - (b) options to acquire royalties and other associated assets (**Royalty Options**);
  - (c) direct ownership in one private coal property (the **Coal Property**); and
  - (d) direct equity investments in both listed and unlisted mineral exploration and development companies (the **Equity Interests**).
- 4 The Filer considers the Royalty Portfolio and the Royalty Options, as a whole, to be material to the Filer's business, as the Royalty Portfolio and the Royalty Options comprise the core part of the Filer's business strategy and objective to continually build a diverse portfolio of royalties to generate growing, long-term returns for its investors. Currently, the Filer considers (i) its private royalty ground on the Kestrel Mine located in the Bowen Basin, Queensland, Australia and (ii) its private royalty ground on the Narrabri Mine located in the Gunnedah Basin, New South Wales, which royalty was acquired in February 2015, subsequent to the Initial Order (as defined below) to be a mineral project on a property material to the Filer.
- 5 The Ordinary Shares are listed and quoted for trading on the London Stock Exchange (**LSE**), which is the principal trading market of the Ordinary Shares. The Filer is in compliance with the reporting requirements of the LSE.
- 6 The Filer is subject to the listing rules and regulations of the UK Financial Services Authority in its capacity as the competent authority for the purposes of Part VI of the UK Financial Services and Markets Act 2000 (as amended from time to time) and the applicable laws of England and Wales (in each case as amended from time to time).
- 7 The Filer does not have a head office in any jurisdiction in Canada. However, the Filer is a "reporting issuer" (as defined under the *Securities Act* (Ontario)) in the Jurisdiction as a consequence of its Ordinary Shares becoming listed and posted for trading on the Toronto Stock Exchange on July 9, 2010.
- 8 The Filer qualifies as a "designated foreign issuer" (as defined in National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*).
- 9 As a royalty and/or option holder, the Filer often has limited, if any, access to non-public scientific and technical information in respect of the properties underlying the Royalty Portfolio and the Royalty Options, or such information is subject to confidentiality provisions. The Filer often has certain rights to require an audit of payments under its royalties but generally does not have access to technical and other information regarding the properties underlying the Royalty Portfolio and the Royalty Options, other than as publicly disclosed by the owners and operators of such properties. As such, in making technical disclosure in respect of the properties underlying the Royalty Portfolio and the Royalty Options, the Filer is required to rely on the public disclosures of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options, as available at the date of such disclosure and such information and disclosure may not comply with the requirements of NI 43-101.
- 10 The public disclosures of certain of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options are subject to technical disclosure requirements that exist in other jurisdictions pursuant to the Foreign Codes.
- 11 The Filer wishes to provide the Foreign Code Disclosure to Canadian investors because it believes that investors could find such additional disclosure to be useful in understanding the Filer's business as a natural resources royalty company

and evaluating an investment in the Filer. However, any such Foreign Code Disclosure will be subject to the requirements of NI 43-101.

- 12 Section 7.1 of NI 43-101 provides an exemption from section 2.2 of NI 43-101 that is similar to the Exemption Sought. It allows certain issuers to make disclosure and file a technical report that uses the mineral resource and mineral reserve categories of an acceptable foreign code (as defined in NI 43-101) provided that the issuer includes in such technical report a reconciliation of any material differences between the mineral resource and mineral reserve categories used under an acceptable foreign code and the analogous mineral resource and mineral reserve categories reported in the CIM Standards.
- 13 The Filer cannot avail itself of the exemption in section 7.1 of NI 43-101 because (i) it is exempt from filing technical reports under subsection 9.2(1) of NI 43-101, which provides an exemption for royalty or other similar issuers from the requirement to file a technical report under certain conditions and (ii) as a result of the Filer's limited, if any, access to non-public scientific and technical information in respect of the properties underlying the Royalty Portfolio and the Royalty Options as set out in paragraph 9 and the fact that certain of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options report scientific and technical information in accordance with the Foreign Codes (or may, in the future, report scientific and technical information in accordance with the Foreign Codes), the Filer is often unable (or may, in the future, be unable) to take the necessary steps required to describe the material differences between any mineral resource and mineral reserve categories reported in the Foreign Codes as reported in respect of the properties underlying the Royalty Portfolio and the Royalty Options and the CIM Standards.
- 14 On September 24, 2012, the Principal Regulator granted the Filer an exemption from the requirements of section 2.2 of NI 43-101 that the Filer must disclose any information about a mineral resource or mineral reserve using only the meanings ascribed to those terms by the CIM Standards (the **Initial Order**). The Initial Order was granted on substantially the same basis as the Exemption Sought and was revoked in the Subsequent Order (as defined below).
- 15 On June 24, 2015, the Principal Regulator granted the Filer an exemption from the requirements of section 2.2 of NI 43-101 that the Filer must disclose any information about a mineral resource or mineral reserve using only the meanings ascribed to those terms by the CIM Standards (the **Subsequent Order**). The Subsequent Order was granted on substantially the same basis as the Exemption Sought and expired in June 2018.
- 16 The Filer is not in default of securities legislation in any of the jurisdictions in Canada.

### 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:

- 1 The Subsequent Order is revoked; and
- 2 The Exemption Sought is granted provided that:
  - (a) the Exemption Sought applies solely to Foreign Code Disclosure in respect of the properties underlying the Royalty Portfolio or the Royalty Options whose owners and operators are subject to the Foreign Code Disclosure requirements of and report scientific and technical information in accordance with the Foreign Codes;
  - (b) the Filer extracts the Foreign Code Disclosure from information publicly disclosed in documents disclosed by the owners and operators of the properties underlying the Royalty Portfolio or the Royalty Options, from information available in the public domain or from information available on the relevant issuer's website and information available on other public websites;
  - (c) the Filer's disclosure which includes the Foreign Code Disclosure made in reliance of the Exemption Sought will contain the following cautionary statement, as appropriately modified for the circumstances:

"National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("**NI 43-101**") contains certain requirements relating to the use of mineral resource and mineral reserve categories of an "acceptable foreign code" (as defined in NI 43-101) in "disclosure" (as defined in NI 43-101) made by Anglo Pacific Group PLC with respect to a "mineral project" (as defined in NI 43-101), including the requirement to include a reconciliation of any material differences between the mineral resource and mineral reserve categories used under an acceptable foreign code and the standards developed by the Canadian Institute

of Mining, Metallurgy and Petroleum, as the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council, as amended (the “**CIM Standards**”) in respect of a mineral project. Pursuant to an exemption order granted to Anglo Pacific Group PLC by the Ontario Securities Commission, the information contained herein with respect to the **[name applicable properties underlying the Royalty Portfolio/Royalty Option]** has been extracted from information publicly disclosed, disseminated, filed, furnished or similarly communicated to the public by an issuer whose securities trade on a “specified exchange” (as defined in NI 43-101) that discloses mineral reserves and mineral resources under one of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code (each as defined in NI 43-101). As the definitions and standards of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 and the Certification Code are substantially similar to the CIM Standards, a reconciliation of any material differences between the mineral resource and mineral reserve categories reported under the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 and the Certification Code, as applicable, to categories under the CIM Standards is not included and no Form 43-101F1 technical report will be filed to support the disclosure based upon such exemption.”, and

- (d) this decision will terminate 60 months after the date hereof.

“Winnie Sanjoto”  
Manager, Corporate Finance Branch  
Ontario Securities Commission

#### 2.1.4 Invesco Canada Ltd.

##### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds subject to NI 81-102 granted relief to invest up to 10% of net assets in underlying Luxembourg fund subject to UCITS rules.

##### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(c), 19.1.

July 27, 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  
INVESCO CANADA LTD.  
(the Filer)**

**DECISION**

##### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds (NI 81-102)*, exempting each of the existing and future mutual funds managed by the Filer that are subject to NI 81-102 and that have investment strategies that allow or will allow exposure to securities of emerging market corporate issuers (the **Top Funds**, and each individually, a **Top Fund**) from the requirements in:

- a) paragraph 2.5(2)(a) of NI 81-102, which prohibits a mutual fund from investing in another mutual fund unless the other mutual fund is subject to NI 81-102 and offers or has offered securities pursuant to a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)*; and
- b) paragraph 2.5(2)(c) of NI 81-102, which prohibits a mutual fund from investing in another investment fund unless both are reporting issuers in the local jurisdiction,

in order to permit each of the Top Funds to invest up to 10% of its net assets in the securities of Invesco Emerging Market Corporate Bond Fund (the **Underlying Fund**) (collectively, the **Requested Relief**).

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

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

##### Interpretation

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

## Representations

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

### *The Filer*

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office in Toronto, Ontario.
2. The Filer is an indirect wholly-owned subsidiary of Invesco, Ltd., a global investment manager.
3. The Filer is registered as an investment fund manager, portfolio manager, mutual fund dealer, exempt market dealer and commodity trading manager in Ontario and as an investment fund manager, portfolio manager, mutual fund dealer and exempt market dealer in Quebec. The Filer is registered as portfolio manager and exempt market dealer in the rest of the Jurisdictions. Additionally, the Filer is registered as a mutual fund dealer in Alberta, British Columbia, Nova Scotia and Prince Edward Island, and as an investment fund manager in Newfoundland and Labrador.
4. The Filer is not in default of the securities legislation in any of the Jurisdictions.

### *The Top Funds*

5. Each Top Fund is, or will be, an open-end mutual fund trust created under the laws of the Province of Ontario or an open-end mutual fund that is a class of share of a mutual fund corporation.
6. Each Top Fund is, or will be, subject to the provisions of NI 81-102. Each Top Fund is, or will be, a reporting issuer under the laws of the Jurisdictions. The securities of the Top 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.
7. The existing Top Funds are not in default of securities legislation in any of the Jurisdictions.
8. The investment strategies of the Top Funds allow or will allow exposure to fixed-income securities of emerging market corporate issuers. To achieve the investment objectives of the Top Funds, the Filer has determined that it would be in the best interests of each Top Fund to have the ability to invest up to 10% of its net assets in securities of the Underlying Fund.

### *The Underlying Fund*

9. The Underlying Fund is distributed in certain European countries pursuant to the EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to Undertakings of Collective Investment in Transferable Securities (**UCITS**), as amended (the **EU Directives**).
10. The Underlying Fund is a sub-fund of Invesco Funds, SICAV (as hereinafter defined) (**IFS**). IFS is an open-ended investment company that qualifies as a Société d'Investissement à Capital Variable (**SICAV**) governed by the laws of Luxembourg. IFS is registered as a UCITS under the EU Directives.
11. Invesco Management S.A. (**IMSA**) is the manager of IFS. IMSA is a wholly-owned indirect subsidiary of Invesco Ltd. and as of May 31, 2018, IMSA managed approximately US \$73.2 billion.
12. The Underlying Fund is subject to investment restrictions and practices under the laws of Luxembourg that are applicable to mutual funds that are sold to the general public and is a regulated investment fund authorized as a UCITS. Thus, the Underlying Fund is subject to investment restrictions and practices that are substantially similar to those applicable to the Top Funds, including NI 81-102.
13. The Underlying Fund has filed a prospectus with Luxembourg's financial sector regulator, Commission de Surveillance du Secteur Financier, that contains disclosure regarding the Underlying Fund. The Underlying Fund does not typically invest more than 10% of its net asset value in other investment funds.
14. The investment objectives of the Underlying Fund are to achieve a high income yield and long-term capital appreciation by investing primarily in debt securities of emerging market corporate issuers. The Underlying Fund's investment strategy and objective make it a suitable investment for the Top Funds.
15. The Filer would like to have the ability to invest up to 10% of the net assets of each of the Top Funds in the securities of the Underlying Fund, as it provides unique exposure to the fixed-income securities of emerging market corporate issuers.

16. Absent the Requested Relief, an investment by a Top Fund in the Underlying Fund would be prohibited by sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 because the Underlying Fund is not subject to NI 81-102, does not offer its securities under a simplified prospectus in accordance with NI 81-101, and is not a reporting issuer in the local jurisdiction.
17. While it may be possible for the Filer to invest directly in the securities in which the Underlying Fund invests, the Filer submits that it is not desirable to do so, because, given the Top Fund's limited proposed investment in the Underlying Fund, it would be more efficient from a trading costs and liquidity perspective to invest in securities of the Underlying Fund rather than directly in the various securities in which the Underlying Fund invests.
18. Each Top Fund will otherwise comply with section 2.5 of NI 81-102 in its investment in the Underlying Fund and will provide all disclosure mandated for investment funds investing in other investment 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.

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

- a) The Underlying Fund is subject to investment restrictions and practices under the laws of Luxembourg that are applicable to mutual funds that are sold to the general public and is a regulated investment fund authorized as a UCITS;
- b) Each Top Fund will otherwise comply with section 2.5 of NI 81-102 in its investment in the Underlying Fund and will provide all disclosure mandated for investment funds investing in other investment funds. Specifically, the investment by the Top Funds in the Underlying Fund will be disclosed in the simplified prospectus of the Top Funds;
- c) Each Top Fund will not purchase securities of the Underlying Fund if, immediately after the purchase, more than 10% of its net assets, in aggregate, taken at market value at the time of the investment, would consist of investments in the Underlying Fund; and
- d) If the laws applicable to the Underlying Fund that are, as of the date of this decision, substantially similar to Part 2 of NI 81-102 change in a manner that is materially inconsistent with Part 2 of NI 81-102, each Top Fund shall not acquire any additional securities of the Underlying Fund, and shall dispose of the securities of the Underlying Fund then held in an orderly and prudent manner.

"Neeti Varma"  
Manager (Acting)  
Investment Funds and Structured Products Branch  
Ontario Securities Commission

**2.1.5 Genworth Financial, Inc. and Genworth MI Canada Inc.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – reporting insider granted relief from the requirement in subsection 107(2) of the Securities Act (Ontario) to file an insider report within five days of each disposition of securities occurring pursuant to an automatic securities disposition plan, provided that the insider files an insider report in respect of all dispositions under the automatic securities disposition plan on an annual basis.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, ss. 107(2), 121(2)(a)(ii).  
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 3.3.

July 27, 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  
GENWORTH FINANCIAL, INC.  
(THE “INSIDER”)

AND

GENWORTH MI CANADA INC.  
(THE “COMPANY”, AND TOGETHER WITH THE INSIDER, THE “FILERS”)

**DECISION**

**Background**

The principal regulator in the Jurisdiction (the “**Decision Maker**”) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) for an exemption, subject to certain conditions, from the requirements under subsection 107(2) of the *Securities Act* (Ontario) (the “**Act**”), in connection with the disposition of common shares of the Company (the “**Shares**”) beneficially owned by the Insider pursuant to an automatic securities disposition plan, for the following entities:

- (a) the Insider; and
- (b) the Insider Subsidiary Entities (as defined below)

(the exemptions for (a) and (b), above, are collectively referred to in this decision as the “**Exemption Sought**”).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in British Columbia, Alberta, Manitoba, Saskatchewan, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Nunavut and the Yukon (the “**Non-Principal Jurisdictions**”).



Under subsection 4.7(1) of MI 11-102, the decision of the Decision Maker will exempt the Insider and the Insider Subsidiary Entities from the equivalent requirements in section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (“**NI 55-104**”) that apply in the Non-Principal Jurisdictions.

### **Interpretation**

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

### **Representations**

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

1. The Company is a corporation existing under the *Canada Business Corporations Act* and is a reporting issuer in each of the provinces and territories of Canada (collectively, the “**Reporting Jurisdictions**”). The Company is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in the Reporting Jurisdictions.
2. The registered and head office of the Company is located at 2060 Winston Park Drive, Suite 300, Oakville, Ontario, L6H 5R7.
3. The authorized share capital of the Company consists of an unlimited number of Shares, an unlimited number of preferred shares (the “**Preferred Shares**”) and one special share (the “**Special Share**”). As of July 20, 2018, the Company had 89,884,260 Shares, no Preferred Shares and one Special Share issued and outstanding.
4. The Shares are listed on the Toronto Stock Exchange (the “**TSX**”) under the symbol “MIC”.
5. As of July 20, 2018, the Insider was the beneficial owner of an aggregate of 51,224,957 Shares (the “**Insider Shares**”), representing approximately 56.99% of the issued and outstanding Shares, and one Special Share. The Insider Shares are held directly by Genworth Financial International Holdings, LLC (“**GFIH**”), Genworth Mortgage Insurance Corporation (“**GMIC**”, and together with GFIH, the “**Participating Entities**”) and Genworth Mortgage Insurance Corporation of North Carolina (“**GMIC-NC**”), each of which is an indirect wholly-owned subsidiary of the Insider. The Special Share is held directly by Genworth Financial International Holdings, LLC. None of the Insider Shares that will be subject to the ASDP (as defined below) and held by the Participating Entities will be subject to any encumbrances, liens, security interests or other restrictions to transfer upon disposition pursuant to the ASDP. The Participating Entities, together with GMIC-NC, and other subsidiaries that may directly or indirectly beneficially own Insider Shares from time to time and participate in the ASDP are referred to in this decision as the “**Insider Subsidiary Entities**”. Neither the Insider nor any of the Insider Subsidiary Entities is in default of any applicable securities legislation or the rules and regulations made pursuant thereto in the Reporting Jurisdictions.
6. The Company announced on May 1, 2018 that it is engaging in a normal course issuer bid (the “**NCIB**”) for up to 4,489,616 Shares, representing 5% of the Company’s issued and outstanding Shares as of the date specified in the Notice of Intention to Make a Normal Course Issuer Bid that was submitted to, and accepted by, the TSX.
7. Purchases under the NCIB were authorized to commence on May 7, 2018 and will conclude on the earlier of the date on which the maximum number of Shares, being 4,489,616 Shares, have been acquired and May 6, 2019. All purchases under the NCIB will be pursuant to, and in accordance with, the terms of the ASPP (as defined below) and the ASDP. As at July 20, 2018, the Company has not purchased any Shares under the NCIB, and the Company will not make any purchases until such time as the ASPP Agreement and the ASDP Agreement (as such terms are defined below) have been entered into and are effective. Each of the ASPP Agreement and the ASDP Agreement will have been provided to the TSX for review and, as applicable, pre-cleared by the TSX prior to execution.
8. The Insider wishes to maintain its aggregate proportionate percentage ownership in the Company at approximately 57% of the issued and outstanding Shares (the “**Insider Ownership Percentage**”).
9. The Company has determined that it is in the best interests of the Company for the NCIB to include a proportionate participation feature to enable the Insider to participate in the NCIB and maintain its aggregate proportionate percentage ownership in the Company at the Insider Ownership Percentage.
10. In connection with the NCIB, the TSX has granted the Company an exemption (the “**TSX Exemption**”) which will allow the Company to purchase, during the TSX’s Special Trading Session (the “**Special Trading Session**”) through a broker retained for such purpose, on any trading day that the Company makes a purchase from other holders of Shares pursuant

- to the NCIB, such number of Insider Shares from the Insider Subsidiary Entities that will result in the Insider maintaining its aggregate proportionate percentage ownership in the Company at the Insider Ownership Percentage.
11. The NCIB, including the proportionate participation feature, will be conducted through the facilities of the TSX or through other permitted means (including through other published markets) in accordance with the bylaws, rules, regulations and policies of the TSX.
  12. The NCIB will be implemented through a broker that is independent of the Company (the “**Broker**”) who is responsible for making purchases of Shares on behalf of the Company pursuant to an automatic share purchase plan (the “**ASPP**”). Pursuant to the ASPP, the Company will instruct the Broker to buy Shares in accordance with a prearranged set of trading parameters and other instructions (the “**ASPP Parameters**”), all as set out in a written plan document (the “**ASPP Agreement**”) that will be submitted to the TSX for pre-clearance and that will be entered into between the Company and the Broker at the time that the ASPP is established.
  13. At the time that the ASPP Agreement is entered into by the Company and the Broker, the Company will not be in possession of any material undisclosed information in relation to the Company that would otherwise be required to be disclosed by law.
  14. Pursuant to the ASPP Agreement, the Broker will determine, in its sole discretion, the timing of the purchases of Shares, the number of Shares to be purchased, the price payable for the Shares and the manner in which purchases of Shares are to occur for the duration of the ASPP, so long as such purchases are within, and in accordance with, the ASPP Parameters. The ASPP Agreement will specify that, other than the ASPP Parameters, the Broker will not take any instructions from, nor consult with, the Company or its affiliates regarding any purchases under the ASPP.
  15. The ASPP will operate automatically and be conducted solely through the Broker. No material discretionary authority will remain with the Company and the Company will have no influence or control over any of the purchases of Shares. The ASPP will enable the Company to buy Shares regardless of whether a “blackout period” applicable to the Company may then be in effect and regardless of whether the Company is in possession of material undisclosed information at the time of a particular purchase.
  16. The ASPP Agreement will provide that (a) the TSX Exemption will immediately terminate if, on a trading day where the Company makes a purchase from other holders of Shares pursuant to the NCIB, the Insider Subsidiary Entities do not sell the specified number of Insider Shares to the Company in order for the Insider to maintain its aggregate proportionate percentage ownership in the Company at the Insider Ownership Percentage, other than as a result of a general market disruption, a legal, regulatory or contractual restriction or other internal policy applicable to the Broker, or other similar event, and (b) the termination of the TSX Exemption upon the occurrence of the events described in (a) above will result in the termination of the ASPP Agreement. Except for the circumstances described in the preceding sentence, any decision by the Insider Subsidiary Entities not to sell Insider Shares to the Company pursuant to the ASDP would be considered an amendment to the ASDP and subject to paragraph 24 below.
  17. In order for the Insider to ensure that it is able to maintain its aggregate proportionate percentage ownership in the Company at the Insider Ownership Percentage, the Insider intends to cause certain Insider Subsidiary Entities to enter into an automatic share disposition plan (the “**ASDP**”) so that such entities will be reciprocally permitted to dispose of Insider Shares when the Company is purchasing Shares under the ASPP, including when a “blackout period” applicable to the Company may be in effect and when the Insider and the relevant Insider Subsidiary Entities may be in possession of material undisclosed information about the Company. Absent an automatic disposition process, as an insider of the Company, the Insider and the Insider Subsidiary Entities would have a limited number of opportunities to dispose of the Insider Shares due to insider trading restrictions under applicable securities laws and the Company's insider trading policies, and the Insider and the Insider Subsidiary Entities might be unable to sell Insider Shares to the Company at all times when the ASPP is operative and purchasing. Purchases of Insider Shares pursuant to the ASDP will only occur if the Company purchases Shares under the NCIB pursuant to the ASPP, and only for the purpose of allowing the Insider to maintain its aggregate proportionate percentage ownership in the Company at the Insider Ownership Percentage.
  18. The ASDP will be administered by the Broker, who is also independent of the Insider and the Insider Subsidiary Entities, in accordance with a pre-arranged set of trading parameters and other instructions (the “**ASDP Parameters**”) set out in a written plan document (the “**ASDP Agreement**”) that will be entered into between the Participating Entities (as the Insider Subsidiary Entities currently expected to participate in the NCIB), the Broker, and the Company at the time that the ASDP is established. The form of ASDP ultimately implemented will be in compliance with applicable securities legislation and guidance, including, *inter alia*, subsection 175(2) of Regulation 1015 under the Act, OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* and similar rules and regulations regarding automatic dispositions of securities under Canadian securities laws.

19. At the time that the ASDP Agreement is entered into, neither the Insider nor any of the Participating Entities will be in possession of any material undisclosed information about the Company and each of them will represent that it is entering into the ASDP in good faith and not as part of a plan or scheme to evade prohibitions against trading with material undisclosed information contained in applicable Canadian securities laws.
20. At the time that the ASDP Agreement is entered into, the Insider will provide the Broker with a certificate from the Company confirming that the Company is aware of the ASDP and certifying that, to the best of the Company's knowledge, each of the Insider and the Participating Entities is not in possession of material undisclosed information about the Company.
21. Pursuant to the ASDP Agreement, the Broker shall determine, in its sole discretion, the timing of the sales of Insider Shares and the number of Insider Shares to be sold, for the duration of the ASDP, so long as such sales are within, and in accordance with, the ASDP Parameters and any rules and procedures of the TSX relating to the Special Trading Session. The ASDP Agreement will specify that, other than the ASDP Parameters, the Broker will not take any instructions from, nor consult with, the Insider or the Participating Entities regarding any sales under the ASDP.
22. The ASDP will operate automatically and be conducted solely through the Broker. No material discretionary authority will remain with the Insider or the Participating Entities and none of them will have any influence or control over any of the sales of Insider Shares under the ASDP.
23. The ASDP Agreement will specify that the Broker will not consult with the Insider or the Participating Entities regarding any sales under the ASDP. The ASDP Agreement will also specify that the Insider and the Participating Entities will not disclose any information concerning the Company or the Shares to the Broker that might influence the execution of the ASDP.
24. The ASDP Agreement will specify that any amendment to, or modification of, the ASDP Agreement (including the termination thereof, other than in accordance with the termination provisions listed in paragraph 25) will require the written agreement of each of the parties thereto, which includes the Company, and will be conducted in compliance with, *inter alia*, statutes and regulations applicable to the trading of securities in the Reporting Jurisdictions, including applicable rules, policy statements and blanket rulings and orders promulgated by Canadian securities regulatory authorities. The ASDP Agreement will specify that at the time of any amendment to, or modification of, the ASDP Agreement, each party will represent that it is not in possession of material undisclosed information with respect to the Company. In the event of any amendment to, or modification of, the ASDP Agreement:
  - (a) a SED! filing in respect of such amendment or modification will be completed by, or on behalf of, the Insider and such filing will include a statement that the Insider is not in possession of any undisclosed material information in respect of the Company, and
  - (b) a press release in respect of such amendment or modification will be issued by, or on behalf of, the Insider and/or the Company if such amendment or modification amounts to material information in respect of the Insider or the Company, which press release will include a statement that none of the Insider, the Insider Subsidiary Entities or the Company is in possession of any undisclosed material information in respect of the Company.
25. The ASDP shall terminate upon the first to occur of the following:
  - (a) the termination of the NCIB;
  - (b) the termination of the ASPP in accordance with its terms;
  - (c) the termination of the TSX Exemption; and
  - (d) the commencement of any voluntary or involuntary proceedings seeking:
    - (i) the liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law of the Insider or any of the Participating Entities; or
    - (ii) the appointment of a trustee, receiver or other similar official in respect of the Insider or any of the Participating Entities,or the taking of any corporate action by any of the Insider or the Participating Entities to authorize any of the foregoing.

## Decisions, Orders and Rulings

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26. The Insider will file an insider report in accordance with subsection 107(2) of the Act to reflect the change in the direct or indirect beneficial ownership of, or control or direction over, the Insider Shares in connection with the entering into of the ASDP Agreement.
27. The ASDP Agreement may be amended to include additional Insider Subsidiary Entities as "Participating Entities" and those additional entities will be subject to the same obligations as the original Participating Entities.
28. None of the Insider Subsidiary Entities will purchase or sell Shares through the facilities of the TSX during the 30 minutes before the scheduled close of a trading session on the TSX.
29. For greater certainty, the Exemption Sought applies to the Insider Subsidiary Entities to the extent the exemption from the insider reporting requirements in section 9.5 of NI 55-104 is not available for use.

### Decision

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

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

- (a) at the time the ASPP Agreement is entered into, none of the parties to the ASPP Agreement is in possession of any material undisclosed information in relation to the Company that would otherwise be required to be disclosed by law;
- (b) at the time the ASDP Agreement is entered into, none of the parties to the ASDP Agreement is in possession of any material undisclosed information about the Company, and none of them is entering into the ASDP as part of a plan or scheme to evade prohibitions against trading with material undisclosed information in applicable Canadian securities laws;
- (c) the ASDP Agreement and ASPP Agreement reflect the terms and conditions described in representations 12, 14, 15, 16, 18, 20 to 25, inclusive, and 27, as applicable;
- (d) each of the ASDP Agreement and ASPP Agreement will have been provided to the TSX for review and, as applicable, pre-cleared by the TSX prior to execution;
- (e) the Insider files an insider report in accordance with subsection 107(2) of the Act to reflect the change in the direct or indirect beneficial ownership of, or control or direction over, the Insider Shares in connection with the entering into of the ASDP Agreement;
- (f) upon any amendment to, or modification of, the ASDP Agreement:
  - (i) a SEDI filing in respect of such amendment or modification will be completed by, or on behalf of, the Insider and such filing will include a statement that the Insider is not in possession of any undisclosed material information in respect of the Company, and
  - (ii) a press release in respect of such amendment or modification will be issued by, or on behalf of, the Insider and/or the Company if such amendment or modification amounts to material information in respect of the Insider or the Company, which press release will include a statement that none of the Insider, the Insider Subsidiary Entities or the Company is in possession of any undisclosed material information in respect of the Company; and
- (g) the Insider files an insider report (as such term is defined in NI 55-104) disclosing, on a transaction-by-transaction basis or in acceptable summary form (as such term is defined in NI 55-104), all dispositions of Insider Shares under the ASDP that have not been previously disclosed in an insider report filed by or on behalf of the Insider during a calendar year, on or before March 31 of the next calendar year.

"Philip Anisman"  
Commissioner  
Ontario Securities Commission

"Deborah Leckman"  
Commissioner  
Ontario Securities Commission

## 2.1.6 Equinox Gold Corp.

### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations – Information Circular – An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation – the issuer is required to include historical financial statements for a business it is acquiring; it would be extremely difficult, if not impossible, to prepare certain of the historical financial statements because information to support an audit cannot be obtained and personnel with the historical information are not available; alternate financial information that is available will be provided about the business; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole.

### Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1.  
Form 51-102F5 Information Circular, Item 14.2.

June 21, 2018

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

**AND**

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

**AND**

**IN THE MATTER OF  
EQUINOX GOLD CORP.  
(the Filer)**

**DECISION**

### Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) that the Filer is exempt from the requirement in item 14.2 of Form 51-102F5 *Information Circular* to include the La Verde Statements (as defined below) in an information circular (Circular) to be sent to holders of common shares of the Filer (Equinox Shareholders) in connection with an annual general and special meeting of the Shareholders (the Equinox Meeting) expected to be held for the purposes of considering a plan of arrangement (the Arrangement) under the *Business Corporations Act* (British Columbia) (the BCBCA) (the Requested Relief).

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

- (a) the British Columbia Securities Commission is the principal regulator for this Application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

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

### Representations

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

#### **Filer**

1. the Filer is a corporation existing under the BCBCA and its head office is located in Vancouver, British Columbia;
2. the Filer is a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada, other than Québec;
3. the Filer is not in default of securities legislation in any jurisdiction of Canada;
4. the Filer's financial year end is December 31;
5. the common shares of the Filer are listed on the TSX Venture Exchange (TSXV);
6. the Filer is presently engaged in mineral exploration and development, with its material properties located in the United States and Brazil; the Filer also holds a 60% interest in the La Verde copper-silver-gold deposit in Mexico (the La Verde Project) and owns a ranch property in Guatemala (the Guatemala Property and, together with the La Verde Project, the Spinoff Assets);
7. the Spinoff Assets are currently in the exploration stage and have not generated any operating revenue within either of the fiscal years ended December 31, 2017 or 2016 or for the three months ended March 31, 2018; there have been no exploration expenditures on the Spinoff Assets since September 2013, other than expenditures related to care and maintenance; as a result, the Filer submits that the Spinoff Assets should be considered as "dormant";
8. the La Verde Project does not have proven or probable reserves; a resource estimate for the La Verde Project was reported in the technical report titled "La Verde Copper Project Michoacán State, Mexico, Technical Report" prepared by AMC Mining Consultants (Canada) Ltd. with an effective date of September 30, 2012, which is available on the SEDAR profile of Catalyst Copper Corp. (Catalyst), a wholly-owned subsidiary of the Filer;

#### **Lowell**

9. Lowell Copper Holdings Inc. (Lowell) is a corporation existing under the BCBCA and its head office is located in Vancouver, British Columbia;
10. Lowell's financial year end is December 31;
11. the Filer directly holds all of the outstanding common shares of Lowell (Lowell Shares);
12. Lowell is not a reporting issuer in any jurisdiction and is not in default of securities legislation in any jurisdiction of Canada;
13. the Lowell Shares are not 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;
14. Lowell owns a 100% interest in the Warintza copper-molybdenum exploration property in Ecuador (the Warintza Project), a 100% interest in the Ricardo copper-molybdenum exploration project in Chile (the Ricardo Project), both of which are currently in the exploration stage and have not generated any operating revenue within either of the fiscal years ended December 31, 2017 or 2016 or for the three months ended March 31, 2018; there have been no exploration expenditures on the Warintza Project since June 2006 or the Ricardo Project since June 2015, other than expenditures related to care and maintenance;

**Spinco**

15. Solaris Copper Inc. (Spinco) is a corporation existing under the BCBCA and its head office is located in Vancouver, British Columbia;
16. the Filer directly holds all of the outstanding common shares of Spinco (Spinco Shares);
17. Spinco is not a reporting issuer in any jurisdiction and is not in default of securities legislation in any jurisdiction of Canada;

**Arrangement**

18. the Filer entered into an arrangement agreement pursuant to which:
  - (a) through a series of transactions with affiliates, the Spinoff Assets will be transferred to Lowell;
  - (b) the Filer will transfer all of the issued and outstanding shares of Lowell to Spinco;
  - (c) holders of common shares of the Filer will receive one new common share of the Filer and one-tenth of one Spinco Share in exchange for each common share of the Filer held immediately prior to the closing of the Arrangement;
19. following the completion of the Arrangement:
  - (a) the La Verde Project and the Warintza Project will become the principal assets of Spinco, which will also hold the Ricardo Project and the Guatemala Property;
  - (b) Spinco will become a reporting issuer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, Newfoundland and New Brunswick;
  - (c) the Spinco Shares will not be listed and posted for trading on any exchange;
20. pursuant to the Filer's constating documents, the BCBCA and applicable securities laws, the Equinox Shareholders will be required to approve the Arrangement at the Equinox Meeting;
21. the Arrangement must be approved by a special resolution passed by (i) at least two-thirds of the votes cast by Shareholders present in person or represented by proxy at the Equinox Meeting, and (ii) if required, a majority of the votes cast by the Equinox Shareholders other than those required to be excluded pursuant to Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*;
22. the Arrangement will be a "restructuring transaction" under NI 51-102 in respect of the Filer and therefore the Circular is subject to the requirements of item 14.2 of Form 51-102F5 *Information Circular* (Form 51-102F5);
23. the Filer is relying on the prospectus exemption in section 2.11(b)(i) of National Instrument 45-106 *Prospectus Exemptions* for the distribution of Spinco Shares under the Arrangement;

**Disclosure Requirements**

24. item 14.2 of Form 51-102F5 requires, among other items, that the Circular contain the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that Spinco would be eligible to use immediately prior to the filing and sending of the Circular to Equinox Shareholders for a distribution of Spinco Shares; therefore, the Circular must contain the disclosure in respect of Spinco prescribed by National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1);
25. the La Verde Project has been the subject of two acquisitions; Newcastle Gold Ltd. (Newcastle) acquired the project by acquiring Catalyst on May 26, 2016, and the Filer acquired the project by acquiring Newcastle on December 22, 2017;
26. item 32 of Form 41-101F1 requires a prospectus of a venture issuer to include financial statements of a business acquired by an issuer within two years before the date of the prospectus if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business acquired;

27. a reasonable investor would regard the La Verde Project to be part of the primary business of Spinco upon completion of the Arrangement;
28. the Filer is required under Form 41-101F1 to include in the Circular the following financial statements:
- (a) audited combined annual financial statements for Spinco, including Lowell and the Spinoff Assets, for each of the years ended December 31, 2017 and 2016; such statements will include Lowell's results of operations for the years presented, as well as the results of operations of the Spinoff Assets for the period from December 22, 2017 to December 31, 2017, as this is the period that Lowell and the Spinoff Assets were under the common control of the Filer;
  - (b) interim combined financial statements for Spinco, including Lowell and the Spinoff Assets, for the interim periods ended March 31, 2018 and 2017; such statements will include Lowell's results of operations for the periods presented and the results of operations for the Spinoff Assets for the three months ended March 31, 2018 as this is the period that Lowell and the Spinoff Assets were under the common control of the Filer;
- (together, the Combined Spinco Statements)
- (c) audited financial statements for Catalyst, whose primary asset is the La Verde Project, for:
    - (i) the period from January 1, 2017 to December 21, 2017, being the date immediately prior to the acquisition by the Filer, and
    - (ii) the year ended December 31, 2016,(the La Verde Statements);
29. the combination of the following would render the audit of the La Verde Statements for the year ended December 31, 2016 extremely difficult if not impossible to conduct:
- (a) the accounting records for the period prior to May 26, 2016 are not complete; although the Filer has basic source documents, it would be extremely difficult if not impossible to conduct an audit related to the period prior to May 26, 2016 due to the inability to:
    - (i) ensure proper cut-off procedures,
    - (ii) ensure the accurate allocation of shared costs by the parent company,
    - (iii) verify the completeness of transactions with the parent company holding the La Verde project including any return of capital, cash and non-cash contributions, and
    - (iv) verify the completeness non-controlling interest contributions; and
  - (b) none of the management and staff who were employed by the company holding the La Verde Project during the period prior to May 26, 2016 are currently employed by or available to the Filer; no one is available to answer audit questions or help reconstruct supporting information related to the financial period;

**Alternative Disclosure**

30. in lieu of the La Verde Statements, the Filer will include in the Circular audited carve-out financial statements of Catalyst for the following periods:
- (a) January 1, 2017 to December 21, 2017, being the date immediately prior to the acquisition by the Filer, and
  - (b) May 26, 2016 to December 31, 2016,
- (together, the Alternative Statements and, collectively with the Combined Spinco Statements, the Financial Statement Disclosure);



31. the Circular will also include the following:
- (a) the technical information prescribed by item 5.4 of the Form 41-101F1 in respect of the La Verde Project, which information will be derived from a NI 43-101 compliant technical report that is currently being prepared for the Filer and Spinco by AMC Mining Consultants (Canada) Ltd. and that will be filed on Spinco's SEDAR profile;
  - (b) the technical information prescribed by item 5.4 of the Form 41-101F1 in respect of the Warintza Project, which information will be derived from a NI 43-101 compliant technical report that is currently being prepared for the Filer and Spinco by Mine Development Associates and that will be filed on Spinco's SEDAR profile;
  - (c) disclosure of the fact there has been no production or exploration expenditures (other than expenditures related to care and maintenance) at the La Verde Project, the Warintza Project, the Ricardo Project and the Guatemala Property for the relevant financial periods covered in the Alternative Financial Statements;
  - (d) disclosure regarding Lowell, Spinco and the Spin-Off Assets that otherwise complies with Form 41-101F1;
  - (e) a summary of how the working capital amount to be transferred to Spinco will be calculated and the intentions of Spinco as to the uses of its working capital for 12 months,
- (collectively, the Supplemental Disclosure); and
32. the Financial Statement Disclosure and the Supplemental Disclosure will together provide Equinox Shareholders with sufficient information to enable them to make an informed investment decision regarding the Arrangement.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Circular:

- (a) is filed and mailed to Equinox Shareholders by August 14, 2018;
- (b) includes the Financial Statement Disclosure and the Supplemental Disclosure; and
- (c) otherwise complies with the Legislation.

"Michael L. Moretto"  
Acting Director, Corporate Finance  
British Columbia Securities Commission

## 2.1.7 H&R Real Estate Investment Trust

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Real estate investment trust and finance trust received past relief from: NI 51-102, NI 52-109, NI 52-110, NI 44-101, NI 44-102 to accommodate stapled structure. During the period after a reorganization is implemented to eliminate the stapled structure and before the filer has filed stand-alone financial statements, the filer will not be able to rely on the past relief. Transitional relief granted.

Securities Act (Ontario), s. 74(1) – relief from prospectus requirements to allow a trust to issue trust units to existing holders of exchangeable units of certain partnerships controlled by the trust pursuant to a distribution reinvestment plan (DRIP) of the trust – Distributions made in respect of exchangeable units to be applied to the purchase of trust units under the DRIP – relief required since exemption for DRIPs in National Instrument 45-106 Prospectus Exemptions is not available for use – exchangeable units are intended to be, to the greatest extent possible, the economic equivalent of trust units – holders of exchangeable units are entitled to receive distributions paid by the partnerships that are equivalent to distributions paid by the trust on trust units – exchangeable units are exchangeable into trust units at any time – relief also granted to allow DRIP participants that are holders of exchangeable units to make optional cash payments to purchase additional trust units – first trade relief granted for trust units acquired under the decision, subject to certain conditions.

### Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2, 8.1.

National Instrument 44-102 Shelf Distributions, ss. 2.2, 11.1.

National Instrument 51-102 Continuous Disclosure Obligations, Parts 4, 5, 6, 7 and 8, s. 13.1.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 4.2, 5.2, 8.6.

National Instrument 52-110 Audit Committees, Part 5, s. 8.1.

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

July 27, 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  
H&R REAL ESTATE INVESTMENT TRUST  
(the "Filer")

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision (the "Requested Relief") under the securities legislation of the Jurisdiction (the "Legislation") that:

#### Financial Disclosure Requirements

- (i) pursuant to section 13.1 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102"), the Filer be exempted from the obligations in Parts 4 and 5 of NI 51-102 relating to the filing of annual and interim financial statements, along with the accompanying annual or interim management's discussion and analysis ("MD&A"), on a stand-alone basis, and relating to the delivery of the same to the holders of trust units ("H&R REIT Units") of the Filer (the "Financial Disclosure Requirements");

## Decisions, Orders and Rulings

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- (ii) pursuant to section 13.1 of NI 51-102, the Filer be exempted from the requirements (the “**BAR Requirements**”) of Part 8 of NI 51-102 to (i) determine whether an acquisition or probable acquisition is a significant acquisition with reference to stand-alone financial statements of the Filer, and (ii) present stand-alone historical and pro forma financial statements in a business acquisition report (a “**BAR**”);
- (iii) pursuant to section 8.6 of National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“**NI 52-109**”), the Filer be exempted from the requirements of sections 4.2 and 5.2 of NI 52-109 in respect of filing the chief executive officer and chief financial officer certificates that the Filer would normally have to file if it prepared annual and interim financial statements and MD&A on a stand-alone basis (the “**Certificate Form Requirements**”);

### Short Form / Shelf Qualification

- (iv) pursuant to section 8.1 of National Instrument 44-101 – *Short Form Prospectus Distributions* (“**NI 44-101**”), the Filer be exempted from the requirements contained in subparagraph 2.2(d)(i) of NI 44-101 for eligibility to file a short form prospectus, in particular the requirement that the Filer have current annual financial statements for any period for which the Filer previously filed Combined Financial Statements (as defined below) (the “**Short Form Criteria**”);
- (v) pursuant to section 11.1 of National Instrument 44-102 – *Shelf Distributions* (“**NI 44-102**”), subsection 2.2(1) of NI 44-102, with respect to the requirement that the Filer have current annual financial statements for any period for which the Filer previously filed Combined Financial Statements, and subparagraph 2.2(3)(b)(i) of NI 44-102, shall not apply to the Filer (the “**Shelf Criteria**”); and

### Prospectus Requirements

- (vi) the Filer be exempt from the prospectus requirements in the Legislation in respect of any trade of H&R REIT Units by the Filer (or by a trustee, custodian or administrator acting for or on behalf of the Filer) to holders of units of certain subsidiary limited partnerships controlled by H&R REIT (the “**Subsidiary Partnerships**”), which will be exchangeable for H&R REIT Units in accordance with their terms (the “**Exchangeable Units**”), under a distribution reinvestment plan and unit purchase plan (the “**DRIP**”) under which distributions out of earnings, surplus, capital, or other sources payable to holders of Exchangeable Units in respect of the Exchangeable Units and optional cash payments by holders of Exchangeable Units are applied to the purchase of H&R REIT Units (“**DRIP Exemption**”),

in each case provided that certain conditions are satisfied.

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

- (a) the Ontario Securities Commission is the principal regulator for the application, and
- (a) 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Prince Edward Island, New Brunswick, Newfoundland and Labrador and Nova Scotia (collectively and 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**

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

1. The Filer is an open-ended unincorporated real estate investment trust established under the laws of the Province of Ontario that owns a North American portfolio of office, industrial, residential and retail properties. The head office of the Filer is located in Toronto, Ontario.
2. H&R Finance Trust (“**H&R Finance**” and together with the Filer, the “**Trusts**”) is an open-ended limited purpose unit trust established under the laws of the Province of Ontario that primarily invests in notes issued by H&R REIT (U.S.) Holdings Inc. (“**U.S. Holdco**”), an indirect wholly-owned subsidiary of the Filer. The head office of H&R Finance is located in Toronto, Ontario.

3. The Trusts are reporting issuers or the equivalent under the securities legislation of each of the Provinces of Canada and are in compliance in all material respects with the applicable requirements of the securities legislation of each of the Provinces of Canada.
4. As provided in the respective declarations of trust of the Filer and H&R Finance, each H&R REIT Unit is stapled to a trust unit of H&R Finance (an "**H&R Finance Unit**") (and each H&R Finance Unit is stapled to a H&R REIT Unit), and a H&R REIT Unit, together with a H&R Finance Unit, trades as a "Stapled Unit" (the "**Stapled Units**") until there is an "Event of Uncoupling" (the "**Stapled Structure**").
5. Pursuant to a decision document dated October 24, 2013 *In the Matter of H&R Real Estate Investment Trust and H&R Finance Trust* (the "**2013 Decision**"), subject to certain conditions stipulated therein: (i) the Filer has been granted an exemption from the Financial Disclosure Requirements; (ii) H&R Finance has been granted, pursuant to section 13.1 of NI 51-102, an exemption from the obligations in Parts 4 and 5 of NI 51-102 relating to the filing of annual and interim financial statements, along with the accompanying annual or interim MD&A, on a stand-alone basis, and relating to the delivery of the same to the holders of H&R Finance Units; (iii) the Trusts have been granted an exemption from the BAR Requirements; (iv) the Trusts have been granted an exemption from the Short Form Criteria, in particular, the requirement that the Trusts have current annual financial statements for any period for which the Trusts file one set of financial statements prepared on a combined basis ("**Combined Financial Statements**"); and (v) the Trusts have been granted an exemption from the Certificate Form Requirements.
6. Pursuant to the 2013 Decision, the Trusts obtained relief similar to the Requested Relief in connection with the Financial Disclosure Requirements, the BAR Requirements, the Certificate Form Requirements and the Short Form Criteria (the "**2013 Relief**").
7. Pursuant to a decision document dated April 28, 2015 *In the Matter of H&R Real Estate Investment Trust and H&R Finance Trust* (the "**2015 Decision**") the Trusts have been granted an exemption from the Shelf Criteria.
8. Pursuant to the 2015 Decision, the Trusts obtained relief similar to the Requested Relief in connection with the Shelf Criteria (the "**2015 Relief**").
9. Pursuant to a decision document dated March 11, 2016 *In the Matter of H&R Real Estate Investment Trust and H&R Finance Trust*, the Trusts have been granted an exemption similar to the DRIP Exemption (the "2016 Relief", together with the 2013 Relief and the 2015 Relief, the "**Prior Relief**").
10. One of the conditions to each of the 2013 Relief and 2015 Relief is that the H&R REIT Units and H&R Finance Units remain stapled. One of the conditions to the 2016 Relief is that the Stapled Units trade on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*).
11. On October 19, 2017, the Trusts announced a proposed reorganization of the Stapled Structure (the "**Reorganization**"). The Reorganization was described in the Trusts' joint management information circular dated October 31, 2017. Joint meetings of unitholders of the Trusts were held on December 7, 2017 to approve the Reorganization. The voting unitholders of the Trusts approved the Reorganization by the requisite majority, with approximately 99% of the votes cast by voting unitholders of each of the Trusts, respectively, voting in favour of the Reorganization. On December 15, 2017, the Trusts announced receipt of a final order from the Court of Queen's Bench of Alberta (the "**Court**") approving the Reorganization.
12. On February 14, 2018, as a result of the U.S. federal income tax legislation originally referred to as the Tax Cuts and Jobs Act enacted in December 2017, the Trusts announced that they had determined that the Stapled Structure was no longer necessary and that the Reorganization would be amended to eliminate the Stapled Structure with the Filer remaining in place and holders of H&R REIT Units continuing to hold such units.
13. On March 21, 2018, the Trusts and the other parties to the Reorganization agreed to the terms of an amended Reorganization (the "**Amended Reorganization**") and the Trusts received a final order from the Court approving the Amended Reorganization. The announcement of receipt of the final order and the details of the Amended Reorganization were disclosed in a press release of the Trusts dated March 22, 2018.
14. The Amended Reorganization will be effected by way of plan of arrangement involving the Filer, H&R Finance and certain of the Filer's subsidiaries resulting in, among other things, (i) H&R Finance transferring debt owed to it by U.S. Holdco to the Filer, (ii) the occurrence of an "Event of Uncoupling", (iii) unitholders subsequently transferring their H&R Finance Units to the Filer for nominal consideration and retaining their H&R REIT Units, and (iv) termination of H&R Finance and the Stapled Structure. As a consequence of the Amended Reorganization, the H&R REIT Units and H&R Finance Units will be "unstapled". The Filer will continue to exist and be a reporting issuer and holders of H&R REIT Units will continue to hold those units. As a result of its termination, H&R Finance will cease to be a reporting issuer. Following completion

of the Amended Reorganization, investments that are currently held through the Filer and H&R Finance will instead be held solely through the Filer. The H&R REIT Units are expected to trade on the Toronto Stock Exchange (the "TSX") under the ticker symbol "HR.UN".

15. The Amended Reorganization is subject to the receipt by the Trusts of an advance income tax ruling from the Canada Revenue Agency in form and substance satisfactory to the Trusts and other customary closing conditions. The Filer received the required advance tax ruling dated July 12, 2018. The Amended Reorganization is expected to be implemented in August 2018.
16. If the Filer relies on the Requested Relief from the Short Form Criteria or Shelf Criteria, each short form prospectus, prospectus supplement or pricing supplement to a short form base shelf prospectus, or other similar public offering document filed by the Filer qualifying the distribution of securities of the Filer (a "**Prospectus**"), will incorporate by reference at least the following documents (the "**Prospectus Documents**"):
  - (a) the Filer's then current annual information form ("**the Filer's Current AIF**");
  - (b) the most recently filed audited annual Combined Financial Statements, along with the corresponding MD&A, until such time as the Filer files its next audited annual financial statements in accordance with NI 51-102 (expected to be by March 31, 2019);
  - (c) (i) if, at the date of the Prospectus, the Filer has filed or has been required to file interim financial statements for its most recently completed interim period and Combined Financial Statements relating to the applicable interim period have been filed, such Combined Financial Statements relating to such interim period, along with the corresponding interim MD&A, or (ii) if, at the date of the Prospectus, the Filer has filed or has been required to file interim financial statements for a period subsequent to the then most recent financial year-end of the Filer in respect of which annual financial statements have been filed, and such interim financial statements are stand-alone financial statements of the Filer, such stand-alone interim financial statements relating to such interim period, along with the corresponding interim MD&A;
  - (d) the content of any news release or other public communication that is publicly disseminated by, or on behalf of, the Filer prior to the filing of the Prospectus through news release or otherwise and that contains historical financial information about the Filer and H&R Finance, or the Filer on a stand-alone basis, as applicable for a period more recent than the end of the most recent period for which financial statements are required under paragraphs (b) and (c) above;
  - (e) any material change report, other than a confidential material change report, filed by the Filer under Part 7 of NI 51-102 since the end of the financial year in respect of which the Filer's Current AIF is filed;
  - (f) any BAR filed by the Filer for acquisitions completed since the beginning of the financial year in respect of which the Filer's Current AIF is filed, unless:
    - (i) the BAR is incorporated by reference in the Filer's Current AIF; or
    - (ii) at least nine months of the relevant business operations are reflected in annual financial statements required under paragraph (b) above;
  - (g) any information circular filed by the Filer since the beginning of the financial year in respect of which the Filer's Current AIF is filed, other than an information circular prepared in connection with an annual general meeting of the Filer if the Filer has filed and incorporated by reference in the Prospectus an information circular for a subsequent annual general meeting; and
  - (h) any other disclosure document which the Filer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority, or pursuant to an exemption from any requirement of securities legislation of a Canadian jurisdiction, since the beginning of the financial year in respect of which the Filer's Current AIF is filed.
17. As a result of the 2013 Decision, prior to the effective date of the Amended Reorganization, the Filer is exempt from the requirement to file financial statements and MD&A in accordance with NI 51-102 subject to certain conditions, including that the Filer files Combined Financial Statements and related MD&A and that each H&R Finance Unit remains stapled to a H&R REIT Unit and trades together as a Stapled Unit. Accordingly, following the effective date of the Amended Reorganization, at the time the Filer files a short form prospectus pursuant to NI 44-101, or a short form base shelf prospectus pursuant to NI 44-102, it will not be able to satisfy the Short Form Criteria or Shelf Criteria, respectively, since it will not have current annual financial statements, as it has only prepared and filed Combined Financial Statements,

and since each of the 2013 Relief and 2015 Relief will no longer be effective as an “Event of Uncoupling”, as defined in each of the 2013 Decision and the 2015 Decision, will have occurred.

18. The Filer has satisfied, and is currently satisfying, each of the conditions to the Prior Relief.
19. For the period from the effective date of the Amended Reorganization until the Filer has filed its own stand-alone annual financial statements pursuant to NI 51-102 (expected to be by March 31, 2019), the Filer would not be able to satisfy the Short Form Criteria or Shelf Criteria, absent the Requested Relief.
20. If the Amended Reorganization is implemented following the end of an interim period or fiscal year but prior to the time the Filer files Combined Financial Statements and accompanying MD&A for such interim period or fiscal year, the Filer will not be able to rely on the 2013 Relief when filing the financial statements and MD&A for such interim period or fiscal year because the H&R REIT Units and H&R Finance Units will become “unstapled” as part of the Amended Reorganization and will no longer trade together as Stapled Units. For such an interim period or fiscal year, the Filer will file Combined Financial Statements and accompanying MD&A for that interim period or fiscal year in accordance with the Requested Relief. The Requested Relief in this regard will be conditional upon, among other things, (i) the Stapled Structure having been in existence at the end of the applicable interim period or fiscal year, and (ii) the Amended Reorganization having been implemented prior to the Filer having filed Combined Financial Statements and accompanying MD&A for such interim period or fiscal year. In such circumstances, following the completion of the fiscal period in which the Amended Reorganization is implemented, the Filer will file stand-alone financial statements and accompanying MD&A in accordance with NI 51-102.
21. H&R REIT controls, either directly or indirectly, certain limited partnerships which issue, among other securities, units exchangeable at any time for Stapled Units (and, following completion of the Amended Reorganization, H&R REIT Units). These exchangeable units include the Class B Limited Participation LP units (“**HRLP Exchangeable Units**”) of H&R Portfolio Limited Partnership, the Exchangeable GP units (“**HRRMSLP Exchangeable Units**”) of H&R REIT Management Services Limited Partnership and exchangeable limited partnership units (the “**Primaris Exchangeable Units**”) of Grant Park Limited Partnership and Place du Royaume Limited Partnership.
22. The HRLP Exchangeable Units, the HRRMSLP Exchangeable Units and the Primaris Exchangeable Units are each intended to be, to the greatest extent practicable, the economic equivalent of the Stapled Units and on completion of the Amended Reorganization, the economic equivalent of the H&R REIT Units.
23. The Filer first implemented the DRIP effective January 1, 2000. The DRIP was amended and restated on December 21, 2001, on October 1, 2008 following the internal reorganization of the Filer to establish H&R Finance and the Stapled Units, and on March 11, 2016 to allow Exchangeable Units to participate. The DRIP will be further amended and restated as a result of the Amended Reorganization.
24. The Filer will be unable to rely on the exemption from the prospectus requirement in the Legislation with respect to reinvestment plans to distribute H&R REIT Units under the amended and restated DRIP to holders of Exchangeable Units enrolled in the amended and restated DRIP since this exemption only permits distributions made in respect of an issuer’s securities and optional cash payments by a holder of an issuer’s securities to be applied to the purchase of the same issuer’s securities.

## Decision

1. The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.
2. The decision of the principal regulator under the Legislation is that the Requested Relief is granted effective on completion of the Amended Reorganization, provided that the Amended Reorganization is implemented in substantially the manner contemplated by the representations above and provided that the conditions set out below are satisfied:
  - (a) In respect of the Financial Disclosure Requirements:
    - (i) the Filer files, under its SEDAR profile, Combined Financial Statements using International Financial Reporting Standards (“**IFRS**”) to reflect the financial position and results of the Filer and H&R Finance on a combined basis for any completed fiscal period prior to implementation of the Amended Reorganization;
    - (ii) any Combined Financial Statements filed by the Filer include the components specified in subsections 4.1(1) of NI 51-102 (for annual financial reporting periods) and 4.3(2) of NI 51-102 (for interim financial reporting periods);

- (iii) the annual Combined Financial Statements filed by the Filer are audited;
  - (iv) the annual Combined Financial Statements filed by the Filer are accompanied by the fee, if any, applicable to filings of annual financial statements;
  - (v) the MD&A of the Filer is prepared with reference to the Combined Financial Statements for any completed fiscal period prior to implementation of the Amended Reorganization;
  - (vi) the Filer and H&R Finance satisfied or were exempt from the requirements set out in National Instrument 52-110 – *Audit Committees* prior to implementation of the Amended Reorganization;
  - (vii) the audit committee of the Filer is responsible for:
    - (A) overseeing the work of the external auditors engaged for the purposes of auditing or reviewing the Combined Financial Statements under IFRS for any completed fiscal period prior to implementation of the Amended Reorganization; and
    - (B) resolving disputes between the external auditors and management of the Filer regarding financial reporting;
  - (viii) the Filer continues to satisfy the requirements of section 4.6 of NI 51-102, except that for each financial reporting period in respect of which Combined Financial Statements are prepared, the Filer shall only be required to send to holders of H&R REIT Units copies of the Combined Financial Statements and related MD&A;
  - (ix) the auditors of the Filer are the same as the auditors of H&R Finance prior to implementation of the Amended Reorganization;
  - (x) prior to the implementation of the Amended Reorganization, except for distributions of H&R REIT Units that were immediately followed by a consolidation of outstanding H&R REIT Units such that an equal number of H&R REIT Units and H&R Finance Units are outstanding immediately following such consolidation, (A) the Filer did not issue any H&R REIT Units that were not stapled to H&R Finance Units, (B) each H&R REIT Unit was stapled to a H&R Finance Unit and traded as a Stapled Unit, and (C) each H&R Finance Unit was stapled to a H&R REIT Unit and traded as a Stapled Unit;
  - (xi) prior to the implementation of the Amended Reorganization, except for distributions of H&R Finance Units that were immediately followed by a consolidation of outstanding H&R Finance Units such that an equal number of H&R Finance Units and H&R REIT Units were outstanding immediately following such consolidation, (A) H&R Finance did not issue any H&R Finance Units that were not stapled to H&R REIT Units, (B) each H&R Finance Unit was stapled to a H&R REIT Unit and traded as a Stapled Unit, and (C) each H&R REIT Unit was stapled to a H&R Finance Unit and traded as a Stapled Unit; and
  - (xii) each Stapled Unit was listed and posted for trading on the TSX prior to the implementation of the Amended Reorganization.
- (b) In respect of the BAR Requirements:
- (i) the Filer satisfied each of the conditions set out in paragraph 2(a) above that were to be satisfied prior to implementation of the Amended Reorganization, and satisfies each of the conditions set out in paragraph 2(a) above that are to be satisfied following implementation of the Amended Reorganization;
  - (ii) the Filer applies the significance tests under subsection 8.3(2) of NI 51-102 with reference to the most recent annual Combined Financial Statements until such time as the Filer files its next audited annual financial statements in accordance with NI 51-102 (expected to be by March 31, 2019);
  - (iii) the Filer applies the optional significant tests under Section 8.3(4) of NI 51-102 with reference to the most recently filed interim financial statements that are Combined Financial Statements until such time as the Filer files its next financial statements for an interim period or fiscal year that are not Combined Financial Statements;

- (iv) if a BAR is required to be filed, the BAR includes, with respect to the Filer, pro forma combined and/or stand-alone financial statements for the applicable periods and as at the applicable statement of financial position date.
- (c) In respect of the Certificate Form Requirements:
  - (i) the Filer satisfied each of the conditions set out in paragraph 2(a) above that were to be satisfied prior to implementation of the Amended Reorganization, and satisfies each of the conditions set out in paragraph 2(a) above that are to be satisfied following implementation of the Amended Reorganization;
  - (ii) the certificates filed by the Filer in accordance with section 4.1 of NI 52-109, in connection with the filing of Combined Financial Statements prepared under IFRS for each completed annual financial reporting period prior to the implementation of the Amended Reorganization, are substantially in the form required by section 4.2 of NI 52-109, except that the certificates refer to and certify matters in respect of the filing of the Filer's annual information form and the Combined Financial Statements and related MD&A; and
  - (iii) the certificates filed by the Filer in accordance with section 5.1 of NI 52-109, in connection with the filing of Combined Financial Statements prepared under IFRS for each completed interim financial reporting period prior to implementation of the Amended Reorganization, are substantially in the form required by section 5.2 of NI 52-109, except that the certificates refer to and certify matters in respect of the filing of Combined Financial Statements and related MD&A.
- (d) In respect of the Short Form Criteria:
  - (i) the Filer satisfied each of the conditions set out in paragraph 2(a) above that were to be satisfied prior to implementation of the Amended Reorganization, and satisfies each of the conditions set out in paragraph 2(a) above that are to be satisfied following implementation of the Amended Reorganization;
  - (ii) the Filer satisfies the criteria in section 2.2 of NI 44-101 except for the requirement in subparagraph 2.2(d)(i);
  - (iii) each H&R REIT Unit is listed and posted for trading on a short form eligible exchange (as defined in NI 44-101); and
  - (iv) each Prospectus filed by the Filer incorporates by reference the Prospectus Documents.
- (e) In respect of the Shelf Criteria, the Filer continues to satisfy the conditions set out in paragraph 2(d) above.

"Winnie Sanjoto"  
Manager, Corporate Finance  
Ontario Securities Commission

- (f) In respect of the DRIP Exemption:
  - (i) at the time of the trade, the Subsidiary Partnerships continue to be controlled directly or indirectly by H&R REIT and H&R REIT is, directly or indirectly, the beneficial owner of all the issued and outstanding voting securities of the Subsidiary Partnerships;
  - (ii) the ability to purchase H&R REIT Units under the DRIP for distributions out of earnings, surplus, capital, or other sources payable by the Subsidiary Partnerships or through optional cash payments made by holders of Exchangeable Units is available to every holder of Exchangeable Units in Canada;
  - (iii) for so long as the DRIP includes a cash payment option, the DRIP Exemption will only apply if (i) the aggregate number of H&R REIT Units issued through optional cash payments does not exceed, in the financial year of the Filer during which the distribution takes place, 2% of the issued and outstanding H&R REIT Units as at the completion of the Amended Reorganization (for the remainder of the financial year in which the Amended Reorganization occurs) and, thereafter, as at the beginning of the financial year, and (ii) the H&R REIT Units trade on a marketplace (as defined in National Instrument 21-101 – *Marketplace Operation*); and



- (iv) the first trade of any H&R REIT Units acquired under this decision in the Jurisdictions will be deemed to be a distribution unless the conditions in subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied at the time of such first trade.

“Philip Anisman”  
Commissioner  
Ontario Securities Commission

“Deborah Leckman”  
Commissioner  
Ontario Securities Commission

2.2 Orders

2.2.1 Majd Kitmitto et al.

File No.: 2018-9

**IN THE MATTER OF  
MAJD KITMITTO,  
STEVEN VANNATTA,  
CHRISTOPHER CANDUSSO AND  
CLAUDIO CANDUSSO**

Robert P. Hutchison, Commissioner and Chair of the Panel

July 25, 2018

**ORDER**

WHEREAS on July 25, 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 (**Staff**) and for Majd Kitmitto, Christopher Candusso, and Claudio Candusso, and Steven Vannatta on his own behalf;

IT IS ORDERED THAT:

1. the Second Attendance in this matter is adjourned; and
2. pursuant to Rule 20 of the Commission's *Rules of Procedures and Forms* (2017), 40 OSCB 8988, and at request of certain of the parties, a confidential conference shall be held on August 13, 2018 at 9:00 a.m., and the parties may, but are not required to, file materials with the Registrar in advance for use at the confidential conference, which materials shall remain confidential.

"Robert P. Hutchison"

2.2.2 Omega Securities Inc. – s. 127(7)

File No.: 2017-64

**IN THE MATTER OF  
OMEGA SECURITIES INC.**

Mark J. Sandler, Commissioner and Chair of the Panel

July 30, 2018

**ORDER**

(Subsection 127(7) of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS on July 30, 2018, the Ontario Securities Commission conducted a hearing in writing, to consider whether to extend the temporary order of the Commission issued on November 23, 2017 in this matter (the **Temporary Order**) and extended on December 5, 2017, January 26, 2018, February 27, 2018, March 28, 2018, April 12, 2018, May 14, 2018 and May 30, 2018;

ON READING the material filed by Staff of the Commission, and considering Omega Securities Inc.'s consent to the making of this Order;

IT IS ORDERED THAT:

1. Pursuant to section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 23(2) of the Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988, the hearing be conducted in writing; and
2. Pursuant to subsection 127(7) of the *Securities Act*, RSO 1990, c S.5, the Temporary Order is extended until September 5, 2018.

"Mark J. Sandler"

2.2.3 Omega Securities Inc.

File No.: 2017-66

**IN THE MATTER OF  
OMEGA SECURITIES INC.**

Mark J. Sandler, Commissioner and Chair of the Panel

July 30, 2018

**ORDER**

WHEREAS on July 30, 2018, the Ontario Securities Commission conducted a hearing in writing, to consider a motion by Staff of the Commission;

ON READING the motion of Staff of the Commission, and considering the consent of Omega Securities Inc. to the making of this Order;

IT IS ORDERED THAT:

1. This motion is heard in writing in accordance with Rule 23(2) of the Ontario Securities Commission *Rules of Procedure and Forms (2017)*, 40 OSCB 8988 and section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22;
2. The Second Appearance in this matter scheduled for July 31, 2018, is vacated;
3. The Second Appearance in this matter will be heard on September 5, 2018, at 10:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary;
4. By no later than August 29, 2018, Staff shall provide preliminary witness lists and statements to the respondent and shall indicate any intent to call an expert witness, including the name of the expert and the issue on which the expert will be giving evidence.

“Mark J. Sandler”

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions

#### 3.1.1 Donna Hutchinson et al.

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

**REASONS FOR DECISION ON MOTION FOR SEVERANCE**

**Citation:** *Hutchinson (Re)*, 2018 ONSEC 40

**Date:** 2018-07-24

**Hearing:** July 17, 2018

**Decision:** July 24, 2018

**Panel:** Mark J. Sandler            Commissioner and Chair of the Panel

**Appearances:** Matthew Britton            For Staff of the Commission  
Raphael Eghan

David Sischy                        For David Paul George Sidders

Ashley Thomassen                For Patrick Jelf Caruso

No one appeared on behalf of Cameron Edward Cornish

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  - G. The use of similar fact evidence at trial
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  - J. The existence of antagonistic defences as between Co-Respondents
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## REASONS FOR DECISION ON MOTION FOR SEVERANCE

### I. INTRODUCTION

- [1] The Respondent, David Paul George Sidders (**Sidders**), brought a motion to the Ontario Securities Commission (the **Commission**) for an order severing his hearing from the hearing of Respondents Cameron Edward Cornish (**Cornish**) and Patrick Jelf Caruso (**Caruso**). Donna Hutchinson (**Hutchinson**), originally a Respondent in the same proceeding, entered into a settlement agreement, which was approved by the Commission,<sup>1</sup> and is now contemplated to be a witness called by Staff at the hearing(s) of the remaining Respondents.
- [2] Sidders submits that the allegations against him should be heard separately for several reasons. He maintains that most of the allegations contained in the Statement of Allegations do not involve him.<sup>2</sup> The allegations against him are said to involve different questions of fact than those relating to the other Respondents. He submits that he should not be exposed to the additional time and expense or delay associated with a joint hearing. He is concerned that if the hearings are not severed, his case may be unfairly tainted by any findings made against the other Respondents.
- [3] Staff of the Commission (**Staff**) opposes the motion for severance and submits that the allegations against the Respondents Sidders, Caruso and Cornish involve many of the same questions of fact, that Sidders has failed to demonstrate prejudice, and that it is in the interests of justice and will be more efficient to proceed with a hearing involving all Respondents. Counsel for Caruso appeared on the motion, but takes no position on the relief sought by Sidders. Cornish did not appear or participate on the motion.
- [4] The motion for severance was heard on July 17, 2018. After hearing the parties' submissions, I ordered that the motion was dismissed, with written reasons to follow. These are the reasons for that order.

### II. THE APPLICABLE TEST

- [5] It is undisputed that the party requesting severance bears the burden of establishing, on the balance of probabilities, that the interests of justice require severance. Previous jurisprudence has identified various factors to be considered in determining whether, in a particular case, a requesting party has met that burden.
- [6] In *R v Last*,<sup>3</sup> the Supreme Court of Canada considered whether a trial judge committed a reversible error in dismissing a severance application brought by the accused in criminal proceedings. The accused was charged in one indictment with counts relating to two separate incidents involving sexual assaults on two different victims. Subsection 591(3) of the *Criminal Code*<sup>4</sup> provides that the court may, where it is satisfied that the interests of justice so require, order that the accused or defendant be tried separately on one or more of the counts contained in the same indictment; and where there is more than one accused or defendant, that one or more of them be tried separately on one or more of the counts.
- [7] The Court noted that a number of factors have been identified that can be weighed when deciding whether to grant a motion for severance. It stated that "the weighing exercise ensures that a reasonable balance is struck between the risk of prejudice to the accused and the public interest in a single trial."<sup>5</sup> Those factors include the following:
- a. the legal and factual nexus between the counts;
  - b. the general prejudice to the accused;
  - c. the complexity of the evidence;
  - d. whether the accused intends to testify on one count but not another;
  - e. the possibility of inconsistent verdicts;
  - f. the desire to avoid a multiplicity of proceedings;
  - g. the use of similar fact evidence at trial;

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<sup>1</sup> *Hutchinson (Re)*, 2018 ONSEC 22, (2018), 41 OSCB 3841 (Oral Reasons for Approval of Settlement) and *Hutchinson (Re)* (2018), 41 OSCB 3499 (Order Approving Settlement).

<sup>2</sup> An Amended Statement of Allegations was filed on May 28, 2018, amending the Statement of Allegations dated September 21, 2017.

<sup>3</sup> *R v Last*, 2009 SCC 45, [2009] 3 SCR 146.

<sup>4</sup> *Criminal Code*, RSC 1985, c C-46.

<sup>5</sup> *R v Last* at para 17.

- h. the length of the trial having regard to the evidence to be called;
- i. the potential prejudice to the accused with respect to the right to be tried within a reasonable time; and
- j. the existence of antagonistic defences as between co-accused persons.<sup>6</sup>

[8] While there are obvious differences between the principles applicable in criminal and regulatory proceedings, the criminal jurisprudence provides some important guidance for the Commission in evaluating a severance motion brought by a Respondent in the regulatory context.

[9] The ten factors articulated in *R v Last* were considered by the Commission in *Black (Re)*.<sup>7</sup> In relation to the length of a hearing, the Commission stated at paragraph 7 that

[t]he case law has recognized that inconvenience resulting from a lengthier trial does not constitute undue prejudice in the context of a severance, and although cost is an issue, it is not determinative. Specifically, courts have denied severance where it has been determined that any prejudice was largely confined to having to attend a longer trial, and the courts have recognized that such prejudice could be mitigated by the case management process ...<sup>8</sup>

[10] The parties indicate that they have not found any other Commission decisions that addressed the appropriate test for severance. Counsel for Sidders did refer me to two decisions from the Alberta Securities Commission (**ASC**), which apply a different test. In *Belvedere (Re)*<sup>9</sup> and *Stock (Re)*,<sup>10</sup> the ASC granted severance after applying the following test:

... first assess whether there is a common question of fact or law or a common transaction or series of transactions linking the groups of parties and if so, whether severance or continuance as a single proceeding would give rise to material prejudice, and where the balance of convenience lies.<sup>11</sup>

[11] The ASC applies a threshold test focused on one factor (i.e. “whether there is a common question of fact or law or common transaction or series of transactions linking the groups of parties”) and then, only if this threshold is met, the ASC considers whether there is “material prejudice and where the balance of convenience lies.” Conversely, the Supreme Court of Canada’s approach in *R v Last* does not prescribe a single determinative factor or precondition on which the discretion to sever depends. Also, *Belvedere (Re)* draws a distinction between the test to be adopted when considering whether to sever parties and the test when considering whether to sever issues. I am not convinced that this distinction should survive the Supreme Court of Canada’s decision in *R v Last*. In fairness, the approach taken in *Belvedere (Re)* (which was followed in *Stock (Re)*) predates the decision in *R v Last*.

[12] In my view, it is appropriate to apply the test for severance articulated by the Supreme Court of Canada in *R v Last* and adopted by the Commission in *Black (Re)*. By following this approach, the Commission will have flexibility to consider each factor on a case-by-case basis and will not be constrained by a threshold test solely or primarily focused on one factor.

[13] Even if I followed the ASC’s approach, the result of this motion would not change, as the facts of *Belvedere (Re)* and *Stock (Re)* are distinguishable. *Belvedere (Re)* involved unconnected market manipulation allegations against separate groups of respondents. In *Stock (Re)*, the respondent seeking severance faced an allegation only of interfering with the regulatory investigation, while a number of respondents faced allegations of insider trading.

### III. THE UNDERLYING ALLEGATIONS AND HUTCHINSON SETTLEMENT

[14] In this case, Staff has made allegations of insider trading and/or insider tipping against four individuals. Staff’s Statement of Allegations against all Respondents includes the following allegations:

- a. Quadra FNX Mining Ltd. (**Quadra**) – Hutchinson tipped Cornish as to material information not generally disclosed. During the period when this information was to remain confidential, there was frequent communication between Hutchinson and Cornish, between Cornish and Sidders and between Cornish and Caruso. During this time frame, Cornish accumulated Quadra securities through an institutional account. Sidders

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<sup>6</sup> *R v Last* at para 18.

<sup>7</sup> *Black (Re)*, 2014 ONSEC 33, (2014), 37 OSCB 9697.

<sup>8</sup> *Black (Re)* at para 7.

<sup>9</sup> *Belvedere (Re)*, [2003] ASCD No 1120.

<sup>10</sup> *Stock (Re)*, 2001 ABASC 306.

<sup>11</sup> *Belvedere (Re)* at para 22; *Stock (Re)* at para 12.

and Caruso purchased Quadra shares and liquidated their positions at a profit after the material information was generally disclosed.

- b. X Company (**X Co.**) – Hutchinson tipped Cornish as to material information not generally disclosed. During the period when this information was to remain confidential, there was frequent communication between Hutchinson and Cornish, between Cornish and Sidders and between Cornish and Caruso. Both Sidders and Caruso purchased shares of X Co., and Caruso (or a related entity) purchased put options on the firm acquiring X Co. and call options on X Co.
- c. Rainy River Resources Ltd. (**Rainy River**) – Hutchinson tipped Cornish as to material information not generally disclosed. During the period when this information was to remain confidential, Hutchinson and Cornish, and Cornish and Sidders were in telephone contact. Cornish bought and sold shares of Rainy River on the day prior to the material information being generally disclosed.
- d. Osisko Mining Corp. (**Osisko**) – Hutchinson tipped Cornish as to material information not generally disclosed. On the same day Hutchinson became aware of this information, she called Cornish twice and Caruso called Cornish once. The following day, Cornish and Caruso exchanged multiple text messages, Caruso telephoned Cornish and Hutchinson telephoned Cornish twice. During this same period, Caruso accumulated Osisko shares which he sold for a profit once the material information was announced.
- e. Allergan Inc. (**Allergan**) – Hutchinson tipped Cornish as to material information not generally disclosed. The day prior to the announcement of the material information, Hutchinson telephoned Cornish twice; Caruso telephoned Cornish three times and Caruso purchased Allergan shares. Once the material information was announced, Caruso sold the shares for a profit.
- f. Aurora Oil & Gas Ltd. (**Aurora**) – Hutchinson tipped Cornish as to material information not generally disclosed. During the period when this information was to remain confidential, there was frequent contact between Cornish and Hutchinson, and between Cornish and Caruso. Commencing on the same date of that contact, Sidders purchased Aurora shares, which he liquidated for a profit once the material information was announced.
- g. Tim Hortons Inc. (**Tim Hortons**) – Hutchinson tipped Cornish as to material information not generally disclosed. Hutchinson’s law firm was retained on the subject transaction on February 24, 2014. That same day and the following day, Cornish and Hutchinson communicated four times by telephone. On February 24, 2014, Cornish initiated communications with both Sidders and Caruso; Cornish and Caruso communicated through multiple text messages and Cornish placed a short call to Sidders. On February 25, 2014, Caruso purchased call option contracts, and through his net accumulation of call option contracts and share purchases in Tim Hortons, made well over \$1 million. Through his institutional trading account, Cornish also made a net accumulation of multiple Tim Hortons shares prior to the public announcement of material information, after which he sold those shares for a profit.
- h. Xtreme Drilling and Coil Services (**Xtreme**) – Hutchinson tipped Cornish as to material information not generally disclosed. During the period when this information was to remain confidential, Caruso accumulated a large number of Xtreme shares which he sold at a profit after the material information was announced.

[15] I reiterate that these are, at this point, allegations only.

[16] As previously indicated, Hutchinson entered in a settlement agreement. In that agreement, she acknowledged that she provided material information, not generally disclosed, to her good friend, Cornish, respecting M & A transactions being handled by the law firm where she was employed as a legal assistant. Hutchinson admitted that she tipped Cornish in relation to transactions involving the following companies:

- a. Quadra;
- b. X Co.;
- c. Rainy River;
- d. Osisko;
- e. Tim Hortons; and
- f. Xtreme.



#### IV. ANALYSIS

[17] As stated above, the party requesting severance bears the burden of establishing, on the balance of probabilities, that the interests of justice require severance. In determining whether the interests of justice require severance, I am guided by factors articulated in *R v Last*. Below, I have addressed each of the ten factors to explain why severance is not appropriate in this case.

##### A. The legal and factual nexus between the transactions

[18] In his written submissions, Sidders asserted that he was mentioned in only three of the eight subject transactions. He observed that the settlement agreement with Hutchinson related to only six of the subject transactions. At the hearing of the motion, Sidders' counsel acknowledged that there were at least limited common questions of fact between Sidders and the other Respondents. However, he said that the real questions that need to be answered to determine Sidders' liability are whether Cornish tipped Sidders with material non-public information on the Quadra, Aurora and X Co. deals and whether Sidders traded on that information.

[19] I respectfully disagree with these submissions. First, Sidders is mentioned in five of the eight subject transactions, not three, which counsel for Sidders acknowledged at the hearing of the motion. It is accurate to say that Sidders is alleged to have engaged in insider trading in three transactions. However, the Statement of Allegations also contends in relation to the Rainy River and Tim Hortons transactions that he was in communication with Cornish contemporaneously with Cornish's communications with Hutchinson and Caruso. A hearing panel may conclude that although these two transactions do not allege insider trading on Sidders' part, they do permit an inference that Cornish was tipping him in relation to these transactions which in turn, might be relevant to the issues between Staff and Sidders, including the nature of the relationship between Cornish and Sidders. Counsel for Sidders agreed at the hearing of the motion that such an inference might be available to the Commission.

[20] Second, there are significant common questions of fact involving all of the Respondents, including Sidders. Was Hutchinson providing to Cornish material information that had not been generally disclosed? If Staff is unable to prove that Hutchinson was doing so, the case against all remaining Respondents likely fails. It follows that all the alleged interactions between Hutchinson and Cornish may be relevant to whether an improper tipper-tippe relationship existed between them, and hence relevant to the cases involving all remaining Respondents. The extent to which Cornish was tipping Caruso on some transactions may circumstantially support the conclusion that Cornish was also tipping Sidders on those same transactions, on the theory that it might defy coincidence that Cornish is tipping Caruso but not Sidders, though Sidders' and Caruso's communications take place contemporaneously. Again, I am making no assessment of the merits of Staff's position; I only observe that the issues arising in relation to Cornish and Caruso are, in many respects, interwoven with the issues pertaining to Sidders. Finally, I observe that, at least in relation to the transactions allegedly involving Sidders, the materiality of the subject information and whether it was generally undisclosed at the time of the subject transactions, represent questions of fact common to Sidders and the other remaining Respondents.

[21] Third, the fact that Hutchinson's settlement agreement addresses only six of the eight transactions contained in the Statement of Allegations is of little persuasive value on this severance motion. Staff has the burden to prove in relation to the remaining Respondents all the allegations made in the Statement of Allegations, irrespective of what Hutchinson and Staff agreed to in a settlement agreement.

[22] Four, Sidders observes that the Supreme Court of Canada ordered separate trials in *R v Last*. However, in that case, two separate unrelated complainants made allegations of sexual crimes against the accused. Each of the allegations did not qualify as similar fact evidence vis-à-vis the other. That is to say the evidence in relation to one sexual crime was not admissible for the purpose of inferring that the accused committed the other sexual crime. Moreover, the matter was being heard by a jury. In a jury trial, there is a heightened concern that the jury might misuse or be tainted by the evidence on one count in deciding the case on another count. This misuse of evidence may involve improper propensity reasoning: that is, concluding that by virtue of criminal conduct evidencing an accused's bad character, he or she is more likely to have committed another crime. Judges and adjudicators are trained to avoid improper propensity reasoning and are well equipped to evaluate the merits of each allegation without risk of "cross-pollination."

##### B. General prejudice to the Respondent Sidders

[23] I am unconvinced that a hearing on all of the allegations against the remaining Respondents will cause general prejudice to Sidders, largely for the reasons already given and described further under the factors below. A hearing panel is well situated to evaluate each allegation on its own merits, and only using evidence in relation to other allegations in ways that are legally permissible.

**C. The complexity of the evidence**

[24] There is no suggestion that the evidence here is of such complexity that a hearing panel will have difficulty sorting it out or differentiating between different allegations.

**D. Whether the Respondent intends to testify on one allegation, but not another**

[25] There is no suggestion that Sidders intends or would prefer to testify on one allegation, but not another. Accordingly, it is unnecessary to consider whether this factor should figure prominently, or at all, in the regulatory context. There are special reasons, unique to criminal accused, including certain constitutional protections, that may explain or give heightened importance to the inclusion of this factor.

**E. The possibility of inconsistent verdicts**

[26] Contrary to Sidders' position, there is a real possibility of inconsistent verdicts should multiple hearings be held in this matter. One hearing panel could decide that Hutchinson never tipped Cornish and that therefore, Cornish could not have tipped Caruso. Another hearing panel could decide, in a separate hearing, that Hutchinson did tip Cornish who in turn tipped Sidders. The potential of inconsistent verdicts should be avoided where possible.

**F. The desire to avoid a multiplicity of proceedings**

[27] This factor favours denial of this severance motion. Otherwise, there would be at least two separate hearings and conceivably, based on the success of Sidders' motion, a rationale for three separate hearings for each of the remaining Respondents.

**G. The use of similar fact evidence at trial**

[28] It will ultimately be the merits hearing panel's decision as to the use that can be made of evidence pertaining to one allegation in evaluating the merits of another allegation. However, for the reasons already given, I am unconvinced that the only evidence admissible against Sidders relates to the three transactions respecting which he allegedly engaged in insider trading. At the very least, the evidence pertaining to the five transactions in which he is mentioned may be relevant to the case against him. Indeed, the three transactions in which he is not mentioned may have some relevance to the issues pertaining to him: such as whether they circumstantially support the existence of an improper relationship between Hutchinson and Cornish, which may be relevant to whether Cornish tipped Sidders, and thus, whether Sidders engaged in insider trading. Again, that will be for the merits hearing panel to decide. Even if such evidence is admissible against Sidders, the panel is entitled to consider any limitations on the use to be made of that evidence vis-à-vis Sidders.

**H. The length of the hearing having regard to the evidence to be called**

[29] In considering this point, it is appropriate to address the added time and expense that may be associated with a joint hearing. Sidders submits that a hearing of the allegations against him alone would require no more than three days, while a hearing of the allegations against all Respondents would require eight to ten days. After the hearing of the motion, Staff and counsel for each of the Respondents Sidders and Caruso agreed that seven days was sufficient for the merits hearing. This is reflected in my order dated July 17, 2018.

[30] For the reasons already given, I am unconvinced that the evidence relevant to Sidders is as narrowly focused as he contends. Staff intends to call three witnesses, including Hutchinson. Sidders acknowledges that Staff's three witnesses would likely need to be called at each hearing. Therefore, separate hearings would also result in an increased use of Commission resources and increased costs to the Commission.

[31] In any event, the fact that some of the evidence may ultimately be irrelevant to Sidders or of limited relevance is insufficient to overcome the other factors which, viewed together, overwhelmingly favour a joint hearing of the subject allegations. As well, Staff is prepared to work with counsel for the Respondents to ensure that they are aware, to the extent practicable, of the anticipated evidence to be called on any particular day. This will enable Sidders and his counsel to make appropriate arrangements to mitigate costs associated with the joint hearing. I am also confident that the hearing panel will accommodate any reasonable requests for absences during the hearing if the evidence is truly irrelevant to Sidders. This is not a case in which the Respondent would suffer undue prejudice as a result of participating in a joint hearing.

**I. The potential prejudice to the Respondent with respect to the right to be tried within a reasonable time**

[32] I accept that a joint hearing may mean that the hearing will only take place in early 2019, rather than the fall of 2018, when Sidders and his counsel are available. In the regulatory context, there is no constitutional right to a trial within a reasonable time, as exists for criminal accused. In any event, the delays contemplated here are not so pronounced as to support this severance motion.

**J. The existence of antagonistic defences as between Co-Respondents**

[33] There is no suggestion that this is an issue here. Accordingly, it is again unnecessary to consider the extent, if any, to which this factor should figure prominently in a regulatory context, rather than in criminal proceedings.

**V. CONCLUSION**

[34] The decision whether to grant a severance motion is a discretionary one, based on weighing of all relevant considerations. In my view, the relevant considerations strongly favour denying severance in this case. Accordingly, I issued the order dated July 17, 2018 dismissing the motion.

Dated at Toronto this 24th day of July, 2018.

“Mark J. Sandler”

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

### Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Knick Exploration Inc.	26 July 2018	

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

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

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

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## Chapter 7

# Insider Reporting

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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](http://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](http://www.sedi.ca)).





## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Canoe Bond Advantage Class  
Canoe Bond Advantage Fund  
Canoe Canadian Asset Allocation Class  
Canoe Canadian Corporate Bond Fund (formerly, O'Leary Canadian Bond Yield Fund)  
Canoe Canadian Monthly Income Class  
Canoe Energy Class  
Canoe Energy Income Class  
Canoe Enhanced Income Class  
Canoe Enhanced Income Fund  
Canoe Equity Class  
Canoe Equity Income Class  
Canoe Floating Rate Income Fund (formerly, O'Leary Floating Rate Income Fund)  
Canoe Global Equity Income Class  
Canoe Global Income Class  
Canoe Global Income Fund  
Canoe North American Monthly Income Class  
Canoe Premium Income Fund (formerly, Canoe Canadian Dividend Fund)  
Canoe Strategic High Yield Class  
Canoe Strategic High Yield Fund  
Canoe Trust Fund  
Canoe U.S. Equity Income Class  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated July 19, 2018  
NP 11-202 Preliminary Receipt dated July 26, 2018

**Offering Price and Description:**

Series O Securities and Canoe Trust Fund

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Canoe Financial Corp.  
Canoe Financial LP

**Project #2797142**

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**Issuer Name:**

Dynamic Active Core Bond Private Pool  
Dynamic Active Credit Strategies Private Pool  
Dynamic Alternative Managed Risk Private Pool Class  
Dynamic Asset Allocation Private Pool  
Dynamic Canadian Equity Private Pool Class  
Dynamic Conservative Yield Private Pool  
Dynamic Global Equity Private Pool Class  
Dynamic Global Yield Private Pool  
Dynamic Global Yield Private Pool Class  
Dynamic International Dividend Private Pool  
Dynamic North American Dividend Private Pool  
Dynamic Tactical Bond Private Pool  
Dynamic U.S. Equity Private Pool Class  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Annual Information Form dated July 26, 2018  
Received on July 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management L.P.

**Project #2757005**

---

**Issuer Name:**

Fidelity Canadian High Dividend Index ETF Fund  
Fidelity International High Dividend Index ETF Fund  
Fidelity Tactical Global Dividend ETF Fund  
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF Fund  
Fidelity U.S. Dividend for Rising Rates Index ETF Fund  
Fidelity U.S. High Dividend Currency Neutral Index ETF Fund  
Fidelity U.S. High Dividend Index ETF Fund  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated July 24, 2018  
NP 11-202 Preliminary Receipt dated July 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

Fidelity Investments Canada ULC

**Promoter(s):**

Fidelity investments Canada ULC

**Project #2798799**

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**Issuer Name:**

Fiera Capital Core Canadian Equity Fund  
Fiera Capital Defensive Global Equity Fund  
Fiera Capital Diversified Bond Fund  
Fiera Capital Equity Growth Fund  
Fiera Capital Global Equity Fund  
Fiera Capital High Income Fund  
Fiera Capital Income and Growth Fund  
Fiera Capital International Equity Fund  
Fiera Capital U.S. Equity Fund  
Principal Regulator – Quebec

**Type and Date:**

Combined Preliminary and Pro Forma Simplified  
Prospectus dated July 27, 2018  
NP 11-202 Preliminary Receipt dated July 30, 2018

**Offering Price and Description:**

Series AT and FT Units

**Underwriter(s) or Distributor(s):**

NA

**Promoter(s):**

Fiera Capital Corporation

**Project #2799529**

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**Issuer Name:**

PowerShares Senior Loan Index ETF  
PowerShares Fundamental High Yield Corporate Bond  
Index ETF  
PowerShares S&P 500 Low Volatility Index ETF  
PowerShares S&P Emerging Markets Low Volatility 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 ETF  
PowerShares QQQ Index ETF  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated July  
24, 2018  
Received on July 24, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2703193**

**Issuer Name:**

PowerShares Low Volatility Portfolio ETF  
PowerShares FTSE RAFI Global Small-Mid Fundamental  
ETF  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated July  
24, 2018

Received on July 24, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2703174**

---

**Issuer Name:**

IPC Balanced ETF Portfolio  
IPC Growth ETF Portfolio  
IPC Income ETF Portfolio  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated July 30, 2018  
NP 11-202 Preliminary Receipt dated July 30, 2018

**Offering Price and Description:**

Series A, F and I Securities

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Counsel Portfolio Services Inc.

**Project #2800017**

**Issuer Name:**

NCM Balanced Income Portfolio  
NCM Conservative Income Portfolio  
NCM Growth and Income Portfolio  
Norrep Core Canadian (formerly Norrep Core Canadian Pool)  
Norrep Core Global (formerly Norrep Core Global Pool)  
Norrep Energy Plus Class (formerly Norrep Energy Class)  
Norrep Entrepreneurs Class of Norrep Opportunities Corp.  
Norrep Fund  
Norrep Global Income Growth Class of Norrep Opportunities Corp.  
Norrep High Income Fund  
Norrep II Class of Norrep Opportunities Corp  
Norrep Income Growth Class of Norrep Opportunities Corp.  
Norrep Premium Growth Class  
Norrep Short Term Income Fund  
Norrep Tactical Opportunities Class  
Norrep US Dividend Plus Class of Norrep Opportunities Corp.  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated July 19, 2018  
NP 11-202 Preliminary Receipt dated July 24, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Norrep Investment Management Group Inc.  
**Project #2797192**

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**Issuer Name:**

Ninepoint UIT Alternative Health Fund  
Ninepoint Enhanced Equity Class  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated July 26, 2018  
Received on July 27, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Ninepoint Partners LP  
**Project #2745066**

**Issuer Name:**

Premium Income Corporation  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated July 27, 2018  
NP 11-202 Preliminary Receipt dated July 30, 2018

**Offering Price and Description:**

Maximum: \$300,000,000 – Preferred Shares and Class A Shares  
Prices: \$15.21 per Preferred Share and \$7.79 per Class A Share

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2799483**

---

**Issuer Name:**

Purpose Gold Bullion Fund  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated July 25, 2018  
NP 11-202 Preliminary Receipt dated July 27, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Purpose Investments Inc.  
**Project #2799348**

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**Issuer Name:**

Ridgewood Canadian Investment Grade Bond Fund  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated July 25, 2018  
NP 11-202 Preliminary Receipt dated July 25, 2018

**Offering Price and Description:**

\$400,000,000 Maximum (Units)  
Price: \$\* per Unit

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2798346**

**Issuer Name:**

BetaPro Canadian Gold Miners -2x Daily Bear ETF (formerly Horizons BetaPro S&P/TSX Global Gold Bear Plus ETF)  
BetaPro Canadian Gold Miners 2x Daily Bull ETF (formerly Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF)  
BetaPro Canadian Marijuana Companies 2x Daily Bear ETF  
BetaPro Canadian Marijuana Companies 2x Daily Bull ETF  
BetaPro Canadian Marijuana Companies Inverse ETF  
BetaPro NASDAQ-100® -2x Daily Bear ETF (formerly Horizons BetaPro NASDAQ-100® Bear Plus ETF)  
BetaPro NASDAQ-100® 2x Daily Bull ETF (formerly Horizons BetaPro NASDAQ-100® Bull Plus ETF)  
BetaPro S&P 500® -2x Daily Bear ETF (formerly Horizons BetaPro S&P 500® Bear Plus ETF)  
BetaPro S&P 500® 2x Daily Bull ETF (formerly Horizons BetaPro S&P 500® Bull Plus ETF)  
BetaPro S&P 500® Daily Inverse ETF (formerly Horizons BetaPro S&P 500® Inverse ETF)  
BetaPro S&P/TSX 60 -2x Daily Bear ETF (formerly Horizons BetaPro S&P/TSX 60 Bear Plus ETF)  
BetaPro S&P/TSX 60 2x Daily Bull ETF (formerly Horizons BetaPro S&P/TSX 60 Bull Plus ETF)  
BetaPro S&P/TSX 60 Daily Inverse ETF (formerly Horizons BetaPro S&P/TSX 60 Inverse ETF)  
BetaPro S&P/TSX Capped Energy -2x Daily Bear ETF (formerly Horizons BetaPro S&P/TSX Capped Energy Bear Plus ETF)  
BetaPro S&P/TSX Capped Energy 2x Daily Bull ETF (formerly Horizons BetaPro S&P/TSX Capped Energy Bull Plus ETF)  
BetaPro S&P/TSX Capped Financials -2x Daily Bear ETF (formerly Horizons BetaPro S&P/TSX Capped Financials Bear Plus ETF)  
BetaPro S&P/TSX Capped Financials 2x Daily Bull ETF (formerly Horizons BetaPro S&P/TSX Capped Financials Bull Plus ETF)  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 19, 2018  
NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

Class A Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Horizons ETFs Management (Canada) Inc.

Project #2785476

---

**Issuer Name:**

BetaPro Crude Oil -2x Daily Bear ETF (formerly Horizons BetaPro NYMEX® Crude Oil Bear Plus ETF)  
BetaPro Crude Oil 2x Daily Bull ETF (formerly Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF)  
BetaPro Gold Bullion -2x Daily Bear ETF (formerly Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF)  
BetaPro Gold Bullion 2x Daily Bull ETF (formerly Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF)  
BetaPro Natural Gas -2x Daily Bear ETF (formerly Horizons BetaPro NYMEX® Natural Gas Bear Plus ETF)  
BetaPro Natural Gas 2x Daily Bull ETF (formerly Horizons BetaPro NYMEX® Natural Gas Bull Plus ETF)  
BetaPro Silver -2x Daily Bear ETF (formerly Horizons BetaPro COMEX® Silver Bear Plus ETF)  
BetaPro Silver 2x Daily Bull ETF (formerly Horizons BetaPro COMEX® Silver Bull Plus ETF)  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 19, 2018  
NP 11-202 Receipt dated July 24, 2018

**Offering Price and Description:**

Class A Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #2785489

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**Issuer Name:**

Canadian Equity Alpha Corporate Class  
Canadian Equity Growth Corporate Class  
Canadian Equity Growth Pool  
Canadian Equity Small Cap Corporate Class  
Canadian Equity Small Cap Pool  
Canadian Equity Value Corporate Class  
Canadian Equity Value Pool  
Canadian Fixed Income Corporate Class  
Canadian Fixed Income Pool  
Cash Management Pool  
Emerging Markets Equity Corporate Class  
Emerging Markets Equity Pool  
Enhanced Income Corporate Class  
Enhanced Income Pool  
Global Fixed Income Corporate Class  
Global Fixed Income Pool  
International Equity Alpha Corporate Class  
International Equity Growth Corporate Class  
International Equity Growth Pool  
International Equity Value Corporate Class  
International Equity Value Currency Hedged Corporate Class  
International Equity Value Pool  
Real Estate Investment Corporate Class  
Real Estate Investment Pool  
Short Term Income Corporate Class  
Short Term Income Pool  
US Equity Alpha Corporate Class  
US Equity Growth Corporate Class  
US Equity Growth Pool  
US Equity Small Cap Corporate Class  
US Equity Small Cap Pool  
US Equity Value Corporate Class  
US Equity Value Currency Hedged Corporate Class  
US Equity Value Pool  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated July 26, 2018

NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

Assante Capital Management Ltd.

**Promoter(s):**

N/A

**Project #2777764**

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**Issuer Name:**

Epoch European Equity Fund  
Epoch Global Equity Class  
Epoch Global Equity Fund  
Epoch Global Shareholder Yield Currency Neutral Fund  
Epoch Global Shareholder Yield Fund  
Epoch International Equity Fund  
Epoch U.S. Blue Chip Equity Currency Neutral Fund  
Epoch U.S. Blue Chip Equity Fund  
Epoch U.S. Large-Cap Value Class  
Epoch U.S. Large-Cap Value Fund  
Epoch U.S. Shareholder Yield Fund  
TD Advantage Aggressive Growth Portfolio  
TD Advantage Balanced Growth Portfolio  
TD Advantage Balanced Income Portfolio  
TD Advantage Balanced Portfolio  
TD Advantage Growth Portfolio  
TD Asian Growth Fund  
TD Balanced Growth Fund  
TD Balanced Income Fund  
TD Balanced Index Fund  
TD Canadian Blue Chip Dividend Fund  
TD Canadian Bond Fund  
TD Canadian Bond Index Fund  
TD Canadian Core Plus Bond Fund  
TD Canadian Corporate Bond Fund  
TD Canadian Diversified Yield Fund  
TD Canadian Equity Class  
TD Canadian Equity Fund  
TD Canadian Equity Pool  
TD Canadian Equity Pool Class  
TD Canadian Index Fund  
TD Canadian Large-Cap Equity Fund  
TD Canadian Low Volatility Class  
TD Canadian Low Volatility Fund  
TD Canadian Money Market Fund  
TD Canadian Small-Cap Equity Class  
TD Canadian Small-Cap Equity Fund  
TD Canadian Value Class  
TD Canadian Value Fund  
TD Comfort Aggressive Growth Portfolio  
TD Comfort Balanced Growth Portfolio  
TD Comfort Balanced Income Portfolio  
TD Comfort Balanced Portfolio  
TD Comfort Conservative Income Portfolio  
TD Comfort Growth Portfolio  
TD Core Canadian Value Fund  
TD Corporate Bond Plus Fund  
TD Diversified Monthly Income Fund  
TD Dividend Growth Class  
TD Dividend Growth Fund  
TD Dividend Income Class  
TD Dividend Income Fund  
TD Dow Jones Industrial Average Index Fund  
TD Emerging Markets Class  
TD Emerging Markets Fund  
TD Emerging Markets Low Volatility Fund  
TD Global Entertainment & Communications Fund  
(formerly TD Entertainment & Communications Fund)  
TD European Index Fund  
TD Fixed Income Pool  
TD Global Balanced Opportunities Fund  
TD Global Conservative Opportunities Fund

TD Global Core Plus Bond Fund  
TD Global Equity Focused Fund  
TD Global Equity Pool  
TD Global Equity Pool Class  
TD Global Income Fund  
TD Global Low Volatility Class  
TD Global Low Volatility Fund  
TD Global Risk Managed Equity Class  
TD Global Risk Managed Equity Fund  
TD Global Unconstrained Bond Fund  
TD Health Sciences Fund  
TD High Yield Bond Fund  
TD Income Advantage Portfolio  
TD International Growth Class  
TD International Growth Fund  
TD International Index Currency Neutral Fund  
TD International Index Fund  
TD International Stock Fund  
TD Monthly Income Fund  
TD Nasdaq Index Fund  
TD North American Dividend Fund  
TD North American Small-Cap Equity Fund  
TD Precious Metals Fund  
TD Premium Money Market Fund  
TD Real Return Bond Fund  
TD Resource Fund  
TD Retirement Balanced Portfolio  
TD Retirement Conservative Portfolio  
TD Risk Management Pool  
TD Science & Technology Fund  
TD Short Term Bond Fund  
TD Short Term Investment Class  
TD Strategic Yield Fund  
TD Tactical Monthly Income Class  
TD Tactical Monthly Income Fund  
TD Tactical Pool  
TD Tactical Pool Class  
TD U.S. Blue Chip Equity Fund  
TD U.S. Corporate Bond Fund  
TD U.S. Dividend Growth Fund  
TD U.S. Equity Portfolio  
TD U.S. Index Currency Neutral Fund  
TD U.S. Index Fund  
TD U.S. Low Volatility Currency Neutral Fund  
TD U.S. Low Volatility Fund  
TD U.S. Mid-Cap Growth Class  
TD U.S. Mid-Cap Growth Fund  
TD U.S. Money Market Fund  
TD U.S. Monthly Income Fund  
TD U.S. Monthly Income Fund – C\$  
TD U.S. Quantitative Equity Fund  
TD U.S. Risk Managed Equity Class  
TD U.S. Risk Managed Equity Fund  
TD U.S. Small-Cap Equity Fund  
TD Ultra Short Term Bond Fund  
TD US\$ Retirement Portfolio  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated July 26, 2018

NP 11-202 Receipt dated July 27, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

TD Investment Services Inc. (for Investor Series and e-Series Units)

TD Waterhouse Canada Inc. (W-Series)

**Promoter(s):**

TD Asset Management Inc.

**Project #2785920**

---

**Issuer Name:**

Franklin Target Return Fund

Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated July 6, 2018

NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

Series A Units, Series F Units, Series PF Units and Series O Units

**Underwriter(s) or Distributor(s):**

Franklin Templeton Investments Corp.

**Promoter(s):**

Franklin Templeton Investments Corp.

**Project #2732278**

---

**Issuer Name:**

Horizons Active Emerging Markets Bond ETF

Horizons Balanced TRI ETF Portfolio

Horizons Conservative TRI ETF Portfolio

Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 23, 2018

NP 11-202 Receipt dated July 25, 2018

**Offering Price and Description:**

Class A units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Horizons ETFs Management (Canada) Inc.

**Project #2778912**

**Issuer Name:**

Horizons Crude Oil ETF (formerly Horizons NYMEX® Crude Oil ETF)  
Horizons Gold ETF (formerly Horizons COMEX® Gold ETF)  
Horizons Natural Gas ETF (formerly Horizons NYMEX® Natural Gas ETF)  
Horizons Silver ETF (formerly Horizons COMEX® Silver ETF)  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 19, 2018  
NP 11-202 Receipt dated July 24, 2018

**Offering Price and Description:**

Class A Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2785498**

---

**Issuer Name:**

PowerShares Senior Loan Index ETF  
PowerShares Fundamental High Yield Corporate Bond Index ETF  
PowerShares S&P 500 Low Volatility Index ETF  
PowerShares S&P Emerging Markets Low Volatility 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 ETF  
PowerShares QQQ Index ETF  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated July 24, 2018  
NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2703193**

**Issuer Name:**

PowerShares Low Volatility Portfolio ETF  
PowerShares FTSE RAFI Global Small-Mid Fundamental ETF  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated July 24, 2018

NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2703174**

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**Issuer Name:**

Lysander-Slater Preferred Share ActivETF  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 24, 2018

NP 11-202 Receipt dated July 25, 2018

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2784950**

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**Issuer Name:**

Mackenzie Cundill Recovery Class  
Mackenzie Cundill Recovery Fund  
Principal Regulator – Ontario

**Type and Date:**

Amendment #4 to Final Simplified Prospectus dated July 16, 2018

NP 11-202 Receipt dated July 25, 2018

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Quadrus Investment Services Ltd.

LBC Financial Services Inc.

**Promoter(s):**

Mackenzie Financial Corporation

**Project #2656987**

**Issuer Name:**

U.S. Global GO GOLD and Precious Metal Miners ETF  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 24, 2018  
NP 11-202 Receipt dated July 25, 2018

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2792228**

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NON-INVESTMENT FUNDS

**Issuer Name:**

Central Timmins Exploration Corp.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated July 25, 2018  
NP 11-202 Preliminary Receipt dated July 25, 2018

**Offering Price and Description:**

\$1,500,000.00  
15,000,000 Common Shares  
\$0.10 per Common Share  
Price Per Common Share: \$0.10

**Underwriter(s) or Distributor(s):**

PI Financial Corp.

**Promoter(s):**

Charles Gryba  
Neville Dastoor  
Mark Wellings  
Jens Mayer

**Project #2798340**

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**Issuer Name:**

Engagement Labs Inc.  
Principal Regulator – Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated July 23, 2018  
NP 11-202 Preliminary Receipt dated July 24, 2018

**Offering Price and Description:**

\$2,000,000.00  
40,000,000 Units comprised of 40,000,000 Common  
Shares and 20,000,000 Warrants at a price of \$0.05 per  
Unit

**Underwriter(s) or Distributor(s):**

Gravitas Securities Inc.  
Echelon Wealth Partners Inc.

**Promoter(s):**

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**Project #2797745**

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**Issuer Name:**

InterRent Real Estate Investment Trust  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 25, 2018  
NP 11-202 Preliminary Receipt dated July 25, 2018

**Offering Price and Description:**

\$100,003,500.00 – 9,390,000 trust units  
Price: \$10.65 per Offered Unit

**Underwriter(s) or Distributor(s):**

Desjardins Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Canaccord Genuity Corp.  
National Bank Financial Inc.  
CIBC World Markets Inc.  
Echelon Wealth Partners Inc.  
Raymond James Ltd.  
GMP Securities L.P.  
Industrial Alliance Securities Inc.

**Promoter(s):**

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**Project #2797117**

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**Issuer Name:**

Kalytera Therapeutics, Inc.  
Principal Regulator – British Columbia

**Type and Date:**

Amendment dated July 25, 2018 to Preliminary Short Form  
Prospectus dated July 9, 2018  
NP 11-202 Preliminary Receipt dated July 25, 2018

**Offering Price and Description:**

Minimum: \$3,000,000.00 (27,272,728 Units)  
Maximum: \$10,000,000.00 (90,909,091 Units)  
Price: \$0.11 Per Unit

**Underwriter(s) or Distributor(s):**

Echelon Wealth Partners Inc.

**Promoter(s):**

–

**Project #2794205**

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**Issuer Name:**

Shopify Inc.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 30, 2018  
NP 11-202 Preliminary Receipt dated July 30, 2018

**Offering Price and Description:**

\$5,000,000,000.00  
Class A Subordinate Voting Shares  
Preferred Shares  
Debt Securities  
Warrants  
Subscription Receipts  
Units

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #2799922**

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**Issuer Name:**

Smartset Services Inc.  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary CPC Prospectus (TSX-V) dated July 26, 2018  
NP 11-202 Preliminary Receipt dated July 26, 2018

**Offering Price and Description:**

\$200,000.00 OR 2,000,000 Common Shares  
Price: \$0.10 Per Common Share

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.

**Promoter(s):**

John Randolph Clifford

**Project #2798997**

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**Issuer Name:**

Spacefy Inc.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated July 26, 2018  
NP 11-202 Preliminary Receipt dated July 27, 2018

**Offering Price and Description:**

\$2,002,500.00 (13,350,000 Units)  
Price: \$0.15 per Unit

**Underwriter(s) or Distributor(s):**

Leede Jones Gable Inc.

**Promoter(s):**

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**Project #2799115**

**Issuer Name:**

Stella-Jones Inc.  
Principal Regulator – Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated July 30, 2018  
Received on July 24, 2018

**Offering Price and Description:**

\$343,157,364.00 – 8,445,911 Common Shares  
Price: \$40.63 per Common Share

**Underwriter(s) or Distributor(s):**

TD Securities Inc.  
Morgan Stanley Canada Limited  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.  
Laurentian Bank Securities Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
Acumen Capital Finance Partners Limited  
GMP Securities L.P.

**Promoter(s):**

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**Project #2798104**

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**Issuer Name:**

Xanadu Mines Ltd

**Type and Date:**

Preliminary Long Form Prospectus dated July 23, 2018  
(Preliminary) Receipted on July 24, 2018

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #2797788**

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**Issuer Name:**

Bank of Nova Scotia, The  
Principal Regulator – Ontario

**Type and Date:**

Final Shelf Prospectus dated July 25, 2018  
NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

\$15,000,000,000.00 – Senior Debt Securities  
(Unsubordinated Indebtedness)  
Subordinated Debt Securities (Subordinated Indebtedness)  
Preferred Shares Common Shares

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #2787146**

**Issuer Name:**

Dynamo Capital Corp.  
Principal Regulator – British Columbia

**Type and Date:**

Final CPC Prospectus (TSX-V) dated July 24, 2018  
NP 11-202 Receipt dated July 25, 2018

**Offering Price and Description:**

OFFERING: \$250,000 or 2,500,000 Common Shares  
PRICE: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

PI Financial Corp.

**Promoter(s):**

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**Project #2768029**

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**Issuer Name:**

Green Thumb Industries Inc. (formerly Bayswater Uranium Corporation)

Principal Regulator – British Columbia

**Type and Date:**

Final Short Form Prospectus dated July 26, 2018  
NP 11-202 Receipt dated July 26, 2018

**Offering Price and Description:**

\$80,300,000.00  
7,300,000 Subordinate Voting Shares  
Price: \$11.00 per Subordinate Voting Share

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.  
GMP Securities L.P.  
Beacon Securities Limited  
Echelon Wealth Partners Inc.  
Eight Capital

**Promoter(s):**

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**Project #2795333**

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**Issuer Name:**

PetroShale Inc.  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Final Short Form Prospectus dated July 27, 2018  
NP 11-202 Receipt dated July 27, 2018

**Offering Price and Description:**

\$40,000,700.00 – 21,622,000 Subscription Receipts  
Price: \$1.85 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.  
Canaccord Genuity Corp.  
National Bank Financial Inc.  
Scotia Capital Inc.  
Peters & Co. Limited

**Promoter(s):**

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**Project #2795165**

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**Issuer Name:**

Radiant Technologies Inc.  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Final Short Form Prospectus dated July 24, 2018  
NP 11-202 Receipt dated July 24, 2018

**Offering Price and Description:**

\$21,600,000.00 – 18,000,000 Units  
PRICE: \$1.20 per Unit

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.  
GMP Securities L.P.  
Laurentian Bank Securities Inc.

**Promoter(s):**

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**Project #2791556**

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**Issuer Name:**

Sarment Holding Limited  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated July 26, 2018  
NP 11-202 Receipt dated July 27, 2018

**Offering Price and Description:**

Maximum C\$33,000,000.00 (Ordinary Shares)  
Minimum C\$19,000,000.00 (Ordinary Shares)  
Offering Price: C\$3.15 per Ordinary Share

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.  
Canaccord Genuity Corp.  
Cormark Securities Inc.  
Paradigm Capital Inc.

**Promoter(s):**

Bertrand Faure Beaulieu

**Project #2742246**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Extuple Management Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	July 24, 2018
New Registration	Heirloom Investment Management (Canada) Inc.	Portfolio Manager, Exempt Market Dealer and Commodity Trading Manager	July 24, 2018
Name Change	From: Reel Capital Corporation To: Spotlight Capital Corp.	Exempt Market Dealer	June 20, 2018
Change in Registration Category	National Bank Trust Inc.	From: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer and Commodity Trading Manager	July 26, 2018
New Registration	Coin Capital Investment Management Inc.	Exempt Market Dealer, Investment Fund Manager and Portfolio Manager	July 27, 2018

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## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.3 Clearing Agencies

#### 13.3.1 CDS – Request for Comment – Application to Vary the Recognition Order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.

#### REQUEST FOR COMMENT

#### APPLICATION TO VARY THE RECOGNITION ORDER FOR THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED AND CDS CLEARING AND DEPOSITORY SERVICES INC.

##### A. Background

The Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, as varied and restated, pursuant to section 21.2 of the *Securities Act* (Ontario) (**Act**) continuing the recognition of The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (collectively, **CDS**) as clearing agencies (**Recognition Order**).

CDS has filed an application (**Application**) with the Commission requesting that an order be issued varying the Recognition Order to remove the requirement that one director of the CDS Board of Directors (**Board**) be a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited) and nominated by marketplaces unaffiliated with TMX Group Limited (**Unaffiliated Marketplace Director Requirement**) and to replace the Unaffiliated Marketplace Director Requirement with a marketplace committee established to advise on any matters the Committee deems appropriate to management and the CDS Board (**Draft Variation Order**).

Subject to comments received, staff propose to recommend to the Commission that it grant CDS an order in the form of the proposed Draft Variation Order attached at Appendix A.

##### B. Comment Process

The Commission is publishing for public comment the Application and Draft Variation Order. We are seeking comment on the Application and Draft Variation Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **September 17, 2018** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca).

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

Aaron Ferguson  
Manager, Market Regulation  
Tel: 416-593-3676  
[aferguson@osc.gov.on.ca](mailto:aferguson@osc.gov.on.ca)

Emily Sutlic  
Senior Legal Counsel, Market Regulation  
Tel: 416-593-2362  
[esutlic@osc.gov.on.ca](mailto:esutlic@osc.gov.on.ca)

**DRAFT VARIATION ORDER**

**APPENDIX "A"**

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

**AND**

**IN THE MATTER OF  
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**AND**

**CDS CLEARING AND DEPOSITORY SERVICES INC.**

**VARIATION ORDER  
(Section 144 of the Act)**

**WHEREAS** the Ontario Securities Commission ("**Commission**") issued an order dated July 4, 2012, as varied and restated on December 21, 2012 and as varied on December 7, 2012, May 1, 2013, June 25, 2013, June 24, 2014, January 27, 2015, March 27, 2015, December 20, 2016 and February 28, 2018 pursuant to section 21.2 of the Act continuing the recognition of The Canadian Depository for Securities Limited ("**CDS Ltd.**") and CDS Clearing and Depository Services Inc. (together with CDS Ltd., "**CDS**") as clearing agencies (the "**Clearing Agency Recognition Order**");

**AND WHEREAS** CDS has filed an application ("**Application**") with the Commission to vary the Clearing Agency Recognition Order pursuant to section 144 of the Act to delete section 4.2(c) of Schedule "B" of the Clearing Agency Recognition Order (the "**Unaffiliated Marketplace Director Requirement**") for the limited purpose of removing the requirement that one director of the CDS Board be a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited) and nominated by the marketplaces unaffiliated with Maple Group Acquisition Corporation;

**AND WHEREAS** the Application requests that the Commission vary the governance terms and Conditions in Schedule "B" of the Clearing Agency Recognition Order to include new sections 4.4.1 and 4.5.1 (the "**Marketplace Committee Requirement**") to provide for a new requirement for the use of a marketplace advisory committee by CDS;

**AND WHEREAS** the Commission has determined based on the Application and representations made by CDS that it is not prejudicial to the public interest to vary the Clearing Agency Recognition Order to remove the Unaffiliated Marketplace Director Requirement and add the Marketplace Committee Requirement;

**IT IS HEREBY ORDERED** that, pursuant to section 144 of the Act, section 4.2(c) of Schedule "B" of the Clearing Agency Recognition Order is deleted in its entirety and the following is added as section 4.4.1 and section 4.5.1:

- 4.4.1 The recognized clearing agency governance structure shall provide for the use of a marketplace committee to provide advice, comments and recommendations to management and the board of directors of the recognized clearing agency and such committee shall meet the following requirements:
- (a) membership is open to all marketplaces that access the services provided by the recognized clearing agency;
  - (b) the marketplace committee may advise on any matters that the marketplace committee deems appropriate, and shall if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and
  - (c) a staff representative of the Commission may attend any meetings of the marketplace committee as an observer.



- 4.5.1 The recognized clearing agency's board of directors shall:
- (a) as required by the Commission and in any event annually, provide a written report to the Commission that contains:
    - (i) the recommendations made by the marketplace committee and whether and why any of the recommendations were rejected or only partially implemented, and
    - (ii) a response from the marketplace committee regarding whether and why they agree or disagree with the recognized clearing agency's report; and
  - (b) file such report and the marketplace committee's response with the Commission within 45 days after each fiscal year-end of the recognized clearing agency or within 60 days of a request made by the Commission.

DATED at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

***[Editor's Note: The CDS Application follows on separately numbered pages. Bulletin page numbers resume at the end of the Application.]***



June 28, 2018

**VIA OSC ELECTRONIC PORTAL**

Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

**Re: Application for an order varying the recognition order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.**

The Canadian Depository for Securities Limited (“**CDS Limited**”) and CDS Clearing and Depository Services Inc. (“**CDS Clearing**”, and collectively with CDS Limited, “**CDS**”) are hereby applying to the Ontario Securities Commission (“**OSC**”) for an order varying the CDS recognition order. The variation order (the “**Requested Variation Order**”) would remove the requirement that one director of the CDS Board be both a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited, “**TMX**”) and be nominated by the marketplaces unaffiliated with TMX (the “**Unaffiliated Marketplace Director Requirement**”). The Unaffiliated Marketplace Director Requirement significantly reduces the pool of potential directors for one of the CDS Board seats. We believe that CDS, its stakeholders and the public interest would be better served if the pool for this Board seat was not limited to marketplace representatives.

As a condition of approval, CDS is prepared to institute a committee for marketplaces to provide advice, comments and recommendations to the management and board of directors of CDS (the “**Marketplace Committee Requirement**”). This committee would give the non-TMX marketplaces an ability to participate on an equal basis with each other to bring forward matters to CDS, and would be structured to require the CDS Board to address all recommendations brought forward by these marketplaces, including by requiring the CDS Board to report annually in this regard to the OSC.

In conjunction with the above, CDS is applying to the Autorité des marchés financiers (“**AMF**”) for a similar variation order and will be seeking approval from the British Columbia Securities Commission (“**BCSC**”) to permit this change to the CDS Board structure.

**Recognition order provisions**

The OSC’s varied and restated order recognizing CDS as a clearing agency dated December 21, 2012, as amended (the “**OSC CDS Recognition Order**”), the AMF’s Decision No. 2012-PDG-0142 recognizing CDS as a clearing house, as amended (the “**AMF CDS Recognition Order**”, and together with the OSC CDS Recognition Order, the “**CDS Recognition Orders**”), contain the

## Unaffiliated Marketplace Director Requirement.<sup>1</sup>

In order to effect the governance changes in the Requested Variation Order, CDS is requesting that the OSC CDS Recognition Order be varied to remove the Unaffiliated Marketplace Director Requirement and add the Marketplace Committee Requirement. In particular, CDS is requesting that section 4, Schedule “B” of the OSC CDS Recognition Order be revised as follows (with the text to be removed struck-through and new text underlined):

4.2 The recognized clearing agency shall ensure that:

...

~~(c) one director is a representative of a marketplace unaffiliated with Maple and nominated by the marketplaces unaffiliated with Maple;~~

...

4.4.1 The recognized clearing agency governance structure shall provide for the use of a marketplace committee to provide advice, comments and recommendations to management and the board of directors of the recognized clearing agency and such committee shall meet the following requirements:

(a) membership is open to all marketplaces that access the services provided by the recognized clearing agency;

(b) the marketplace committee may advise on any matters that the marketplace committee deems appropriate, and shall if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and

(c) a staff representative of the Commission may attend any meetings of the marketplace committee as an observer.

...

4.5.1 The recognized clearing agency’s board of directors shall:

(a) as required by the Commission and in any event annually, provide a written report to the Commission that contains:

(i) the recommendations made by the marketplace committee and whether and why any of the recommendations were rejected or only partially implemented, and

(ii) a response from the marketplace committee regarding whether and why they agree or disagree with the recognized clearing agency’s report; and

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<sup>1</sup> Section 4.2(c) of Schedule “B” of the OSC CDS Recognition Order and section 23.2(c) of Part II of the AMF CDS Recognition Order.

- (b) file such report and the marketplace committee's response with the Commission within 45 days after each fiscal year-end of the recognized clearing agency or within 60 days of a request made by the Commission.

### **Rationale for removing Unaffiliated Marketplace Director Requirement**

The Maple transaction resulted in the vertical integration and alignment of CDS's cash clearing, settlement, and depository functions with "trading services" under TMX's corporate structure. The Request for Comment on the proposed Maple transaction, published in October, 2011<sup>2</sup> acknowledged the potential risk that the broader organization could engage in anti-competitive behaviour, restrict access to clearing services by unaffiliated marketplaces, or otherwise impede competition among marketplaces. The Unaffiliated Marketplace Director Requirement was put in place specifically to address this concern.<sup>3</sup>

With the benefit of more than five years of experience since the Maple transaction, CDS respectfully submits that the Unaffiliated Marketplace Director Requirement is, for several reasons, a disproportionate response to the competition law concerns raised in the Maple transaction context. In the first instance, we are of the view that multiple regulatory requirements already address the unaffiliated marketplaces' concerns. In the second instance, we believe that the Unaffiliated Marketplace Director Requirement has a measurably adverse impact on the effective operation of the CDS Board and the CDS Board's efficient oversight of CDS's operations. Both CDS, and by extension our stakeholders, are constrained by the significant and unnecessary constriction of the pool of potential directors, for a single board seat, to a stakeholder group with a tenuous need for clearing house board representation.

It is important to note that other requirements will continue to be in place that ensure that a majority of CDS Board members are not affiliated with TMX, including the requirement that at least 33% of the board is independent<sup>4</sup>, and the requirement that at least 33% of the board are representatives of CDS participants. In light of CDS's role as a clearing house that has been federally designated as systemically important financial infrastructure, the additional existing requirement that a Board seat be dedicated to a marketplace representative is an unwarranted restriction to the pool of potential CDS directors.

### ***Negative Impact on CDS***

In our view, the Unaffiliated Marketplace Director Requirement negatively impacts the CDS Board because it significantly, and unnecessarily, narrows the pool of potential directors for one of the CDS Board seats. Consistent with the CPSS-IOSCO *Principles for Financial Market Infrastructures* ("PFMIs"), CDS strives to populate its Board with members who have an "appropriate mix of skills (including strategic and relevant technical skills), experience, and knowledge of the entity".<sup>5</sup> In our view, dedicating one CDS Board seat to a marketplace representative does not assist CDS in achieving this principle. Further, the PFMIs are clear that there are various mechanisms that can be used by a board when considering relevant

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<sup>2</sup> (2011) 34 OSCB 10451.

<sup>3</sup> (2012) 35 OSCB (Supp-2) 103.

<sup>4</sup> See Part II, section 4.3(a) of the OSC CDS Recognition Order which sets out that a director is independent if the director is not (i) an associate, partner, director, officer or employee of a significant shareholder of TMX, (ii) an associate, partner, director, officer or employee of a CDS Participant or such Participant's affiliates, (iii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliates, or (iv) an officer or employee of CDS or its affiliates.

<sup>5</sup> CPSS-IOSCO – Principles for financial market infrastructures – April 2012, section 3.2.10.

stakeholders' interests, including user committees and public consultation processes.<sup>6</sup>

Experience since the Maple transaction has also demonstrated that the unaffiliated marketplace representative is often, and unavoidably, placed in a conflicted position while discharging his fiduciary duty to CDS. This issue is particularly acute given the competitive nature of the relationship between the unaffiliated marketplace and the TMX marketplaces. The effect of having a board member conflicted out of decisions on a regular basis is the concomitant, and adverse, increase in workload and responsibility falling on the remaining board members. In the past five years, the unaffiliated marketplace representative has formally recused himself, or otherwise left during parts of a meeting, eight times.

### *Small Talent/Expertise Pool*

In Canada, there are currently seven organizations operating unaffiliated equities marketplaces, and the majority of these organizations operate with very few employees and, more critically, few senior executives. This environment results in an extremely small talent/expertise pool from which to select a board member who meets the board membership fitness criteria for a systemically important clearing house functioning as the sole Canadian cash clearing house.

Each CDS director must be a fit and proper person and his or her past conduct must afford reasonable grounds for belief that the director will perform his or her duties with integrity. Each nominee must possess the appropriate strengths, skills, expertise and experience, when complemented by the other members of the board, to guide the strategies and business operations of CDS. Some of the skills that are, therefore, required of a CDS board member would include experience and expertise:

- As a senior officer of a marketplace
- In risk management
- With governance / board operations(including any certification from a director education program)
- In a financial role
- With a regulated company
- In information technology and systems
- In corporate strategy

More specifically, since the PFMI's specifically focus on the risk management role of the board of directors, experience in the area of risk management is a particularly relevant skill for a CDS board member. In this respect, the CDS board can benefit from having individual members with relevant experience related to liquidity risk and credit risk, experiences which may not typically arise as part of a marketplace's operations. Other demographic and diversity factors that are considered when recruiting for the CDS board include age, gender, and geographic location, as well as basic qualities such as integrity, good character, and being highly regarded in his or her community or professional field.

### *Difficulty in Discharging Duties*

Certain marketplace representatives have had difficulties on the CDS Board. It is challenging for an individual to effectively separate his interests as a marketplace operator from his fiduciary responsibility as a clearing house director. In our fragmented equities market, marketplaces are

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<sup>6</sup> Ibid, section 3.2.18.

in direct competition with each other. This means that the marketplace representative operates a business that is in direct competition with CDS's equities exchange affiliates. This places the marketplace representative in a position that is different than other CDS directors.

By comparison, while the participant representatives on the CDS Board have interests with respect to their participant entity, the participant is not itself in competition with any CDS affiliate, and the participant has broader interests with respect to the clearing house than the narrow interest that a marketplace has (which is limited to access to the clearing house). Given that a participant has a broader interest in the operations of the clearing house, and is not in direct competition with any CDS affiliates, we believe this seems to be a significant distinction between a marketplace representative and a participant representative, and may help to explain the difficulty that seems to manifest in the marketplace representative role on the CDS Board. In summary, the varied roles and objectives related to this CDS board position almost de facto place the marketplace representative board member in an irreconcilable conflict position, between his fiduciary duty to the CDS board and his obligations to the marketplace that he operates.

### ***CDS Statistics: Majority of Value Traded does not come from Marketplace Trades***

We believe that it is important to recognize that a significant proportion of the value traded each day, and processed by CDS, does not result from trades executed on marketplaces (these trades are considered 'exchange trades' as defined below). In May, 2018, for example, the marketplaces collectively accounted for approximately 36.2 million securities traded (volume traded) in CDS's clearing and settlement systems and infrastructure ("**CDSX system**"), and the value of these trades was approximately \$235 billion. By contrast, non-marketplace trades in fixed income securities totaled approximately \$11.2 trillion, and non-marketplace trades in equity securities totaled approximately \$364.6 billion. We believe that the comparative activity levels resulting from marketplace activity is an important consideration in determining the need for a marketplace representative on the CDS board.

### ***Marketplace concerns are addressed by other means***

The CDSX system is agnostic with respect to the particular source of 'exchange trades' (trades which are matched and confirmed prior to their being submitted to CDSX). Trade information, in the form of a daily trade file, is received from all recognized marketplaces. Once trade details are received from a marketplace by CDS, CDSX performs clearing and settlement processes as between participant ledgers. These CDSX processes are the same for all 'exchange trades', irrespective of the marketplace on which the trade occurred.

In the depository services context, securities may be deposited by participants into their accounts (ledgers) at CDS only after CDS determines that the securities are eligible for deposit. CDS's eligibility criteria are well established, public, and standardized. These criteria, like the clearing and settlement systems, are agnostic with respect to the recognized exchange on which a security is listed. CDS's agreements with marketplaces (including listing venues) are limited to: a) a technical document (Form CDSX818) that provides CDS with the minimum information required to enable reception of trade (and, in the case of listing venues, dividend) files from the marketplace to CDS; b) in certain circumstances, a fee collection agreement pursuant to which CDS collects trading fees from participants on behalf of a marketplace; and c) a standard form MOU with listing venues that describes their role with respect to oversight of listed issuers.

### ***OSC CDS Recognition Order restrictions***

The relevant access requirements include the following:

- CDS shall not unreasonably prohibit, condition or limit, directly or indirectly, access by a person or company to services offered by it
- CDS shall not permit unreasonable discrimination among existing and potential participants and marketplaces, or impose any burden on competition that is not reasonably necessary or appropriate
- Must accept clearing of trades in securities that are eligible under its rules on a non-discriminatory basis, regardless of the marketplace of execution
- Must allow any person or company to interface or connect to any of its services or systems on a commercially reasonable basis, for the purposes of facilitating post-trade processing of securities transactions by participants
- CDS rules shall not unreasonably create an impediment to competition
- CDS shall provide its services and products, including any interface or connection to its services or systems, to any person or company, on a non-discriminatory basis and at a service level or performance standards comparable to that which would be provided to its affiliated entities
- CDS shall use Participant committees to assist the CDS Board, and membership on these committees is open to all marketplaces that access CDS's services

The relevant requirements related to fees, fee models and incentives include the following:

- CDS's fees shall not have the effect of unreasonably creating barriers to access its services or discriminating between users of CDS's services or marketplaces
- Tied selling involving CDS products/services or products/services of any affiliate is prohibited

#### *CDS OSC Rule and Fee Review Protocol*

Any change to the CDS legal documents, any new fee, and any change to a fee in CDS's posted fee schedule, must, except in extremely limited circumstances, be published for comment and approved by the OSC.<sup>7</sup> This public comment process for both rules and fees provides a critical avenue by which all CDS's stakeholders actively may participate in CDS's rule- and fee-making process.

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<sup>7</sup> Housekeeping changes are considered effective upon filing.

## *TMX OSC Recognition Order Restrictions (related to clearing services)*

### Fees, Fee Models, and Incentives

- Prohibition on tied selling involving a TMX clearing agency

### Clearing and Settlement

- Prohibition on establishing requirements relating to clearing and settlement of trades that would result in (i) unfair discrimination between marketplace participants based on the clearing agency used, (ii) an imposition of any burden on competition among clearing agencies or back office service providers that is not reasonably necessary or appropriate, or (iii) an unreasonable prohibition, condition or limitation relating to access by a person to services offered by the recognized exchange or a TMX clearing agency

## *National Instrument 24-102*

Subsequent to the Maple transaction, National Instrument 24-102 *Clearing Agency Requirements* (“**NI 24-102**”) was adopted by the Canadian Securities Administrators. NI 24-102 codified certain access provisions that are found in the CDS Recognition Orders, namely that a clearing house must not:

- Unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency
- Impose any burden on competition that is not reasonably necessary and appropriate
- Unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency’s services offered by it

NI 24-102 includes governance provisions that require a recognized clearing agency’s board of directors to include appropriate representation by individuals who are independent of the clearing agency. NI 24-102 also provides that a recognized clearing agency must establish procedures and operations designed to ensure that it meets or exceeds certain principles set out in the PFMI.

### **Adopting a CDS Marketplace Committee**

CDS believes that the existing regulatory framework, including the opportunity for marketplaces to participate on existing committees, is sufficient to address any marketplace concerns related to potential TMX anti-competitive behaviour. We understand, however, that CDS’s regulators are of the view that a new safeguard should be implemented in order to permit the removal of the Unaffiliated Marketplace Director Requirement. We therefore propose the adoption of a Marketplace Committee Requirement.

### ***Operation of the Marketplace Committee***

Any marketplace that accesses CDS’s services would be able to be a member of this committee. As with CDS’s existing participant committees, the marketplace committee would be able to advise on any matters that it deems appropriate, and any recommendation made by the marketplace committee would be brought by CDS management to the CDS Board. The CDS



Board would report annually to the OSC and AMF on the recommendations made by the marketplaces, including whether and why any of the recommendations were rejected or only partially implemented. CDS would commit to poll the marketplaces quarterly to seek interest for holding a meeting and topics to be discussed.

By providing unaffiliated marketplaces with clear means to raise competition-related concerns with CDS, and CDS's regulators, the Marketplace Committee Requirement would address the theoretical risk of TMX using its market position to engage in inappropriate behaviour. Furthermore, the participation of unaffiliated marketplaces on such a committee provides a forum to raise other concerns of unique concern, even if such concerns do not relate directly to competition. The marketplace committee affords all marketplaces the same opportunity to raise concerns to CDS, instead of relying on one individual on the CDS Board whose views may not reflect those of every marketplace. The Marketplace Committee Requirement would achieve these outcomes without adversely affecting the composition and efficient operation of the CDS Board.

### **International Benchmarking**

We have reviewed public documents from various clearing houses globally to inform our understanding of whether other clearing houses with marketplace affiliates have created governance frameworks to specifically address potential concerns from unaffiliated marketplaces. In our review, we did not find an example of a requirement that a marketplace be represented on the board of a cash clearing house and we did not find requirements that these clearing houses establish an advisory committee for marketplaces.

#### ***Australia***

The Australian Securities Exchange ("**ASX**") has clearing house affiliates that are the sole providers of clearing and settlement arrangements for Australia's cash equities market. The boards of these clearing houses are comprised of six directors, with three of these directors not also sitting on the ASX parent company board. These three independent directors are able to meet separately to determine any matters that require consideration of commercially sensitive information from an unaffiliated marketplace that is obtaining services from, or access to, these clearing houses. There are not any marketplace representatives on the ASX clearing house boards.<sup>8</sup>

#### ***England***

LCH is majority owned by London Stock Exchange Group ("**LSEG**"), which owns London Stock Exchange, Borsa Italiana, Turquoise and other trading venues. LCH Group Holdings Ltd ("**LCH Holdco**") operates LCH Limited ("**LCH**") which is the operating clearing house in the UK. LCH Holdco has 13 directors: 4 directors are independent of LCH Ltd. and LSEG, 4 are participant representatives, 4 are LSEG/LCH executives and the final board member is the Chair, who is considered to be independent although he is also a member of the London Stock Exchange board. LCH, the operating clearing house in the UK, has the same structure as LCH Holdco with two fewer participant representatives (11 directors total: 4 independent, 2 participant representatives, 4 LSEG/LCH representatives, 1 Chair (the same Chair as for LCH Holdco)). These board breakdowns are not dissimilar to the CDS structure, and focus on having an equal number of independents and LCH executives, with some participant representation, and with a Chair who

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<sup>8</sup> <https://www.asx.com.au/documents/investor-relations/AnnualReport2017.pdf>

also sits on the board of an affiliate that is not a clearing house. There are not any marketplace representatives on the LCH Holdco Board or the LCH Board.<sup>9</sup>

### **Germany**

Eurex Clearing AG is part of the Eurex Group which is owned by Deutsche Borse, the operator of many trading venues. The Supervisory Board of Eurex Clearing currently has eleven members: 5 independent, 4 participant representatives, and 2 Eurex executives.<sup>10</sup> Currently one of the independent board members is also an independent director at a US futures exchange, but this marketplace connection does not appear to be a requirement for the Eurex Clearing Supervisory Board. Eurex Clearing hosts a number of advisory committees for their clearing members<sup>11</sup>, but none specific to marketplaces.

### **United States**

Unlike the above clearing houses which are owned by public holding companies and are affiliated with trading venues, DTCC is member-owned. DTCC itself owns The Depository Trust Company and National Securities Clearing Corporation. The DTCC Board of Directors is currently composed of 19 directors. Of these, 12 are participant representatives (including representatives of broker-dealers, custodians and clearing banks, and investment institutions), 3 are independent directors, 2 are designated by DTCC's "preferred shareholders", NYSE Euronext and FINRA, 1 is a DTCC executive, and 1 (the Chair) is independent. In its "Key Provisions of Principles of Governance", DTCC lists its key constituents as being: its shareholders, participants, issuer and investor clients, and government and supervisory authorities.<sup>12</sup>

### **Conclusion**

In conclusion, CDS submits that removing the Unaffiliated Marketplace Director Requirement and adopting the Marketplace Committee Requirement will improve the functioning of the CDS Board and will benefit CDS, its stakeholders, and the Canadian capital markets as a whole. We attach, at Appendix A, a draft variation order for your consideration.

Yours truly,



Deanna Dobrowsky  
Vice President, Regulatory, TMX Group

cc: Susan Greenglass, *Ontario Securities Commission*  
Élaine Lanouette, *Autorité des marchés financiers*  
Doug MacKay, *British Columbia Securities Commission*

<sup>9</sup> <https://www.lch.com/about-us/structure-and-governance/board-directors-0>

<sup>10</sup> <http://www.eurexclearing.com/clearing-en/about-us/corporate-overview/supervisory-board>

<sup>11</sup> <http://www.eurexclearing.com/clearing-en/about-us/corporate-overview/other-committees>

<sup>12</sup> <http://www.dtcc.com/about/leadership>

## Chapter 25

# Other Information

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### 25.1 Consents

#### 25.1.1 Bradmer Pharmaceuticals Inc. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

##### Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Cayman Islands Companies Law (2016 Revision), as amended.

##### Statutes Cited

Business Corporations Act, R.S.O. 1990, c.B.16, as am., s. 181.  
Securities Act, R.S.O. 1990, c.S.5, as am.

##### Regulation Cited

Ont. Reg. 289/00, as am., s. 4(b), made under the Business Corporations Act, R.S.O. 1990, c. B.16, as am.

**IN THE MATTER OF  
R.R.O. 1990, REGULATION 289/00, AS AMENDED  
(the REGULATION) UNDER  
THE BUSINESS CORPORATIONS ACT (ONTARIO),  
R.S.O. 1990 c. B.16, AS AMENDED  
(the OBCA)**

AND

**IN THE MATTER OF  
BRADMER PHARMACEUTICALS INC.**

**CONSENT  
(Subsection 4(b) of the Regulation)**

**UPON** the application (the “**Application**”) of Bradmer Pharmaceuticals Inc. (the “**Applicant**”) to the Ontario Securities Commission (the “**Commission**”) requesting the Commission’s consent to the Applicant continuing in another jurisdiction pursuant to section 181 of the OBCA (the “**Continuance**”);

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is an offering corporation under the OBCA.
2. The Applicant’s common shares are listed on the NEX Board of the TSX Venture Exchange under the symbol “BMR”. As of July 9, 2018, the Applicant had 19,659,725 issued and outstanding common shares.
3. The Applicant intends to apply to the Director pursuant to section 181 of the OBCA (the “**Application for Continuance**”) for authorization to continue as a corporation under the Cayman Islands *Companies Law (2016 Revision)*, as amended from time to time (the “**CICL**”).
4. On February 14, 2018, the Applicant announced that it had entered into an agreement (the “**Arrangement Agreement**”) involving the Applicant, First Coin Capital Corp. (“**First Coin**”), Galaxy Digital LP (“**Galaxy LP**”) and Galaxy Digital GP LLC (“**Galaxy GP**”) pursuant to which, the Applicant, First Coin, Galaxy LP and Galaxy GP will combine their respective assets (the “**Arrangement**”).
5. The Application for Continuance is being made in connection with the Applicant’s intention to complete the Arrangement, as further described in the Applicant’s management information circular dated May 14, 2018 (“**Information Circular**”).

## Other Information

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The Applicant will have operations around the world and principally outside of Canada. As such, the Continuance is intended to reorganize the corporate operations of the Applicant in order to optimize the tax and operational efficiencies of those operations and to take advantage of the favourable tax treatment accorded to corporations governed by the CICL.

6. The CICL permits foreign jurisdiction corporations to continue under the laws of the Cayman Islands.
7. The material rights, duties and obligations of a corporation governed by the CICL are substantially similar to those of a corporation governed by the OBCA. However, there are differences. The principle differences have been highlighted for the shareholders of the Applicant ("**Shareholders**") in the Information Circular.
8. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") and the securities legislation of British Columbia, Alberta, Manitoba and Québec (collectively, the "**Legislation**"). It will remain a reporting issuer in these jurisdictions following the Continuance.
9. The Applicant is not in default of any of the provisions of the OBCA, the Act, or the Legislation, including the regulations and rules made thereunder.
10. The Applicant is not subject to any proceeding under the OBCA, the Act, or the Legislation.
11. The Applicant is not in default of any provision of the rules, regulations or policies of the NEX Board of the TSX Venture Exchange.
12. The Commission is the principal regulator of the Applicant. Following the Continuance, the principal regulator of the Applicant will continue to be the Commission.
13. As the Applicant will continue in a jurisdiction outside of Canada following the proposed Continuance, the Applicant has provided an undertaking (the "**Undertaking**") to the Commission that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" thereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (**SEDAR**) promptly following the effective date of the Continuance. The Undertaking also provides that the Applicant will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein. The form of Undertaking provided to the Commission is attached as Appendix "A".
14. The Information Circular for the Applicant's annual general and special meeting of shareholders, held on June 11, 2018 (the "**Shareholders Meeting**"), was provided to all Shareholders. It included full disclosure of the reasons for, and the implications of, the proposed Arrangement and the proposed Continuance. It also provided a summary of the material differences between the OBCA and the CICL that affect the Shareholders, and a description of the Shareholders' dissent rights in connection with the proposed Arrangement and Continuance pursuant to section 185 of the OBCA.
15. The Shareholders authorized the Arrangement and the proposed Continuance at the Shareholders Meeting by a special resolution that was approved by 99.52% of the votes cast; no Shareholders exercised dissent rights pursuant to section 185 of the OBCA.
16. Subsection 4(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

**THE COMMISSION CONSENTS** to the continuance of the Applicant under the CICL.

**DATED** at Toronto, Ontario this 20th day of July, 2018.

"Cecilia Williams"  
Commissioner  
Ontario Securities Commission

"Poonam Puri"  
Commissioner  
Ontario Securities Commission

**APPENDIX "A"**

**UNDERTAKING**

**To: Ontario Securities Commission (the "Commission")**

**RE: Bradmer Pharmaceuticals Inc. (the "Applicant")**

**Application dated July 9, 2018 for a Consent to a Continuance out of Ontario under the Cayman Islands *Companies Law (2016 Revision)*, as amended from time to time, pursuant to clause 4(b) of Ontario Regulation 289/00 made under the *Business Corporations Act*, R.S.O. 1990, c. B. 16**

The Applicant hereby undertakes that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" hereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (**SEDAR**) promptly following the effective date of the Continuance.

The Applicant hereby further undertakes that it will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein.

Dated: July 19, 2018.

BRADMER PHARMACEUTICALS INC.

"Paul Van Damme"

Paul Van Damme  
Chief Financial Officer

**SCHEDULE "A" TO APPENDIX "A"**

**ISSUER FORM OF SUBMISSION TO JURISDICTION AND  
APPOINTMENT OF AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the "Issuer"):  
\_\_\_\_\_
2. Jurisdiction of incorporation, or equivalent, of Issuer:  
\_\_\_\_\_
3. Address of principal place of business of Issuer:  
\_\_\_\_\_
4. Description of securities (the "Securities"):  
\_\_\_\_\_
5. Name of agent for service of process (the "Agent"):  
\_\_\_\_\_
6. Address for service of process of Agent in Canada (which address may be anywhere in Canada):  
\_\_\_\_\_
7. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served with a notice, pleading, subpoena, summons or other process in an action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the obligations of the Issuer as a reporting issuer and irrevocably waives any right to raise as a defence in any such Proceeding an alleged lack of jurisdiction to bring such Proceeding.
8. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:
  - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which the Securities have been distributed; and
  - (b) any administrative proceeding in any such province or territory, in any Proceeding arising out of or related to or concerning the obligations of the Issuer as a reporting issuer.
9. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form or as otherwise prescribed by securities law at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.
10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.
11. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Signing Officer of Issuer

\_\_\_\_\_  
Print name and title of person signing

**Other Information**

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**AGENT**

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Agent

\_\_\_\_\_  
Print name of person signing and, if agent is not an individual, the title of the person

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