**The Ontario Securities Commission**

# OSC Bulletin

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

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# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information – Notice of Coming into Effect

**NOTICE OF COMING INTO EFFECT**

**IOSCO ENHANCED MULTILATERAL MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION AND COOPERATION AND THE EXCHANGE OF INFORMATION**

On July 11, 2018, the Ontario Securities Commission (the **Commission**) became a signatory to the IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the **IOSCO Enhanced MMoU**).

The IOSCO Enhanced MMoU came into effect on September 17, 2018 pursuant to section 143.10 of the *Securities Act* (Ontario).

The IOSCO Enhanced MMoU will foster greater cross-border enforcement cooperation and mutual assistance among securities regulators, enabling them to respond to the risks and challenges posed by globalization and advances in technology. The IOSCO Enhanced MMoU expands on the forms of assistance available under the IOSCO Multilateral Memorandum of Understanding (the **IOSCO MMoU**), which came into effect on December 5, 2002. The new arrangement was established to ensure continued effectiveness of securities regulators in safeguarding market integrity and stability, protecting investors and deterring misconduct and fraud in the capital markets.

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### 1.1.2 CSA Multilateral Staff Notice 58-310 Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions

CSA Multilateral Staff Notice 58-310 *Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* follows on separately numbered pages. Bulletin pagination resumes at the end of the Multilateral Staff Notice.

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

**CSA Multilateral Staff Notice 58-310**

# Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions

**September 27, 2018**

# EXECUTIVE SUMMARY

This report outlines key trends from a recent review of disclosure regarding women on boards and in executive officer positions as required by Form 58-101F1 *Corporate Governance Disclosure* (the disclosure requirements) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101). The review was conducted by securities regulatory authorities in Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan. The review was completed for the purposes of identifying key trends. A qualitative assessment of compliance with the disclosure requirements was not conducted.

The key trends are based on a review sample of 648 issuers that had year-ends between December 31, 2017 and March 31, 2018 (year 4) and filed information circulars or annual information forms by July 31, 2018.

The following key trends were observed in this review:

| | |
|---|---|
| **Board seats** | • 15% of board seats were held by women; however this number tended to increase with the size of the issuer and varied by industry.<br>• 66% of issuers had at least one woman on their board, however 218 issuers had no women on their board.<br>• 29% of vacated board seats were filled by women. |
| **Executive officer positions** | • 4% of issuers had a female CEO.<br>• 14% of issuers had a female CFO.<br>• 66% of issuers had at least one woman in an executive officer position. |
| **Targets** | • 16% of issuers adopted targets for the representation of women on their board.<br>• 4% of issuers adopted targets for the representation of women in executive officer positions. |
| **Term limits and other mechanisms of board renewal** | • 21% of issuers adopted some form of director term limits (alone or with other mechanisms of board renewal).<br>• 32% of issuers adopted other mechanisms of board renewal, but did not adopt term limits.<br>• 43% of issuers disclosed that they did not have director term limits nor had they adopted other mechanisms of board renewal. |
| **Policies** | • 42% of issuers adopted a policy relating to the representation of women on their board. |

# SNAPSHOT OF DATA

The following is a snapshot of the year-over-year comparison of the key trends identified in our reviews:

| Trends | Year 1 | Year 2 | Year 3 | Year 4 |
|---|---|---|---|---|
| **Board representation** | | | | |
| Total board seats occupied by women | 11% | 12% | 14% | 15% |
| Issuers with at least one woman on their board | 49% | 55% | 61% | 66% |
| Issuers with three or more women on their board | 8% | 10% | 11% | 13% |
| Board seats occupied by women for issuers with less than $1 billion market capitalization | 8% | 9% | 10% | 11% |
| Board seats occupied by women for issuers with $1-2 billion market capitalization[1] | 11% | 13% | 17% | 19% |
| Board seats occupied by women for issuers with $2-10 billion market capitalization[1] | 17% | 18% | 18% | 21% |
| Board seats occupied by women for issuers with over $10 billion market capitalization[1] | 21% | 23% | 24% | 25% |
| Board vacancies filled by women[2] | -- | -- | 26% | 29% |
| **Executive officers** | | | | |
| Issuers with at least one woman in executive officer positions | 60% | 59% | 62% | 66% |
| Issuers with a female CEO[3] | -- | -- | -- | 4% |
| Issuers with a female CFO[3] | -- | -- | -- | 14% |
| **Policies** | | | | |
| Issuers that adopted a policy relating to the representation of women on their board | 15% | 21% | 35% | 42% |
| **Targets** | | | | |
| Issuers that adopted targets for the representation of women on their board | 7% | 9% | 11% | 16% |
| Issuers that adopted targets for the representation of women in executive officer positions | 2% | 2% | 3% | 4% |
| **Term limits** | | | | |
| Issuers that adopted director term limits | 19% | 20% | 21% | 21% |
| **Consideration of the representation of women** | | | | |
| Issuers that considered the representation of women on their boards as part of the director identification and selection process | 60% | 66% | 65% | 73% |
| Issuers that considered the representation of women in executive officer appointments | 53% | 58% | 58% | 60% |

[1] Board seats occupied by women for issuers over $1 billion market capitalization: 16% (Year 1), 18% (Year 2), 20% (Year 3), and 21% (Year 4).
[2] Board vacancies filled by women were not included in our reporting in Year 1 and Year 2.
[3] Issuers with a female CEO and issuers with a female CFO were not included in our reporting in Year 1, Year 2 and Year 3.

# KEY TRENDS

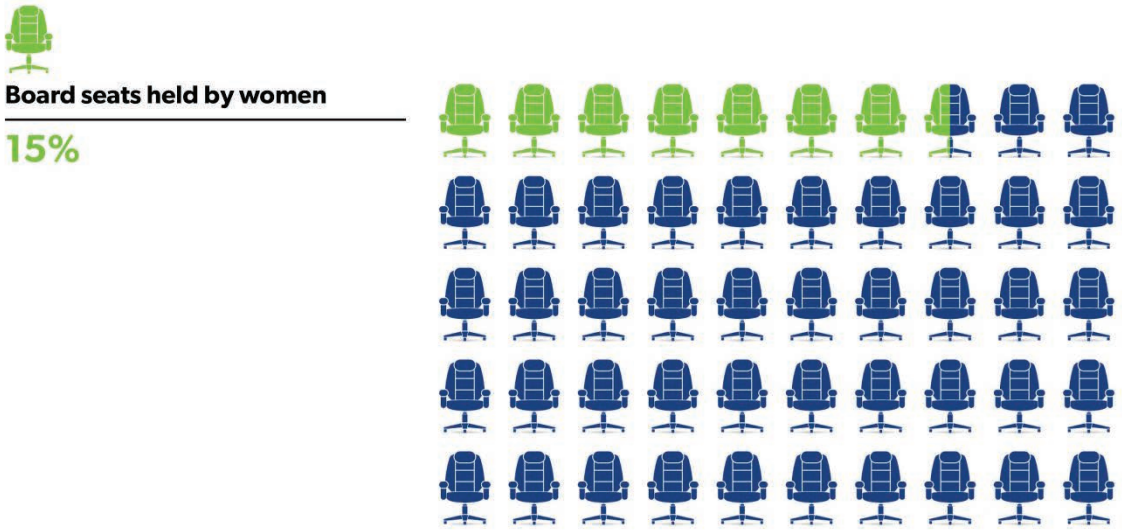
Set out below are highlights from our review related to the following:

A. Women on boards
B. Women in executive officer positions
C. Board renewal

## A. Women on boards

**Board seats**

**The percentage of board seats held by women increased to 15% in year 4.**




The percentage of board seats held by women varied by the size of the issuer.

- For the 417 issuers with a market capitalization of less than $1 billion, 11% of board seats were held by women.
- For the 85 issuers with a market capitalization of between $1 billion and $2 billion, 19% of board seats were held by women.
- For the 99 issuers with a market capitalization of between $2 billion and $10 billion, 21% of board seats were held by women.
- For the 47 issuers with a market capitalization of greater than $10 billion, 25% of board seats were held by women.[4]

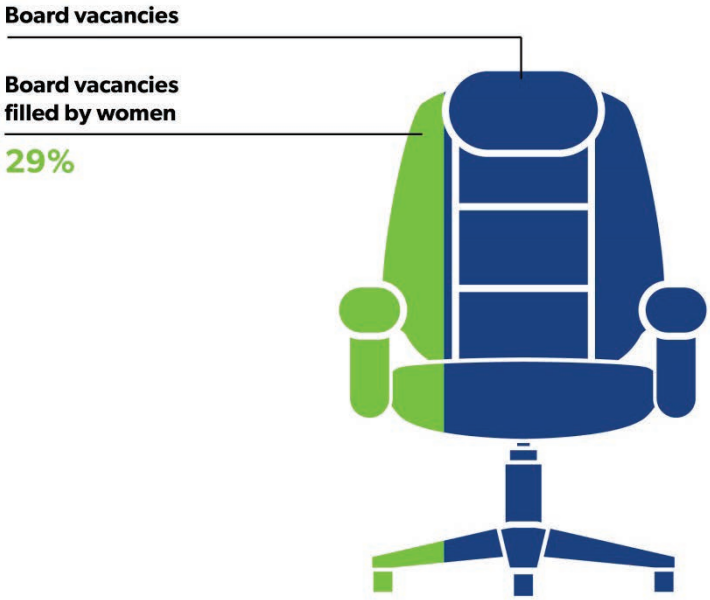
73% of issuers indicated that they considered the representation of women on their boards in identifying and nominating candidates for election or re-election to the board.

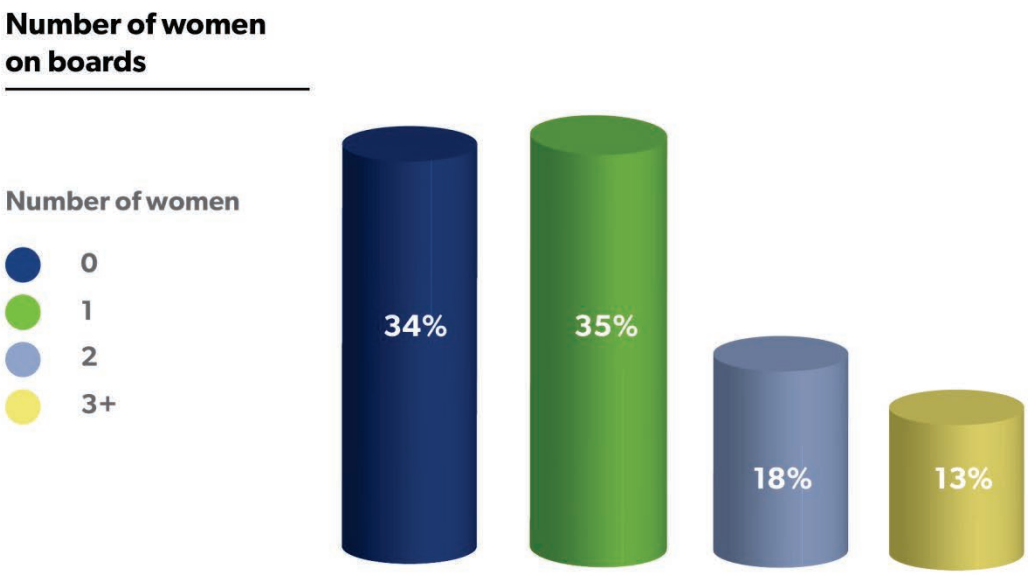
[4] Board seats occupied by women for the 231 issuers with a market capitalization of greater than $1 billion were: 16% (Year 1), 18% (Year 2), 20% (Year 3), and 21% (Year 4).

**Board fill rate**

**When board seats became available and were filled, approximately three in ten seats were filled by women.**

This year, 720 board seats were vacated during the year and 561 of those seats were filled. Of those filled seats, 29% (165 seats) were filled by women which represents a 3% increase over year 3.



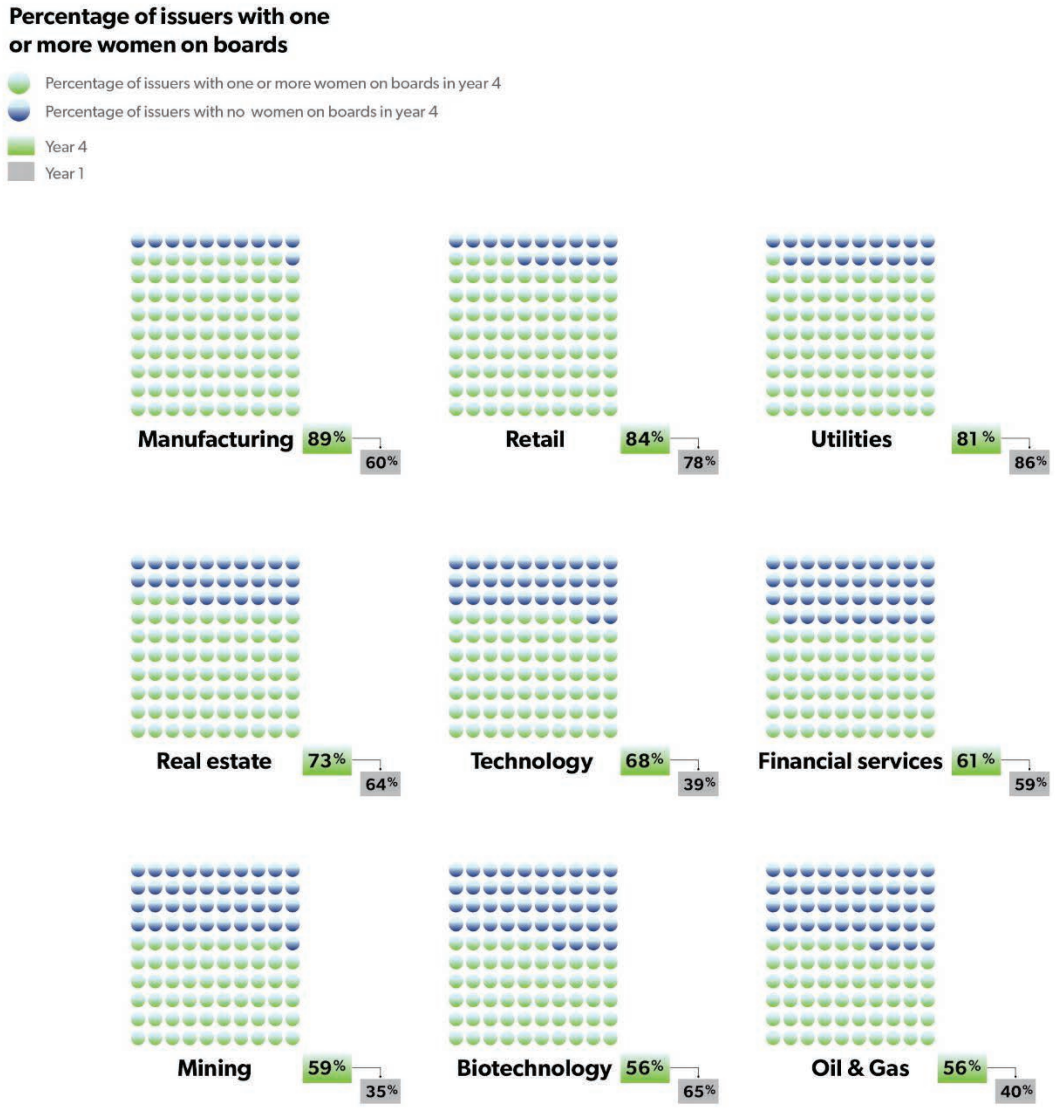
| | |
|---|---|
| **Issuers with no women on board** | **The number of issuers with no women on their board has declined since the disclosure requirements were introduced.**<br><br>34% of issuers (218 issuers) had no women on their board. |
| **Issuers with at least one woman on board** | **The number of issuers with at least one woman on their board has increased since the disclosure requirements were introduced.**<br><br>66% of issuers had at least one woman on their board.<br><br>  |

**Industry data**

## The number of women on boards varied by industry.

The manufacturing, retail and utilities industries had the highest percentage of issuers with one or more women on their boards.[5] The oil and gas, biotechnology and mining industries had the lowest percentage of issuers with one or more women on their boards.

Refer to Appendix A for a year-over-year comparison of the percentage of issuers with one or more women on their boards by industry.




[5] The larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in our reviews. The six largest banks had an average of 38% of women on their boards based on their 2018 information circulars filed for their years ending October 31, 2017.

| | |
|---|---|
| **Targets** | **Few issuers had targets for women on their boards.**<br><br>16% of issuers set targets for the representation of women on their boards.<br><br>Issuers that had adopted board targets had an average of 24% of their board seats held by women, compared to issuers without targets that had an average of 13%. |
| **Policies relating to the identification and nomination of women directors** | **42% of issuers adopted a policy on identifying and nominating women directors, representing an almost three-fold increase since year 1.**<br><br>The 269 issuers that had adopted a policy relating to the representation of women on their boards had an average of 20% of women on their boards compared to issuers with no such policy, that had an average of 12%. |

## B. Women in executive officer positions

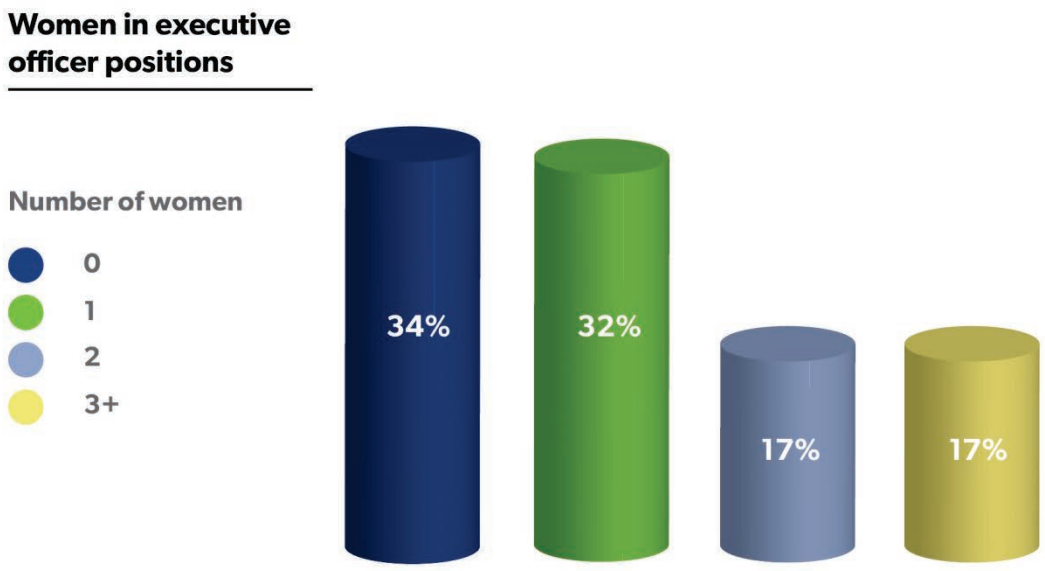
**Number of women in executive officer positions**

**66% of issuers had at least one woman in an executive officer position.[6]**

The number of executive officers reported by issuers ranged from zero to approximately 4,000, with most issuers having fewer than 50 executive officers.[7]

4% of issuers had a female CEO.[8]
14% of issuers had a female CFO.[8]

60% of issuers indicated that they considered the representation of women in executive officer positions when making executive officer appointments.



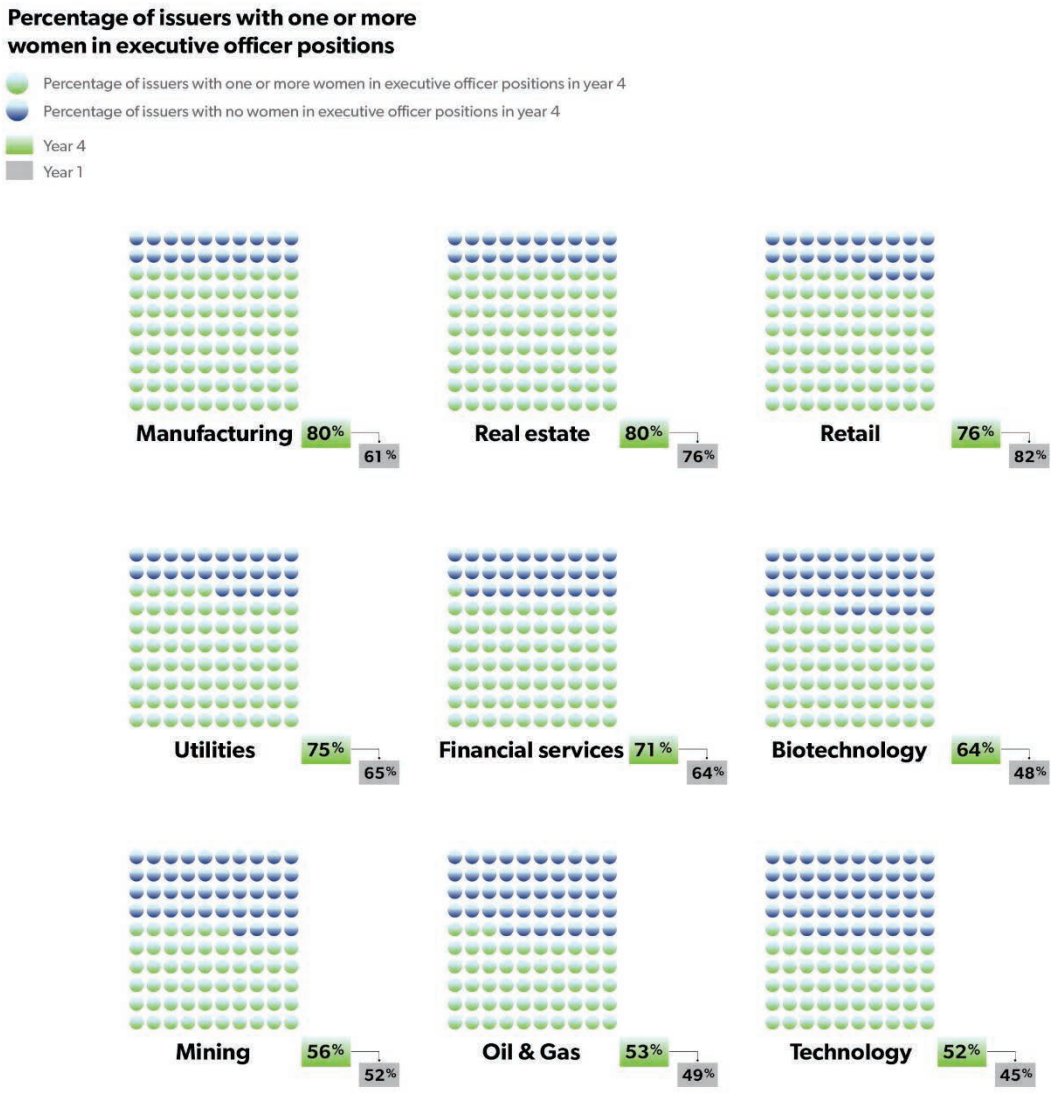

[6] 586 of the 648 issuers in the review sample disclosed executive officer information.
[7] The numbers included in this part of the report are taken from issuers' disclosure, and may include positions other than executive officers, as that term is defined in NI 58-101.
[8] CEO and CFO data is not a disclosure requirement.

## Industry data

**The number of women in executive officer positions varied by industry.**

The manufacturing and real estate industries had the highest percentage of issuers with one or more women in executive officer positions. The technology, oil and gas and mining industries had the lowest percentage of issuers with one or more women in executive officer positions.

Refer to Appendix B for a year-over-year comparison of the percentage of issuers with one or more women in executive officer positions by industry.




## Targets

**Targets for women in executive officer positions were rare.**

4% of issuers set targets for the representation of women in executive officer positions.

## C. Board renewal

| | |
|---|---|
| **Term limits** | **21% of issuers had adopted term limits (alone or with other mechanisms of board renewal).**<br><br>Term limits took varied forms:<br>• 47% adopted age limits,<br>• 25% adopted tenure limits, and<br>• 28% adopted both age and tenure limits.<br><br>The average tenure and age limits were 13 years and 74 years, respectively. |
| **Other mechanisms of board renewal** | 32% of issuers adopted other mechanisms of board renewal, but did not adopt term limits. Some of these issuers indicated that they used assessments of the board and individual directors as a mechanism of board renewal. Other issuers indicated that they had adopted mechanisms of board renewal other than term limits but did not describe them.<br><br>43% of issuers disclosed that they did not have director term limits nor had they adopted other mechanisms of board renewal. |

# BACKGROUND

**Required disclosure**

Issuers listed on the Toronto Stock Exchange (TSX) and certain other non-venture issuers are required to provide disclosure on an annual basis in the following five areas:

- **Number of women in roles** – the number and percentage of women on its board of directors (board) and in executive officer positions.
- **Targets** – whether it has targets for the number or percentage of women on its board and in executive officer positions, and if not, why not.
- **Board policy** – whether it has a written policy relating to the identification and nomination of women directors, and if not, why not.
- **Board renewal** – whether it has director term limits or other mechanisms of board renewal, and if not, why not.
- **Consideration of the representation of women** – whether it considers the representation of women in its director identification and selection process and in its executive officer appointments, and if not, why not.

**Objective**

To increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation.

**Prior reviews of disclosure**

This is the fourth consecutive annual review of this disclosure that we[9] have conducted. The trends from our first three annual reviews are set out in:

- **Year 1 (2015)** – CSA Multilateral Staff Notice 58-307
- **Year 2 (2016)** – CSA Multilateral Staff Notice 58-308
- **Year 3 (2017)** – CSA Multilateral Staff Notice 58-309

[9] The Alberta Securities Commission did not participate in the 2015 and 2016 reviews as the disclosure requirements had not yet been adopted in Alberta. The British Columbia Securities Commission has not adopted the disclosure requirements and did not participate in any of the reviews. However, Alberta-based and BC-based TSX-listed issuers were included in the respective samples.

# REVIEW SAMPLE

As of May 31, 2018, approximately 1,500 issuers were listed on the TSX, of which approximately 790 were subject to the disclosure requirements.

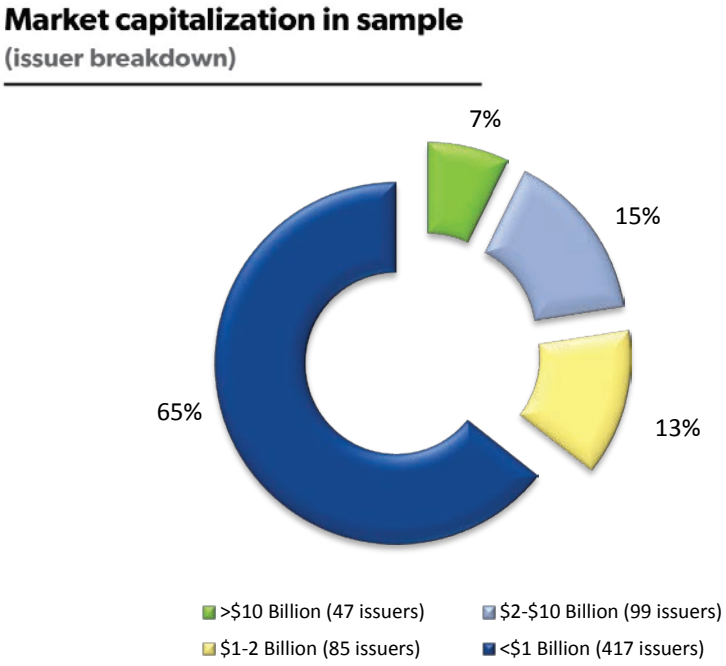
**Scope of sample**

We reviewed the disclosure of 648 issuers that had year-ends between December 31, 2017 and March 31, 2018, and filed information circulars or annual information forms by July 31, 2018.[10]

Issuers excluded from our review include:

- approximately 700 exchange-traded funds or closed-end funds,
- issuers that moved the listing of their securities from the TSX Venture Exchange (TSX-V) to the TSX in 2018, and
- other issuers such as designated foreign issuers and SEC foreign issuers that are exempt from the requirements of NI 58-101.

**Profile of issuers in review sample[11]**

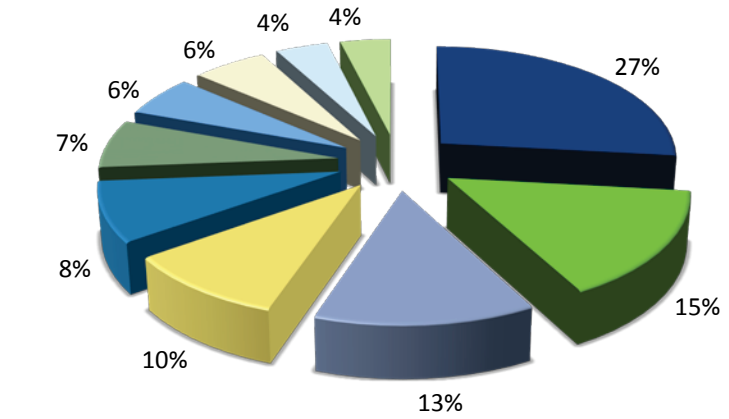



[10] Because of the scope of our sample, our findings, and the comparisons between the current year and the prior three years provide only a partial picture. The issuers in the current year and the prior year samples vary for several reasons including:

- issuers being delisted from the TSX,
- issuers' listings of securities being moved to the TSX-V,
- corporate reorganizations resulting in issuers no longer being listed on the TSX,
- issuers filing information circulars after July 31, 2018,
- issuers completing initial public offerings and becoming listed on the TSX, and
- issuers ceasing to be reporting issuers.

[11] As noted above, the larger Canadian banks are not captured in our reviews due to their year-ends.

## Industries in sample




- Mining (172 issuers - 27%)
- Oil & gas (99 issuers - 15%)
- Other (89 issuers - 13%)
- Financial services (64 issuers - 10%)
- Real estate (55 issuers - 8%)
- Manufacturing (44 issuers - 7%)
- Retail (37 issuers - 6%)
- Technology (37 issuers - 6%)
- Utilities (26 issuers - 4%)
- Biotechnology (25 issuers - 4%)

# NEXT STEPS

The disclosure requirements have been in place for four annual reporting periods and in light of this experience, the CSA are considering whether:

- changes to the disclosure requirements are warranted and, if so, the nature of those changes, and
- introduction of new or supplemental guidelines regarding corporate governance practices in National Policy 58-201 *Corporate Governance Guidelines* is warranted and if so, the nature of those guidelines.

We have engaged in the following three areas of work:

| | |
|---|---|
| **Consultations** | During winter and spring 2018, CSA staff consulted with a variety of stakeholders to better understand their needs and perspectives. The consultations occurred through a variety of forums, including consultation papers, roundtables and other meetings with stakeholders and email communications. |
| **Research** | CSA staff revisited and updated research to support evidence-based policy making on the following:<br>• the approaches to gender diversity in certain jurisdictions outside of Canada,<br>• director term limits,<br>• shareholder proxy voting guidelines relating to gender diversity, and<br>• academic and other studies on gender diversity and social and behavioural economics.<br><br>We will continue to conduct further research and analysis. |
| **Disclosure reviews** | CSA staff considered the key trends arising from the four annual disclosure reviews. |

Based on this work, the CSA will determine whether changes to our regulatory regime are warranted. No decisions have been made yet.

# QUESTIONS

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# APPENDIX A

The following is a year-over-year comparison of the percentage of issuers with one or more women on their boards by industry:

| Industry | Year 1 | Year 2 | Year 3 | Year 4 |
|---|---|---|---|---|
| **Percentage of issuers with one or more women on their boards** | | | | |
| Biotechnology | 65% | 57% | 56% | 56% |
| Financial Services | 59% | 67% | 60% | 61% |
| Manufacturing | 60% | 68% | 84% | 89% |
| Mining | 35% | 38% | 54% | 59% |
| Oil & Gas | 40% | 40% | 45% | 56% |
| Real Estate | 64% | 66% | 59% | 73% |
| Retail | 78% | 79% | 89% | 84% |
| Technology | 39% | 52% | 52% | 68% |
| Utilities | 86% | 82% | 86% | 81% |

# APPENDIX B

The following is a year-over-year comparison of the percentage of issuers with one or more women in executive officer positions by industry:

| Industry | Year 1 | Year 2 | Year 3 | Year 4 |
|---|---|---|---|---|
| **Percentage of issuers with one or more women on in executive officer positions** | | | | |
| Biotechnology | 48% | 66% | 71% | 64% |
| Financial Services | 64% | 63% | 66% | 71% |
| Manufacturing | 61% | 81% | 79% | 80% |
| Mining | 52% | 49% | 52% | 56% |
| Oil & Gas | 49% | 46% | 48% | 53% |
| Real Estate | 76% | 76% | 80% | 80% |
| Retail | 82% | 71% | 68% | 76% |
| Technology | 45% | 44% | 59% | 52% |
| Utilities | 65% | 73% | 67% | 75% |

## 1.2 Notices of Hearing

### 1.2.1 Michael Pearson and LeadFX Inc. – s. 127

**FILE NO.:** 2018-53

**IN THE MATTER OF**
**MICHAEL PEARSON**

**AND**

**IN THE MATTER OF**
**LEADFX INC.**

**NOTICE OF HEARING**
Section 127 of the
*Securities Act*, RSO 1990, c S.5

**PROCEEDING TYPE:** Application for Transactional Proceeding

**HEARING DATE AND TIME:** September 24, 2018 at 2:15 p.m.

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

**PURPOSE**

The purpose of this proceeding is to consider the Application filed by Michael Pearson dated September 18, 2018, relating to a special meeting of shareholders of LeadFX Inc. called to consider and approve a special resolution to approve a going-private transaction, to be completed via a statutory plan of arrangement under section 192 of the *Canada Business Corporations Act*.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 7(1) of the Commission's *Practice Guideline*.

**REPRESENTATION**

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

**FAILURE TO ATTEND**

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

**FRENCH HEARING**

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

**AVIS EN FRANÇAIS**

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

Dated at Toronto this 21st day of September, 2018

"Grace Knakowski"
Secretary to the Commission

**For more information**

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

### 1.2.2 Omega Securities Inc. – s. 127(1)

**FILE NO.:** 2017-66

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

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

**PROCEEDING TYPE:** Public Settlement Hearing

**HEARING DATE AND TIME:** October 4, 2018 at 10:00 a.m.

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

**PURPOSE**

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated September 21, 2018 between Staff of the Commission and Omega Securities Inc. in respect of the Statement of Allegations filed by Staff of the Commission dated November 16, 2017.

**REPRESENTATION**

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

**FAILURE TO ATTEND**

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

**FRENCH HEARING**

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

**AVIS EN FRANÇAIS**

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

Dated at Toronto this 21st day of September, 2018

"Grace Knakowski"
Secretary to the Commission

**For more information**

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

## 1.4 Notices from the Office of the Secretary

### 1.4.1 Michael Pearson and LeadFX Inc.

**FOR IMMEDIATE RELEASE**
**September 21, 2018**

**IN THE MATTER OF**
**MICHAEL PEARSON**

**AND**

**IN THE MATTER OF**
**LEADFX INC.,**
**File No. 2018-53**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing setting the above named matter for a First Attendance to be heard on September 24, 2018 at 2:15 p.m. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated September 21, 2018 and the Application dated September 18, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

mailto:media_inquiries@osc.gov.on.ca

For investor inquiries:

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

### 1.4.2 Omega Securities Inc.

**FOR IMMEDIATE RELEASE**
**September 21, 2018**

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

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

The hearing will be held on October 4, 2018 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated September 21, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

### 1.4.3 Roy Ping Bai (aka Ping Bai) and RBP Consulting

**FOR IMMEDIATE RELEASE**
**September 24, 2018**

**ROY PING BAI**
**(aka PING BAI) AND**
**RBP CONSULTING,**
**File No. 2018-46**

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

A copy of the Reasons and Decision and the Order dated September 21, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

### 1.4.4 Benedict Cheng et al.

**FOR IMMEDIATE RELEASE**
**September 24, 2018**

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

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

A copy of the Order dated September 24, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

### 1.4.5 Michael Pearson and LeadFX Inc.

**FOR IMMEDIATE RELEASE**
**September 24, 2018**

**MICHAEL PEARSON and**
**LEADFX INC.,**
**File No. 2018-53**

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

A copy of the Order dated September 24, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

### 1.4.6 X.X.

**FOR IMMEDIATE RELEASE**
**September 25, 2018**

**AN ACCESS TO INFORMATION REQUEST**
**SUBMITTED BY**
**X.X.,**
**File No. 2018-52**

**TORONTO** – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated September 24, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Ninepoint Partners LP

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodian requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation, whether or not such derivatives are subject to U.S. and European regulatory requirements. Decision treats cleared swaps similar to other cleared derivatives.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.7(1), 2.7(4), 6.1, 19.1.

**August 31, 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**
**NINEPOINT PARTNERS LP**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from Ninepoint Partners LP 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**), in respect of Ninepoint Concentrated Canadian Equity Fund, Ninepoint International Small Cap Fund and Ninepoint UIT Alternative Health Fund (the **Enumerated Funds**), the investment funds listed in Exhibit A (the **Specified Funds**) and all future investment funds that are managed by Ninepoint Partners LP or an affiliate thereof (together, the **Filer**) and that are subject to NI 81-102 (the **Future Funds**, and together with the Enumerated Funds and the Specified Funds, each a **Fund** and, collectively, the **Funds**) exempting:

a. each Fund that is subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (an **81-101 Fund**) from the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

b. each 81-101 Fund from the limitation in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

c. each Fund from the requirement in subsection 6.1(1) of NI 81-102 to hold all portfolio assets of an investment fund under the custodianship of one custodian in order to permit each Fund to deposit cash or other portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin,

in each case, with respect to Cleared Swaps (as defined below) (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 the Application; and

(b) Ninepoint Partners LP has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the provinces and territories of Canada other than Ontario (collectively 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. Capitalized terms used in this decision have the following meanings:

**Advisors** means the Filer and each third party portfolio manager retained from time to time by the Filer to manage the investment portfolio of one or more Funds as an advisor or sub-advisor.

**CFTC** means the U.S. Commodity Futures Trading Commission.

**Cleared Swap** means any OTC derivative transaction that can be entered into on a cleared basis, whether or not such derivative is subject to a clearing determination or a clearing obligation issued by the CFTC or ESMA, as the case may be.

**Clearing Corporation** means any clearing organization registered with the CFTC or central counterparty authorized by ESMA, as the case may be, that, in either case, is also recognized or exempt from recognition in Ontario.

**Dodd-Frank** means the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

**EMIR** means the European Market Infrastructure Regulation.

**ESMA** means the European Securities and Markets Authority.

**European Economic Area** means all of the European Union countries and also Iceland, Liechtenstein and Norway.

**Futures Commission Merchant** means any futures commission merchant that is registered with the CFTC and/or clearing member for purposes of EMIR, as applicable, and is a member of a Clearing Corporation.

**LSOC Model** means the legally segregated operationally commingled model adopted by the CFTC for Cleared Swaps collateral.

**OTC** means over-the-counter.

**U.S. Person** has the meaning attributed thereto by the CFTC.

**Representations**

This decision is based on the following facts represented by Ninepoint Partners LP:

1. Ninepoint Partners LP is a limited partnership formed and organized under the laws of the Province of Ontario. The general partner of Ninepoint Partners LP is Ninepoint Partners GP Inc., a corporation incorporated under the laws of the Province of Ontario. The head office of Ninepoint Partners LP is located in Ontario.

2. Ninepoint Partners LP is registered as (i) an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, (ii) a portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador, and (iii) an exempt market dealer in Ontario, British Columbia, Alberta,

Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador and Quebec. Neither Ninepoint Partners LP nor any of the Enumerated Funds or Specified Funds is in default of securities legislation in any province or territory of Canada.

3. The Filer is, or will be, the portfolio manager to the Funds. One of the Advisors, other than the Filer, may act as sub-advisor to the portfolio manager with respect to a Fund.

4. Each Fund is, or will be, an investment fund created under the laws of Ontario or another jurisdiction of Canada and is, or will be, subject to the provisions of NI 81-102.

5. The securities of each Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each Fund is, or will be, a reporting issuer or the equivalent in each Jurisdiction.

6. Ninepoint Partners LP became the manager and portfolio adviser of the Specified Funds when the management agreements relating to the Specified Funds were transferred to Ninepoint Partners LP by Sprott Asset Management LP pursuant to an Asset Purchase Agreement among, inter alia, Sprott Asset Management LP, Sprott Private Wealth LP and Ninepoint Financial Group Inc. (formerly 2568004 Ontario Inc.) dated April 10, 2017, as filed on SEDAR under the profile of Sprott Inc., as the same may be amended, supplemented or modified from time to time in accordance with its terms.

7. Ninepoint Partners LP acquired the management agreement relating to Ninepoint UIT Alternative Health Fund from Redwood Asset Management Inc. pursuant to the approval of securityholders of that fund on March 19, 2018 and pursuant to regulatory approval of the change of manager in a decision dated March 12, 2018. Ninepoint Partners LP recently launched the Ninepoint Concentrated Canadian Equity Fund and Ninepoint International Small Cap Fund by way of simplified prospectus and annual information form dated April 23, 2018.

8. Each of the Specified Funds obtained the same relief as the Requested Relief evidenced by a decision dated January 7, 2016 (the **Specified Prior Relief**). Ninepoint Partners LP, as the current manager of the Specified Funds, is now seeking to obtain the Requested Relief in a separate, new decision, reflecting itself as the current manager of the Specified Funds, and on behalf of the Specified Funds, the Enumerated Funds and the Future Funds the Filer may establish in the future.

9. Should the Requested Relief be granted, neither the Filer nor any of the Funds will rely on the Specified Prior Relief. The Specified Prior Relief will continue to apply to existing and future investment funds managed by Sprott Asset Management LP.

10. The investment objective and investment strategies of each Fund permit, or will permit, the Fund to enter into derivative transactions, including Cleared Swaps. Ninepoint Partners LP considers Cleared Swaps to be an important investment tool that is available to it to properly manage a Fund's portfolio.

11. The Dodd-Frank Act requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a Clearing Corporation.

12. EMIR also requires that certain OTC derivatives be cleared through a central counterparty authorized to provide clearing services for purposes of EMIR. Generally, where one party to a swap is a financial counterparty or a non-financial counterparty whose OTC derivative trading activity exceeds a certain threshold, in each case established in a state that is a participant in the European Economic Area, that swap will be required to be cleared.

13. In addition to clearing swaps that are mandated to be cleared under the Dodd-Frank Act and/or EMIR, many of the Clearing Corporations offer clearing services in respect of other types of derivative transactions. Many global derivative end-users enter into Cleared Swaps on both a voluntary and a mandatory basis.

14. In order to benefit from both the pricing benefits and reduced trading costs that an Advisor is often able to achieve through its trade execution practices for its managed investment funds and accounts and from the reduced costs associated with Cleared Swaps as compared to other OTC trades, Ninepoint Partners LP wishes that the Funds have the ability to enter into Cleared Swaps.

15. In the absence of the Requested Relief, an Advisor will need to structure the derivative transactions entered into by the applicable Funds so as to avoid clearing, including the clearing requirements of the CFTC and under EMIR, as applicable. Ninepoint Partners LP respectfully submits that this would not be in the best interests of the Funds and their investors for a number of reasons, as set out below.

16. Ninepoint Partners LP strongly believes that it is in the best interests of the Funds and their investors to continue to be able to execute OTC derivatives with global counterparties, including U.S. and European swap dealers.

17. An Advisor may use common trade execution practices for all of its accounts, including the Funds. If these practices involve the use of Cleared Swaps and if the Funds are unable to employ these trade execution practices, then the Advisor would have to create separate trade execution practices only for the Funds and would have to execute trades for the Funds on a separate basis. This would increase the operational risk for the Funds and would prevent the Funds from benefitting from the pricing benefits and reduced trading costs that an Advisor may be able to achieve through common practices for its advised accounts. In the opinion of Ninepoint Partners LP, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Cleared Swaps.

18. In its role as a fiduciary for the Funds, Ninepoint Partners LP has determined that central clearing represents a good choice for the investors in the Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

19. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Funds. Ninepoint Partners LP respectfully submits that the Funds should be encouraged to comply with the robust clearing requirements established by the CFTC and under EMIR by granting them the Requested Relief.

20. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, i.e., clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, such Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

21. For the reasons provided above, Ninepoint Partners LP submits that it would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

**Decision**

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that the Clearing Corporation is permitted to offer customer clearing of OTC derivatives in the Jurisdiction where the applicable Fund is located and provided further that, in respect of the deposit of cash and other portfolio assets as margin:

a. in Canada,

   i. the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and

   ii. the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit; and

b. outside of Canada,

   i. the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

   ii. the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

   iii. the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit.

This decision will terminate on the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives.

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

**EXHIBIT A**

**SPECIFIED FUNDS**

**Public Trust Funds**

1. Ninepoint Gold Bullion Fund
2. Ninepoint Silver Bullion Fund
3. Ninepoint Diversified Bond Fund
4. Ninepoint Energy Fund
5. Ninepoint Global Infrastructure Fund
6. Ninepoint Global Real Estate Fund
7. Ninepoint Gold and Precious Minerals Fund
8. Ninepoint Short Term Bond Fund
9. Ninepoint Enhanced Balanced Fund

**Public Corporate Class Funds**

1. Ninepoint Diversified Bond Class
2. Ninepoint Real Asset Class
3. Ninepoint Resource Class
4. Ninepoint Short-Term Bond Class
5. Ninepoint Silver Equities Class
6. Ninepoint Enhanced Balanced Class
7. Ninepoint Enhanced Equity Class
8. Ninepoint Enhanced U.S. Equity Class
9. Ninepoint Focused Global Dividend Class
10. Ninepoint Focused U.S. Dividend Class

**Public Listed Funds**

1. Ninepoint Energy Opportunities Trust

### 2.1.2 MD Financial Management Inc

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval for change of control of manager under s. 5.5(1)(a.1) of National Instrument 81-102 Investment Funds – acquirer has requisite experience and integrity to participate in Canadian capital markets – transaction will not result in any material changes to operations and management of the manager or the funds it manages.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a.1), 19.1.

**September 18, 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**
**MD FINANCIAL MANAGEMENT INC.**
**(the Manager)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Manager and 10803553 Canada Limited (the **Purchaser** and together with the Manager, the **Filers**) under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval pursuant to subsection 5.5(1)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of a change of control of the Manager (the **Approval Sought**).

Under National Policy 11-203 *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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (together with Ontario, the **Jurisdictions**).

**Interpretation**

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

**Representations**

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

***The Manager and the Canadian Medical Association***

1. The Manager is a corporation incorporated under the laws of Canada with its head office located in Ottawa, Ontario. The Manager is registered as a portfolio manager in each of the provinces and territories of Canada and additionally is

registered in Ontario in the category of commodity trading manager and investment fund manager. The Manager is also registered as an investment fund manager in the provinces of Québec and Newfoundland and Labrador. The Manager surrendered its registration as an exempt market dealer, which surrender was accepted by the Director as of August 23, 2018.

2. The Manager is the manager for the purposes of NI 81-102 and, other than in respect of MD Growth Investments Limited, trustee of all of the mutual funds identified in Schedule "A" hereto (each a **Fund** and collectively, the **Funds**).

3. The Manager is indirectly wholly-owned by CMA Holdings (2014) Inc. (**CMA Holdings**), which is a wholly-owned subsidiary of the Canadian Medical Association (**CMA**).

4. The CMA is an association incorporated and existing pursuant to *An Act to Incorporate the Canadian Medical Association* and is a national, voluntary association of physicians that advocates on behalf of its members and the public for access to high quality health care, and provides leadership and guidance to physicians.

5. The Manager is not in default of applicable securities legislation in any Jurisdiction.

***The Funds***

6. Each Fund is an open-end mutual fund trust or, in the case of MD Growth Investments Limited, a mutual fund corporation.

7. Each Fund is a reporting issuer in all of the Jurisdictions and subject to NI 81-102. The securities of each Fund are qualified for distribution pursuant to a simplified prospectus, fund facts and annual information form that have been prepared and filed in accordance with National Instrument 81-101 *Mutual Funds Prospectus Disclosure*.

8. Prior to June 1, 2018, the Funds were only available to "eligible" investors, as such term is defined in applicable account opening documentation, being members (and their families) and employees of the CMA. On or after June 1, 2018, investors in the Funds do not need to be members of the CMA, although investors must still be physicians (or members of a physician's family or staff). The Funds known as the MD Funds are distributed exclusively through MD Management Limited (**MDM**), a wholly owned subsidiary of the Manager and a registered investment dealer and dealer member of the Investment Industry Regulatory Organization of Canada. The Funds known as the MDPIM Pools are generally distributed only to clients of the Manager who have established a discretionary managed account with the Manager, through its division known as MD Private Investment Counsel. Certain series of certain of the MDPIM Pools are also available to clients of MDM. These series are noted in Schedule "A".

9. None of the Funds is in default of applicable securities legislation in any Jurisdiction.

***The Purchaser and The Bank of Nova Scotia***

10. The Purchaser is a private corporation that was incorporated to purchase 100% of the issued and outstanding shares of CMA Holdings, which indirectly owns all of the shares of the Manager (as further discussed below).

11. The Purchaser is a wholly-owned subsidiary of The Bank of Nova Scotia (**Scotiabank**) with its head office located in Toronto, Ontario. Scotiabank is a Schedule I bank formed and existing under the *Bank Act* (Canada). Common shares of Scotiabank are listed and posted for trading on the Toronto Stock Exchange and New York Stock Exchange.

12. Neither the Purchaser nor Scotiabank is in default of applicable securities legislation in any Jurisdiction.

***The Proposed Transaction and the Amalgamation***

13. In a press release issued on May 31, 2018, the CMA and Scotiabank announced that they entered into a share purchase agreement (the **SPA**) pursuant to which Scotiabank will indirectly acquire 100% of the issued and outstanding shares of CMA Holdings for consideration consisting of $2.585 billion (the **Proposed Transaction**) payable in cash at the Closing (as defined below). CMA Holdings owns, directly, 100% of the issued and outstanding shares of MD Financial Holdings Inc. (**MDFHI**), which owns, directly, 100% of the issued and outstanding shares of the Manager.

14. Completion of the Proposed Transaction is subject to customary closing conditions, including regulatory non-objections/approvals under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and the Approval Sought. Assuming timely receipt of all necessary regulatory non-objections/approvals and the satisfaction of all other conditions, the closing of the Proposed Transaction is expected to occur on or about September 28, 2018 or on such other later date when all of the conditions precedent have been satisfied or waived, and all non-objections/approvals have been obtained, subject to extension by the parties (the

**Closing**). If completed as contemplated, following the date of Closing, Scotiabank will indirectly own 100% of the outstanding shares of the Manager.

15. On or following the date of Closing, Scotiabank may, for tax reasons, undergo a reorganization so that the Purchaser, CMA Holdings, MDFHI, and the Manager will continue as one corporation (**Amalgamated Manager**) (the **Amalgamation**) and the subsidiaries currently owned by the Manager will be owned by the Amalgamated Manager. Each of CMA Holdings, MDFHI, and the Purchaser is a private holding company, and none are registered or required to be registered under securities, commodity futures, or derivatives legislation in any Jurisdiction.
16. A material change report dated June 4, 2018 and amendments dated June 8, 2018 to the Funds' current simplified prospectus, annual information form and related fund facts documents announcing the Proposed Transaction were filed on SEDAR.

17. Notice of the Proposed Transaction has been considered by the Compliance and Registrant Regulation branch of the principal regulator pursuant to section 11.9 of NI 31-103.

***Change of Control of Manager***

18. As the share ownership of the Manager will change such that after the date of Closing, Scotiabank will indirectly own 100% of the outstanding shares of the Manager, the Proposed Transaction will result in a change of control of the Manager and accordingly regulatory approval is required pursuant to section 5.5(1)(a.1) of NI 81-102.

***Impact of the Proposed Transaction and the Amalgamation***

19. Upon Closing, Scotiabank will become the ultimate parent of the Amalgamated Manager.

20. Neither the Proposed Transaction nor the Amalgamation is expected to result in any material changes to, or impact on, the business, operations and affairs of the Funds, the securityholders of the Funds, or the Manager. In particular, and notwithstanding the Amalgamation:

    (a) There are no plans to change the role of the Amalgamated Manager as manager of the Funds or the structure of the Funds.

    (b) There is no current intention to change the name or branding of the Funds as a result of the Proposed Transaction. "MD Financial Management", the present phrase used to describe the business of the Manager, will operate as a distinct, stand-alone brand within Scotia Wealth Management following Closing.

    (c) Following Closing and the Amalgamation, the Amalgamated Manager will continue to act as the investment fund manager of the Funds in materially the same manner as the Manager did immediately prior to the Closing.

    (d) There is no current intention:

        i. to make any substantive changes as to how the Manager operates or manages the Funds;

        ii. to amalgamate or merge the Manager with any other investment fund manager; or

        iii. to, immediately following the Proposed Transaction and the Amalgamation, or within a foreseeable period of time, change the Amalgamated Manager, as manager of the Funds, to another investment fund manager.

    (e) There is no current intention to change the directors, officers, or senior management of the Manager, other than the addition of certain individuals associated with entities related to Scotiabank as new directors to the Board of the Amalgamated Manager, and the transfer to the CMA of two senior officers of the Manager, one of whom is presently a director of the Manager.

    (f) Pursuant to the SPA, there will be no changes to the personnel employed by the Manager for one year. Specifically, following Closing, the Amalgamated Manager will retain the compliance supervisory personnel that were in place immediately prior to the Closing, including its chief compliance officer.

    (g) It is not expected that there will be any immediate change to the fundamental investment objectives and strategies or the valuation procedures of the Funds as a result of the Proposed Transaction. It is not expected that there will be any immediate changes to fund accounting and other administrative functions undertaken by the current providers, both internal and external, to the Manager or the Funds as a result of the Proposed Transaction. The Amalgamated Manager may decide to change certain of the portfolio advisers for the Funds

following the Closing, which is consistent with the Manager's right to change the portfolio advisers for the Funds today. The Manager or Amalgamated Manager may decide to merge certain of the Funds and make other fundamental changes to the Funds (pursuant to NI 81-102) prior to or following the Closing.

(h) It is not expected that there will be any changes to the fees or expenses charged to the Funds as a result of the Proposed Transaction.

(i) It is not expected that the trustee of the Funds that are trusts will change. It is expected that the custodian of the Funds will be changed from State Street Trust Company to Scotiabank, as custodian. This will occur in due course following the completion of the Proposed Transaction and will be carried out in accordance with applicable laws.

(j) The members of the Independent Review Committee (**IRC**) of the Funds will cease to be IRC members by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). Immediately following the completion of the Proposed Transaction, the IRC will be reconstituted and the members of the IRC of the funds managed by 1832 Asset Management L.P. will be appointed as the IRC of the Funds. Each of these individuals is independent of the Manager.

21. No final decisions have been made as to any duplication of systems and some streamlining of such can be expected in due course.

22. To the extent that any related party issues arise following the Proposed Transaction, in particular if, in the future, the Amalgamated Manager wishes to appoint a service provider to a Fund that is an affiliate, including changing the custodian of the Funds, the Amalgamated Manager will establish written policies and procedures to address the conflict of interest matter and will refer such policies and procedures to the IRC for its review and input, in accordance with its obligations under NI 81-107.

23. The Proposed Transaction and the Amalgamation are not expected to adversely impact the financial stability of the Amalgamated Manager or its ability to fulfill its regulatory obligations. At this time, the Manager does not anticipate that the Proposed Transaction will give rise to any conflicts of interest in addition to those that are currently managed in the ordinary course of each Fund's business.

***Notice Requirement***

24. The Manager provided written notice (the Notice) regarding the Proposed Transaction to each securityholder of the Funds as required by section 5.8(1) of NI 81-102. Delivery of the Notice was completed on July 19, 2018.

**Decision**

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

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

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

**SCHEDULE "A"**

**FUNDS**

MD Precision Canadian Balanced Growth Fund (formerly MD Balanced Fund)
MD Bond Fund
MD Short-Term Bond Fund
MD Precision Canadian Moderate Growth Fund (formerly MD Dividend Income Fund)
MD Equity Fund
MD Growth Investments Limited
MD Dividend Growth Fund
MD International Growth Fund
MD International Value Fund
MD Money Fund
MD Select Fund
MD American Growth Fund
MD American Value Fund
MD Strategic Yield Fund
MD Strategic Opportunities Fund
MD Fossil Fuel Free Bond Fund
MD Fossil Fuel Free Equity Fund
MD Precision Conservative Portfolio
MD Precision Balanced Income Portfolio
MD Precision Moderate Balanced Portfolio
MD Precision Moderate Growth Portfolio
MD Precision Balanced Growth Portfolio
MD Precision Maximum Growth Portfolio
MDPIM Canadian Bond Pool
MDPIM Canadian Long Term Bond Pool
MDPIM Dividend Pool
MDPIM Strategic Yield
MDPIM Canadian Equity Pool +
MDPIM US Equity Pool +
MDPIM International Equity Pool
MDPIM Strategic Opportunities Pool
MDPIM Emerging Markets Equity Pool +
MDPIM S&P/TSX Capped Composite Index Pool +
MDPIM S&P 500 Index Pool +
MDPIM International Equity Index Pool+

*Each of the Funds indicated with an + have a series that is available for acquisition through MD Management Limited.*

### 2.1.3 IA Clarington Investments Inc. et al.

**Headnote**

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

**Applicable Legislative Provisions**

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

**[TRANSLATION]**

**August 27, 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**
**IA CLARINGTON INVESTMENTS INC.**
**(the Filer)**

**AND**

**IA CLARINGTON CORE PLUS BOND FUND,**
**IA CLARINGTON GLOBAL BOND FUND AND**
**IA CLARINGTON EMERGING MARKETS BOND FUND**
**(the Proposed ETF Funds)**

**DECISION**

**Background**

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

(a) exempts the Filer and each Fund from the requirement in subsection 3.1(2) of *Regulation 41-101 respecting General Prospectus Requirements* (V-1.1, r.14) (**Regulation 41-101**) to prepare and file a long form prospectus for the ETF Securities (as defined below) in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**), subject to the terms of this decision and provided that the Filer files a prospectus for the ETF Securities in accordance with the provisions of *Regulation 81-101 respecting*

*Mutual Fund Prospectus Disclosure* (V-1.1, r. 38) (**Regulation 81-101**), other than the requirements pertaining to the filing of a fund facts document (the **ETF Prospectus Form Requirement**);

(b) exempts the Filer and each Fund from the requirement in section 5.9 of Regulation 41-101 (and in Ontario, subsection 59(1) of the *Securities Act* (Ontario)) to include a certificate of an underwriter in a Fund's prospectus (the **Underwriter's Certificate Requirement**);

(c) exempts all purchasers and holders purchasing ETF Securities in the normal course through the facilities of the TSX (as defined below) or another Marketplace (as defined below) from the Take-over Bid Requirements (as defined below) in Part 2 of *Regulation 62-104 respecting Takeover Bids and Issuer Bids* (V-1.1, r. 35) (**Regulation 62-104**)

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

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

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

(b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in jurisdiction 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 or regulator in Ontario

**Interpretation**

Terms defined in *Regulation 14-101 respecting Definitions* (V-1.1, r. 3), Regulation 11-102, Regulation 41-101, Regulation 62-104, Regulation 81-101 and *Regulation 81-102 respecting Investment Funds* (V-1.1, r. 39) (Regulation 81-102) have the same meaning if used in this decision, unless otherwise defined.

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

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

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

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

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

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

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

**Marketplace** means a "marketplace" as defined in *Regulation 21-101 respecting Marketplace Operation* (V-1.1, r. 5) that is located in Canada.

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

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

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

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

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

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

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

**TSX** means the Toronto Stock Exchange.

**Representations**

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

***The Filer***

1. The Filer's head office is in Québec City, Québec.

2. The Filer is a corporation amalgamated under the laws of Canada.

3. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as an exempt market dealer in Québec and Ontario, and as a portfolio manager in all the jurisdictions of Canada.

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

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

***The Funds***

6. Each Proposed ETF Fund is established under the laws of Ontario as an investment fund that is an open-ended mutual fund trust. Each Fund is, or will be, a reporting issuer in each jurisdiction of Canada in which its securities are distributed. Each Fund offers, or will offer, ETF Securities and Mutual Fund Securities.

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

8. The Proposed ETF Funds currently offer Series A, Series E, Series EF, Series F, Series I, Series L and Series O units. IA Clarington Core Plus Bond Fund also currently offers Series E4, Series EF4, Series F4, Series L4, Series P, Series P4, Series T4 and Series W units. IA Clarington Global Bond Fund and IA Clarington Emerging Markets Bond Fund also currently offer Series E5, Series EF5, Series F5, Series L5 and Series T5 units. These Mutual Fund Securities are currently distributed under a simplified prospectus dated June 18, 2018.

9. On or about August 27, 2018, an amended and restated prospectus in respect of the ETF Securities of the Proposed ETF Funds will be filed with the securities regulatory authorities in each jurisdiction of Canada.

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

***The Exemption Sought***

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

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

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

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

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

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

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

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

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

***ETF Prospectus Form Requirement***

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

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

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

***Underwriter's Certificate Requirement***

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

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

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

26. The Filer, on behalf of the Funds, may enter into agreements with various Authorized Dealers (that may or may not be Designated Brokers) pursuant to which the Authorized Dealers may subscribe for ETF Securities of one or more Funds.

***Dealer Delivery Document***

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

28. According to Authorized Dealers and Designated Brokers, Creation Units will generally be commingled with other ETF Securities purchased by the Authorized Dealers, Designated Brokers and Affiliate Dealers in the secondary market. As such, it is not practicable for the Authorized Dealers, Designated Brokers or Affiliate Dealers to determine whether a particular re-sale of ETF Securities involves Creation Units or ETF Securities purchased in the secondary market.

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

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

***Take-over Bid Requirements***

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

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

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

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

**Decision**

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.

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

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

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

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

2. The decision of the Decision Makers under the Legislation is that the exemption sought in respect of the Underwriter's Certificate Requirement is granted provided that the Filer will be in compliance with the following conditions:

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

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

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

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

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

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

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

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

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

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

3. The decision of the Decision Makers under the Legislation is that the Exemption Sought from the Take-over Bid Requirements is granted.

"Lucie Roy"
Senior Director, Corporate finance

### 2.1.4 IA Clarington Investments Inc. et al.

**Headnote**

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

**Applicable Legislative Provisions**

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

**[TRANSLATION]**

**August 27, 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**
**IA CLARINGTON INVESTMENTS INC.**
**(the Filer)**

**AND**

**IA CLARINGTON CORE PLUS BOND FUND,**
**IA CLARINGTON GLOBAL BOND FUND AND**
**IA CLARINGTON EMERGING MARKETS BOND FUND**
**(the Proposed ETF Funds)**

**DECISION**

**Background**

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

(a) exempts each Fund from subparagraph 2.6(a)(i) of *Regulation 81-102 respecting Investment Funds* (V-1.1, r. 39) (**Regulation 81-102**) to permit each Fund to borrow cash from the custodian of the Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Security-holders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the Fund (the **Borrowing Requirement**); and

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

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

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

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

(b) the Filer has provided notice that subsection 4.7(1) of *Regulation11-102 respecting Passport System* (V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in each jurisdiction 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* (V-1.1, r. 3), Regulation 11-102, *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure* (V-1.1, r. 38) (**Regulation 81-101**) and Regulation 81-102 have the same meaning if used in this decision, unless otherwise defined.

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

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

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

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

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

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

**Marketplace** means a "marketplace" as defined in *Regulation 21-101 respecting Marketplace Operation* (V-1.1, r. 5) that is located in Canada.

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

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

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

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

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

**TSX** means the Toronto Stock Exchange.

**Representations**

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

***The Filer***

1. The Filer's head office is in Québec City, Québec.

2. The Filer is a corporation amalgamated under the laws of Canada.

3. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as an exempt market dealer in Québec and Ontario, and as a portfolio manager in all the jurisdictions of Canada.

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

5. The Filer is not in default of securities legislation in any jurisdictions of Canada.

***The Funds***

6. Each Proposed ETF Fund is established under the laws of Ontario as an investment fund that is an open-ended mutual fund trust. Each Fund is, or will be, a reporting issuer in any jurisdiction of Canada in which its securities are distributed. Each Fund offers, or will offer, ETF Securities and Mutual Fund Securities.

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

8. The Proposed ETF Funds currently offer Series A, Series E, Series EF, Series F, Series I, Series L and Series O units. IA Clarington Core Plus Bond Fund also currently offers Series E4, Series EF4, Series F4, Series L4, Series P, Series P4, Series T4 and Series W units. IA Clarington Global Bond Fund and IA Clarington Emerging Markets Bond Fund also currently offer Series E5, Series EF5, Series F5, Series L5 and Series T5 units. These Mutual Fund Securities are currently distributed under a simplified prospectus dated June 18, 2018.

9. On or about August 27, 2018, an amended and restated prospectus in respect of the ETF Securities of the Proposed ETF Funds will be filed

with the securities regulatory authorities in each jurisdiction of Canada.

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

***The Exemption Sought***

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

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

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

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

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

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

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

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

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

***Borrowing Requirement***

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

21. Each Fund will make distributions on a monthly or quarterly basis or at such frequency as the Filer may, in its discretion, determine appropriate, may make additional distributions and, in each taxation year, will distribute sufficient net income and net

realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada) (collectively, the **Distribution Policy**).

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

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

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

***Sales and Redemptions Requirements***

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

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

**Decision**

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

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

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

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

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

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

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

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

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

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

"Lucie Roy"
Senior Director, Corporate finance

### 2.1.5 BMO Investments Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future investment funds granted exemption to invest up to 10% of net assets, in aggregate, in securities of Irish exchange traded mutual funds governed by the Central Bank of Ireland and subject to UCITS rules, and to allow the top funds to pay brokerage commissions for the purchase and sale of the securities of the related underlying exchange traded mutual funds – Relief subject to terms and conditions based on investment restrictions of NI 81-102 such that top funds cannot do indirectly via investment in underlying exchanged traded mutual funds that they cannot do directly under NI 81-102.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), (a.1), (c), (c.1), (e), 19.1.

**September 21, 2018**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**BMO INVESTMENTS INC.**
**(BMOII)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from BMOII on behalf of each investment fund subject to the provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of which BMOII or its affiliate (the **Filer**) is, or in the future will be, the manager (collectively, the **Funds**), for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) providing an exemption from paragraphs 2.5(2)(a), (a.1), (c), (c.1), and (e) of NI 81-102 to permit each Fund to invest up to 10 percent of its net asset value in securities of actively-managed investment funds formed under BMO UCITS ETF ICAV, an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds and authorized by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (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 the application; and

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

**EU Directives** means EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to UCITS, as amended, as implemented into Irish legislation by the Regulations.

**FCA** means the Financial Conduct Authority.

**ISE** means the Irish Stock Exchange.

**KIID** means a Key Investor Information Document prepared by the UCITS Corporation for each of the Underlying Funds which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101.

**LSE** means the London Stock Exchange.

**Main Securities Market** means the principal market on the ISE for Irish and overseas issuers.

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

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

**UCITS** means Undertaking for Collective Investment in Transferable Securities and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country of Europe.

**UCITS Corporation** means BMO UCITS ETF ICAV, an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds with registration number C139810 and authorized by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011.

**UCITS Notices** means the series of UCITS notices, memorandums, guidelines and letters issued by the Central Bank of Ireland.

**UCITS Regulations** means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as amended, which transpose Council Directive 2009/65/EC, Commission Directive 2010/43/EC, Commission Directive 2010/44/EC, and Commission Directive 2014/91/EC into Irish law, and are effective from July 1, 2011.

**Underlying Fund** means, initially, each of BMO Enhanced Income Euro Equity UCITS ETF, BMO Enhanced Income UK Equity UCITS ETF, and BMO Enhanced Income USA Equity UCITS ETF, each of which is a sub-fund of the UCITS Corporation, and includes any other actively managed sub-funds of the UCITS Corporation that may exist in the future.

**Underlying Fund Manager** means F&C Management Limited (trading as BMO Global Asset Management (EMEA)), which serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporation, including the Underlying Funds. The Underlying Fund Manager is an affiliate of the Filer.

**Representations**

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

***The Filer and the Funds***

1. BMOII is a corporation amalgamated under the federal laws of Canada with its head office in Toronto, Ontario.

2. BMOII is an indirect, wholly-owned subsidiary of Bank of Montreal.

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

4. The Filer acts, or will act, as manager of each of the Funds.

5. Each Fund is, or will be, an investment fund established under the laws of a Jurisdiction of Canada and a reporting issuer under the laws of some or all of the Jurisdictions.

6. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

7. The securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a prospectus or a simplified prospectus prepared in accordance with NI 41-101 or NI 81-101, as applicable.

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

***The Underlying Funds***

9. Each Fund proposes, from time to time, to invest up to 10% of its net asset value in securities of an Underlying Fund.

10. The Underlying Funds are sub-funds of the UCITS Corporation and are subject to the UCITS Regulations. The UCITS Corporation was registered in Ireland pursuant to the Irish Collective Asset-management Vehicles Act 2015 on June 8, 2015 and is authorized by the Central Bank of Ireland as a UCITS. The objective of the UCITS Corporation is the collective investment in transferable securities and/or other liquid financial assets of capital raised from the public, operating on the principle of risk spreading in accordance with the UCITS Regulations.

11. The investment objective and policy of each Underlying Fund, as disclosed in the most current prospectus supplement dated June 11, 2018, is as follows:

    (a) *BMO Enhanced Income Euro Equity UCITS ETF:* The investment objective "is to provide an exposure to high quality, large-capitalisation European stocks, together with the potential for the generation of additional income through the use of derivatives." The investment policy "is to combine (i) a broad-based, passive exposure to large-captialisation European stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for" this Underlying Fund. BMO Enhanced Income Euro Equity UCITS ETF provides passive exposure to large-capitalisation European stocks by seeking to track the performance of the EuroStoxx 50 Index while also seeking to earn extra income through the use of an active options strategy.

    (b) *BMO Enhanced Income UK Equity UCITS ETF":* The investment objective "is to provide an exposure to high quality, large-capitalisation UK stocks, together with the potential for the generation of additional income through the use of derivatives.". The investment policy "is to combine (i) a broad-based, passive exposure to large-captialisation UK stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for" this Underlying Fund. BMO Enhanced Income UK Equity UCITS ETF provides passive exposure to large-

capitalisation UK stocks by seeking to track the performance of the FTSE 100 Total Return Index while also seeking to earn extra income through the use of an active options strategy.

(c) *BMO Enhanced Income USA Equity UCITS ETF:* The investment objective "is to provide an exposure to high quality, large-capitalisation US stocks, together with the potential for the generation of additional income through the use of derivatives." The investment policy "is to combine (i) a broad-based, passive exposure to large-captialisation US stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for" this Underlying Fund. BMO Enhanced Income USA Equity UCITS ETF provides passive exposure to large-capitalisation US stocks by seeking to track the performance of the S&P 500 Total Return Index while also seeking to earn extra income through the use of an active options strategy.

12. The call option writing strategy that the existing Underlying Funds use is subject to the following parameters under normal market circumstances: (i) it is expected that the Underlying Fund will write call options in respect of up to 60% of the value of the equity securities which it holds; (ii) the call options will be valid for up to three months; and (iii) the strike price of the call options will always be above the current market price at the inception of trade for the underlying index. Applying those parameters, the Underlying Fund Manager will select option investments based on its estimate of the levels of volatility in applicable equity markets, the valuations of the underlying applicable equity securities and market risks. The Underlying Fund Manager will draw upon the resources of its internal team of analysts as well as external sources of market data to determine these estimates.

13. The Underlying Funds are subject to investment restrictions and practices that are substantially similar to those applicable to the Funds. The Underlying Funds are available for purchase by the public and are generally not considered hedge funds.

14. Each of the Underlying Funds is considered to be an "investment fund" and a "mutual fund" within the meaning of applicable Canadian securities legislation.

15. The Underlying Funds are distributed in certain European countries pursuant to the EU Directives. The Underlying Funds are qualified by way of a prospectus, relating to the UCITS Corporation, and an individual prospectus supplement pertaining to each sub-fund of the UCITS Corporation, including each of the Underlying Funds. In addition to the prospectus and prospectus supplement, the UCITS Corporation prepares a KIID for each of the Underlying Funds.

16. Each class of share currently issued by the existing Underlying Funds was admitted to the ISE's official list and is trading on the Main Securities Market. Each class of share currently issued by the existing Underlying Funds was also admitted to the LSE's official list and is trading on the LSE. The ISE listing was completed for the purpose of facilitating access to trading on the LSE, which is common practice in the industry. The FCA, in its role as the UK Listing Authority (**UKLA**), is the regulator for the LSE. The UKLA has the responsibility for overseeing the admission process to the LSE. The Central Bank of Ireland has regulatory oversight of the ISE.

17. The LSE is subject to substantially equivalent regulatory oversight to securities exchanges in Canada and the requirements to be complied with by the existing Underlying Funds in order to be admitted to trading on the LSE are consistent with the Toronto Stock Exchange listing requirements.

18. The Underlying Fund Manager serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporation, including the Underlying Funds. The Underlying Fund Manager, subject to the supervision of the directors of the UCITS Corporation, is responsible for the investment management, distribution and marketing of the Underlying Funds. The Underlying Fund Manager provides an investment management program for the Underlying Funds and manages the investment of the Underlying Funds' assets. The Underlying Fund Manager is also the distributor of the UCITS Corporation and has been appointed to provide distribution services to the sub-funds of the UCITS Corporation, including the Underlying Funds.

19. The Underlying Fund Manager, being subject to regulatory oversight by the FCA, is subject to substantially equivalent regulatory oversight as the Filer, which is primarily regulated by the Ontario Securities Commission. In discharging its duties, the Underlying Fund Manager must conduct its business with due skill, care and diligence.

20. The Filer, the Underlying Fund Manager, and other affiliates of the Filer, make up the asset management business of BMO Global Asset Management. The Underlying Fund Manager is a wholly-owned subsidiary of F&C Asset Management plc., which is the parent company of the F&C Group and is itself a wholly-owned subsidiary of BMO Global Asset Management (Europe) Limited, which in turn is wholly-owned by the Bank of Montreal. The Underlying Fund Manager is authorized by the FCA and its

investment management business includes management of other Irish authorized collective investment schemes.

21. The following third parties are involved in providing services in respect of the Underlying Funds:

    (a) State Street Fund Services (Ireland) Limited is the administrator and secretary of the UCITS Corporation. State Street Fund Services (Ireland) Limited provides administration services to it and the Underlying Funds. The administrator is a limited liability company incorporated in Ireland on March 23, 1992 and is a wholly-owned subsidiary of the State Street Corporation. The administrator is regulated by the FCA.

    (b) Computershare Investor Services (Ireland) Limited is the registrar of the UCITS Corporation and is responsible for establishing, maintaining and updating the register of the Underlying Funds. In addition, Computershare Investor Services (Ireland) Limited provides Euroclear registrar and transfer agency services in respect of the shares of the Underlying Funds and provides paying agency and representation services in the United Kingdom by way of its associated company, Computershare Investor Services plc.

    (c) State Street Custodial Services (Ireland) Limited is the depositary of all of the UCITS Corporation's assets. The principal activity of the depositary is to act as trustee/depositary of the assets of collective investment schemes. Some of the depositary's main functions are to ensure that the sale, issue, repurchase, redemption and cancellation of shares of the UCITS Corporation's sub-funds are carried out in accordance with applicable law. State Street Custodial Services (Ireland) Limited is regulated by the Central Bank of Ireland.

    (d) KPMG serves as the auditors of the UCITS Corporation.

22. The Underlying Funds qualify as UCITS and the securities of the Underlying Funds are distributed in accordance with the UCITS Regulations. Each of the Underlying Funds is regulated by the Central Bank of Ireland and is subject to the following regulatory requirements and restrictions, which are substantially similar to the requirements and restrictions set forth in NI 81-102:

    (a) Each Underlying Fund is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.

    (b) Each Underlying Fund is restricted to investing a maximum of 10% of its net assets in a single issuer.

    (c) Each Underlying Fund is subject to investment restrictions designed to limit its holdings of illiquid securities to 10% or less of its net asset value.

    (d) Each Underlying Fund holds no more than 10% of its net asset value in securities of other investment funds, including other collective investment undertakings.

    (e) Each Underlying Fund is subject to investment restrictions designed to limit holdings of transferrable securities which are not listed on a stock exchange or regulated market to 10% or less of the Underlying Fund's net asset value.

    (f) The rules governing the use of derivatives by the Underlying Funds are comparable to the rules regarding the use of derivatives under NI 81-102 with respect to the types of derivatives allowed to be used, issuer concentration, risk exposure in connection with mark to market value, the disclosure required in offering documents and the monitoring requirements, and with only a slight difference between the two regimes in connection with counterparty credit ratings (A-1 under NI 81-102 versus an effective rating requirement of A-2 for counterparties which are not regulated as credit institutions under the UCITS Regulations).

    (g) Each Underlying Fund does not currently engage in securities lending activities.

    (h) Each Underlying Fund makes its estimated net asset value available to the public at regular intervals throughout the day, and details of such estimated net asset value for each Underlying Fund is available on the website of the Underlying Fund Manager.

    (i) Each Underlying Fund is required to prepare a prospectus and prospectus supplement that discloses material facts pertaining to each Underlying Fund. The prospectus, together with the corresponding prospectus supplement, provide disclosure that is similar to the disclosure required to be included in a simplified prospectus under NI 81-101 and a

prospectus under NI 41-101, although some information, such as annual returns, management expense ratios, trading expense ratios, and trading price and volume, is not included in the prospectus or prospectus supplement of an Underlying Fund.

(j) Each Underlying Fund publishes a KIID which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101.

(k) Each Underlying Fund is subject to continuous disclosure obligations which are similar to the disclosure obligations of the Funds under National Instrument 81-106 *Investment Fund Continuous Disclosure*.

(l) Any change in the investment objective or material change to the investment policy of an Underlying Fund will only be effected following the written approval of all shareholders of the Underlying Fund or a resolution of a majority of the voting shareholders of that Underlying Fund at a general meeting.

(m) The Underlying Fund Manager is subject to approval by the FCA to permit it to manage and provide portfolio manage-ment advice to each Underlying Fund and is subject to an investment manage-ment agreement which sets out a duty of care and a standard of care requiring the Underlying Fund Manager to act in the best interest of each Underlying Fund and the shareholders of each Underlying Fund.

(n) All activities of the Underlying Fund Manager must be conducted at all times in accordance with the UCITS Regu-lations, the UCITS Notices and the investment policy of each Underlying Fund and are at all times subject to the supervision of the board of directors of the UCITS Corporation.

(o) KPMG, as auditors of each Underlying Fund, is required to prepare an audited set of accounts for each Underlying Fund at least annually.

***Investment by Funds in the Underlying Funds***

23. The investment objective and strategies of each Fund are, or will be, disclosed in each Fund's prospectus or simplified prospectus and any Fund that invests in an Underlying Fund will be permitted to do so in accordance with its investment objectives and strategies.

24. In particular, the investment strategies of each Fund stipulate, or will stipulate, that the Fund may invest a portion of its assets in other investment funds, domestic or foreign, which will permit each Fund to invest in an Underlying Fund.

25. The prospectus or simplified prospectus of each Fund provides, or will provide, all disclosure mandated for investment funds investing in other investment funds.

26. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in an Underlying Fund.

27. The amount of loss that could result from an investment by a Fund in an Underlying Fund will be limited to the amount invested by the Fund in such Underlying Fund.

28. Trading in securities of the existing Underlying Funds will occur in the secondary market rather than by subscribing for or redeeming such securities directly from the Underlying Funds.

29. As is the case with the purchase or sale of any other equity security made on an exchange, brokers are typically paid a commission in connection with trading in securities of exchange traded funds, such as the existing Underlying Funds.

30. Securities of the existing Underlying Funds are typically only directly subscribed for or redeemed by an authorized participant and the Funds would not directly subscribe for securities from the Underlying Funds. The Funds will purchase and sell securities of the Underlying Funds on the LSE.

31. Where a Fund purchases or sells securities of an Underlying Fund in the secondary market it will pay commissions to brokers in connection with the purchase or sale of securities of an Underlying Fund.

32. There are appropriate restrictions on sales fees and redemption charges for any purchase or sale of securities of an Underlying Fund.

***Rationale for Investment in the Underlying Fund***

33. A Fund is not permitted to invest in securities of an Underlying Fund unless the requirements of section 2.5(2) of NI 81-102 are satisfied.

34. Section 2.5 of NI 81-102 would permit the Funds to invest in the Underlying Funds but for the fact that each Underlying Fund is not subject to NI 81-102, does not offer securities under a simplified prospectus in accordance with NI 81-101 (in the case of Funds that are mutual funds), and is not a reporting issuer in any of the Jurisdictions.

35. Other than the paragraphs of section 2.5 of NI 81-102 from which the Funds seek relief, the Funds will otherwise comply fully with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the simplified prospectus (for Funds that are mutual funds) or annual information form (for Funds that are non-redeemable investment funds) will provide all applicable disclosure mandated for investment funds investing in other investment funds.

36. The Filer believes that it is in the best interests of the Funds that they be permitted to invest in the Underlying Funds, because such investment would provide an efficient and cost effective way for the Funds to achieve diversification and obtain unique exposures to the markets in which the Underlying Funds invest.

37. The investment objectives and strategies of the Funds, which contemplate or will contemplate investment in global or international securities, permit or will permit the allocation of assets to global or international securities. As economic conditions change, the Funds may reallocate assets, including on the basis of asset class or geographic region. A Fund will invest in an Underlying Fund to gain exposure to certain unique strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through exchange-traded funds rather than through investments in individual securities. For example, a Fund will invest in the Underlying Funds in circumstances where certain investment strategies preferred by the Funds are either not available or not cost effective to be implemented through investments in individual securities.

38. By investing in the Underlying Funds, the Funds will obtain the benefits of diversification, which would be more expensive and difficult to replicate using individual securities. This will reduce single issuer risk.

39. Investment by a Fund in an Underlying Fund meets, or will meet, the investment objectives of such Fund.

40. An investment by a Fund in securities of each Underlying Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

41. A Fund's investment in securities of the Underlying Fund is not for the purpose of distributing the Underlying Fund to the Canadian public. The investments by a Fund in an Underlying Fund are proposed not to allow the Underlying Fund to be indirectly distributed in Canada, but to allow a Fund to achieve its investment objective by investing, to a very limited extent, in a unique, suitable and professionally managed lower-cost mutual fund, where the investment style and approach is known to the manager of the Fund.

42. In the absence of the Exemption Sought:

    (a) the investment restriction in paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of the Underlying Funds because the Underlying Funds are not subject to NI 81-102 and NI 81-101;

    (b) the investment restriction in paragraph 2.5(2)(a.1) of NI 81-102 would prohibit a Fund that is a non-redeemable investment fund from purchasing or holding securities of the Underlying Funds unless Underlying Funds are subject to NI 81-102;

    (c) the investment restriction in paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of the Underlying Funds unless the Underlying Funds are reporting issuers in the local jurisdiction;

    (d) the investment restriction in paragraph 2.5(2)(c.1) of NI 81-102 would prohibit a Fund that is a non-redeemable investment fund from purchasing or holding securities of the Underlying Funds unless the Underlying Funds are reporting issuers in the local jurisdiction;

    (e) the investment restriction in paragraph 2.5(2)(e) of NI 81-102 would prohibit a Fund from paying sales fees or redemption fees in relation to its purchases or redemptions of securities of the Underlying Funds because they are managed by the Filer or an affiliate or associate of the Filer.

**Decision**

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

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

(a) The Underlying Funds qualify as UCITS and are distributed in accordance with the UCITS Regulations, which subject the Underlying Funds to investment restrictions and practices that are substantially similar to those that govern the Funds;

(b) The investment of the Funds in the Underlying Funds otherwise complies with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the simplified prospectus (for Funds that are mutual funds) or annual information form (for Funds that are non-redeemable investment funds) will provide all applicable disclosure mandated for investment funds investing in other investment funds;

(c) A Fund does not invest in an Underlying Fund if, immediately after the investment, more than 10% of its net assets, taken at market value at the time of the investment, would consist of investments in Underlying Funds;

(d) A Fund shall not acquire any additional securities of an Underlying Fund and shall dispose of any securities of an Underlying Fund then held in the event the regulatory regime applicable to the Underlying Funds is changed in any material way;

(e) The relief from paragraph 2.5(2)(e) of NI 81-102 only applies to brokerage fees payable in connection with the purchase or sale of securities of the Underlying Funds;

(f) The Exemption Sought will terminate six months after the coming into force of any amendments to paragraphs 2.5(a), (a.1), (c), (c.1) or (e) of NI 81-102 that further restrict or regulate a Fund's ability to invest in the Underlying Funds.

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

### 2.1.6 Instinet Canada Cross Limited

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards – relief subject to systems reviews similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

**September 24, 2018**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, MANITOBA, QUÉBEC AND ONTARIO**
**(the Jurisdictions)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS**
**IN MULTIPLE JURISDICTIONS**
**(National Policy 11-203)**

**AND**

**IN THE MATTER OF**
**INSTINET CANADA CROSS LIMITED**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards (collectively, an **ISR**) for each year from 2018 to 2019 inclusive (the **Exemptive Relief Sought**).

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

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

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* 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. Instinet Canada Cross Limited (**ICX**) is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system (**ATS**) as defined in National Instrument 21-101 *Marketplace Operation*;

2. The head office of ICX is located in Toronto, Ontario;

3. ICX is a member of the Investment Industry Regulatory Organization of Canada, the Canadian Investor Protection Fund and is registered in each of the Jurisdictions in the category of investment dealer;

4. The ICX System is an ATS offering two order types – VWAP Cross and Continuous Block Cross – that do not affect the

national best protected bid and best protected offer for the security traded[1];

5. The ICX System is not connected to any other marketplace, and cannot affect another marketplace or be affected by another marketplace;

6. For each of its systems that supports order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, ICX has developed and maintains:

   - reasonable business continuity and disaster recovery plans;
   - an adequate system of internal control over those systems; and
   - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security (including cyber security), change management, problem management, network support and system software support;

7. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, ICX:

   - makes reasonable current and future capacity estimates;
   - conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
   - tests its business continuity and disaster recovery plans; and
   - reviews the vulnerability of the ICX System and data centre operations to internal and external threats including physical hazards, and natural disasters;

8. ICX's current trading and order entry volumes in the ICX System are substantially less than 1% of the current design and peak capacity of the ICX System and ICX has not experienced any failure of the ICX System;

9. ICX's current trade volume is currently substantially less than 1% of total market activity on Canadian equities marketplaces;

10. The estimated cost to ICX of an annual ISR by a qualified third party would represent a material impairment to ICX's business on an annual basis;

11. The ICX System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;

12. ICX shall promptly notify the Commission of any failure to comply with the representations set out herein; and

13. The cost of an ISR is prejudicial to ICX and represents a disproportionate impact on ICX's revenue.

**Decision**

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

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

1. ICX shall promptly notify the Commission of any material changes to the representations set out herein, including any material changes to ICX's annual net income or to the market share or daily transaction volume of the ICX System; and

2. ICX shall, in each year from 2018 to 2019 inclusive, cause Instinet Incorporated to complete a review of the ICX System and of its controls, similar in scope to that which would have applied had ICX undergone an independent systems review and in a manner and form acceptable to the Commission, for ensuring it continues to comply with the representations set out herein and prepare written reports, of its reviews which shall be filed with staff

[1] "Protected bid" and "protected offer" are defined in National Instrument 23-101 *Trading Rules*.

of the Commission no later than (i) 30 days after the report is provided to ICX's board of directors or audit committee or (ii) the 60th day after the calendar year end.

DATED this 24th day of September, 2018

"Tracey Stern"
Manager
Ontario Securities Commission

### 2.1.7 Investors Group Financial Services Inc.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Communication with Beneficial Owners – relief from the requirements of section 3.2 of NI 54-101 that the intermediary receive the instructions and information prescribed in that section in advance of opening an account for existing clients who are having new accounts opened for them to facilitate the migration of client accounts of the intermediary from a back-office system where client investments were registered in the name of the individual clients to a back-off system where client investments will be registered in the nominee name of the intermediary – the intermediary already knows the beneficial ownership information of each of these migrating clients and has received written standing instructions from such clients relating to the receipt of securityholder materials in respect of the intermediary's proprietary mutual fund offerings – migrating clients will continue to receive securityholder materials for these mutual funds directly from the intermediary based on the previously provided instructions – accounts opened to facilitate the migration of client accounts from one back-office system to another are exempt from the requirements in section 3.2 of NI 54-101 for mutual fund offerings of the intermediary held by clients who had previously provided written instructions in respect of the receipt of securityholder materials for such funds, subject to conditions.

**Applicable Legislative Provisions**

National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer, ss. 3.2, 9.2.

**September 21, 2018**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**INVESTORS GROUP FINANCIAL SERVICES INC.**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirements of section 3.2 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**, and such requirements, the **NI 54-101 Requirements**) in connection with the opening of accounts on the Filer's Nominee Name Platform (as defined below) to facilitate the migration of all existing client accounts of Instructing Clients (as defined below) on the Filer's Client Name Platform (as defined below) to the Nominee Name Platform (the **Exemption Sought**).

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

(a) the Manitoba 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 British Columbia, Alberta, Saskatchewan, Quebec, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, the Northwest Territories, Yukon and Nunavut, and

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 54-101 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

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

1. The Filer is a corporation duly constituted under the laws of Canada with its head office located in Winnipeg, Manitoba. The Filer is a member of the Mutual Fund Dealers Association of Canada and is registered as a mutual fund dealer in all the provinces and territories of Canada.

2. The Filer is not in default of securities legislation in any of the provinces and territories of Canada.

3. The Filer currently relies on two back office systems to administer accounts of its clients.

4. The first system is used by the Filer and its affiliate, I.G. Investment Management, Ltd. (the investment fund manager of Investors Group proprietary mutual funds) (**IGIM**) as the book of record for, and to facilitate transactions in, accounts where client investments are registered in the name of the individual clients (the **Client Name Platform**). The Filer has approximately 820,000 clients, with approximately 1.45 million accounts, on the Client Name Platform.

5. The second system is used by the Filer as the book of record for, and to facilitate transactions in, accounts where client investments are registered in the nominee name of the Filer or its designate (the **Nominee Name Platform**). The Filer is an intermediary for clients that have accounts on the Nominee Name Platform. The Filer has approximately 93,000 clients, with approximately 182,000 accounts, on the Nominee Name Platform.

6. The Filer has determined that it is in the best interests of its clients to consolidate client accounts onto one back office system, being the Nominee Name Platform. All clients on the Client Name Platform who will be migrated onto the Nominee Name Platform are existing clients of the Filer and the migration will not result in any first-time establishment of a dealer-client relationship.

7. Generally, the NI 54-101 Requirements require that an intermediary that opens an account for a client:

   (a) send, as part of its procedures to open the account, the client an explanation to clients and a client response form; and

   (b) (i) obtain instructions from the client on the matters to which the client response form pertains (the **Client Response Form Information**),

   (ii) obtain the electronic mail address of the client, if available, and,

   (iii) if applicable, enquire whether the client wishes to consent and, if so, obtain the consent of the client, to electronic delivery of documents by the intermediary to the client, before the intermediary holds securities on behalf of the client in the account (together with the information in clause (ii) above, the **Electronic Information**).

8. The Filer does not act as an intermediary for accounts on the Client Name Platform and accordingly, is not required to comply with the NI 54-101 Requirements with respect to such Client Name Platform accounts (the **Client Name Accounts**). However, clients (the **Instructing Clients**) were provided with an election card (the **Election Card**) seeking written standing instructions on whether they wished to receive the annual financial statements, interim financial statements, annual management reports of fund performance, and/or interim management reports of fund performance with respect to their Investors Group mutual funds (the **IG Mutual Funds**), in accordance with section 5.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). The matters to which the Election Card pertained (the **Election Card Matters**) addresses the matters to which "Part 2 – Receiving Securityholder Materials" of the client response form pertains in respect of the IG Mutual Funds.

9. To facilitate the migration, the Filer will open a new account on the Nominee Name Platform (the **Nominee Name Account**) for each Instructing Client and the IG Mutual Funds and GICs of each Instructing Client contained in their respective Client Name Accounts (collectively, the **Eligible Investments**) will be transferred to such Instructing Client's Nominee Name Account. Client Accounts of Instructing Clients will be migrated automatically in waves, commencing in the fourth fiscal quarter of 2018 and completed by the end of the second fiscal quarter of 2019. Once the migration is complete, and all assets have transferred, the Client Name Accounts will be closed.

10. Beneficial ownership information of Instructing Clients, and their instructions on the Election Card Matters in respect of their IG Mutual Funds (the **Standing Instructions**) are already known to the Filer and IGIM. The Filer and IGIM currently provide securityholder materials for the IG Mutual Funds directly to clients on the Client Name Platform and will continue to do so when the Eligible Investments have been migrated to the Instructing Client's Nominee Name Account. An Instructing Client's Standing Instructions will continue to apply to the Eligible Investments following their migration into the Instructing Client's Nominee Name Account.

11. No securityholder materials are required to be provided, have been produced, or are expected to be produced, with respect to the GICs in Client Name Accounts that will be migrated into Nominee Name Accounts.

12. The types and number of securityholder materials applicable to, and available for, the Eligible Investments have not changed since the time that Instructing Clients provided the Standing Instructions, and Instructing Clients were informed of all of the securityholder materials applicable to, and available for, the IG Mutual Funds at the time they provided the Standing Instructions.

13. Only Eligible Investments of Instructing Clients will be migrated from the Client Name Account of Instructing Clients to such client's Nominee Name Account. All other investments of Instructing Clients currently contained within such client's Client Name Account or that Instructing Clients may wish to add to his/her Nominee Name Account will only be migrated or accepted, as applicable, following receipt by the Filer of the Client Response Form Information and the Electronic Information (together, the **Client Instructions**) in the manner required by the NI 54-101 Requirements.

14. Prior to migrating the Eligible Investments contained in the Client Name Accounts of Instructing Clients into Nominee Name Accounts, Instructing Clients will receive written communications from the Filer that will contain, include and/or describe, among other things:

    (a) notice of the account migration;

    (b) details about administrative changes resulting from the migration, including new account numbers, change of trustee of the client's registered plans, etc., that would be relevant to the Instructing Client; and

    (c) a copy of the Filer's Account Agreement, Relationship Disclosure and Other Information booklet, which contains the terms of the client's account on the Nominee Name Platform as well as the information required in the explanation to clients mandated by the NI 54-101 Requirements.

15. The Filer's network of dealing representatives will also be provided with information and details about the migration in advance of any migration of Client Name Accounts of Instructing Clients to Nominee Name Accounts so that they have the information necessary to be able to respond to inquiries from Instructing Clients about the migration.

**Decision**

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

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

(a) only Eligible Investments of Instructing Clients are migrated from the Client Name Account into the Nominee Name Account opened for such client in connection with the migration;

(b) all other investments of Instructing Clients that are currently contained within an Instructing Client's Client Name Account, or that Instructing Clients may wish to add to his/her Nominee Name Account will only be migrated or accepted, as applicable, following receipt by the Filer of the Client Instructions in the manner required by the NI 54-101 Requirements;

(c) prior to a Nominee Name Account being opened for an Instructing Client in connection with the migration, the Filer provides such Instructing Client with the information required in the explanation to clients mandated by the NI 54-101 Requirements;

(d) the Standing Instructions of Instructing Clients will continue to apply to the Eligible Investments following their migration into the Instructing Clients' Nominee Name Accounts;

(e) Instructing Clients are informed that they can amend or update the Standing Instructions previously provided by them to the Filer, and advised as to the manner in which they may do so; and

(f) the Filer uses its best efforts to obtain, within 12 months of the migration of such Instructing Clients' Client Name Accounts,

(i) a completed client response form from Instructing Clients, and

(ii) the Electronic Information from Instructing Clients for whom this information is not already known to the Filer.

"Chris Besko"
Director
The Manitoba Securities Commission

### 2.1.8 Fidelity Investments Canada ULC

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 2.1(1) and paragraphs 2.2(1)(a), 2.5(2)(a), (b), (c), and (e) and 2.6(a)(i) of National Instrument 81-102 Investment Funds to allow mutual funds to invest in ETFs and to allow the top funds to pay brokerage commissions for the purchase and sale of the securities of the underlying ETFs – Underlying ETFs are subject to NI 81-102 – Relief subject to terms and conditions based on investment restrictions of NI 81-102 such that top funds cannot do indirectly via investment in underlying ETFs what they cannot do directly under NI 81-102.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a)/(b)/(e), 2.6(a)(i), 19.1.

**August 31, 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**
**FIDELITY INVESTMENTS CANADA ULC**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of:

(a) the non-exchange traded mutual funds set out in Schedule A (the **Proposed Top Funds**) and additional mutual funds, including exchange-traded mutual funds, that are, or may be, managed by the Filer, or an affiliate of the Filer, now or in the future (the **Other Top Funds**, and together with the Proposed Top Funds, the **Top Funds**) for a decision under the securities legislation of the principal regulator (the **Legislation**) that:

a. permits each Top Fund to purchase a security of, or enter into a specified derivatives transaction with respect to a security of, an ETF (as defined below) (the **Underlying ETFs** and each an **Underlying ETF**) if the security of the Underlying ETF is not an index participation unit (**IPU**), as such term is defined in National Instrument 81-102 *Investment Funds* (**NI 81-102**), even though, immediately after the transaction, more than 10% of the net asset value of the Top Fund would be invested, directly or indirectly, in securities of the Underlying ETF (the **Concentration Restriction**);

b. permits each Top Fund to purchase a security of an Underlying ETF that is not an IPU such that, after the purchase, the Top Fund would hold securities representing more than 10% of:

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

ii. the outstanding equity securities of the Underlying ETF

(the **Control Restriction**);

c. permits each Top Fund to purchase and hold a security of an Underlying ETF that is not an IPU that is not offered under a simplified prospectus prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) (the **Fund of Fund Restriction**); and

d. permits each Top Fund to pay brokerage commissions in relation to its purchase and sale on the TSX (as defined below) or another Marketplace (as defined below) of securities of the Underlying ETFs that are not IPUs (the **Payment of Fees Restrictions**),

(collectively, the **Underlying Fund Exemptions**);

(b) the Top Funds for a decision under the Legislation that permits each Top Fund to invest in securities of an Underlying ETF that may or may not be IPUs which may, at the time of the purchase, hold more than 10% of its net asset value in securities of another Underlying ETF that are not IPUs (the **Third-Tier ETFs** and each a **Third-Tier ETF**) (the **Third-Tier ETF Exemption**); and

(c) the exchange-traded mutual funds set out in Schedule B (the **Proposed ETFs**) and such other exchange-traded mutual funds as may be managed by the Filer, or an affiliate of the Filer, in the future (the **Future ETFs**, and together with the Proposed ETFs, the **ETFs** and each an **ETF)** for a decision under the Legislation that permits each ETF to borrow cash from the custodian of the ETF (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the ETF (the **Borrowing Exemption**).

The Underlying Fund Exemptions, the Third-Tier ETF Exemption and the Borrowing Exemption are collectively the **Exemption Sought**.

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

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

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

**Interpretation**

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

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

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

**Basket of Securities** means, in relation to the Listed Securities of an ETF, a group of securities identified from time to time that collectively reflect the constituents of the portfolio of an ETF.

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

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

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

**Listed Securities** means a series of securities of an ETF distributed pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2 that is listed on the TSX or another Marketplace.

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

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

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

**Prescribed Number of Listed Securities** means the number of Listed Securities of an ETF determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

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

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

**Securityholders** means beneficial or registered holders of Listed Securities or Unlisted Securities (as defined below) as applicable.

**Unlisted Securities** means a series of securities of an ETF offered only on a private placement basis pursuant to available prospectus exemptions, including the accredited investor exemption, under securities laws.

**Representations**

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

***The Filer***

1. The Filer is a corporation continued under the laws of the Province of Alberta with its head office located in Toronto, Ontario.

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

3. The Filer, or an affiliate of the Filer, is, or will be, the investment fund manager of the Top Funds and the ETFs and is, or will be, the trustee of the Top Funds and the ETFs where the Top Fund or the ETF is a trust.

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

***The Top Funds***

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

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

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

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

9. Each Top Fund wishes to have the ability to invest up to 100% of its net asset value in the securities of one or more Underlying ETFs that are not IPUs.

10. The Top Funds do not, and will not, sell short securities of any Underlying ETF.

***The ETFs***

11. Each Proposed ETF will be a mutual fund structured as a trust that is governed by the laws of the Province of Ontario. The Future ETFs will be either trusts or corporations or classes thereof governed by the laws of a Jurisdiction or the laws of Canada.

12. Each ETF will be an open-ended mutual fund subject to NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

13. No ETF will be a commodity pool governed by National Instrument 81-104 *Commodity Pools* (**NI 81-104**).

14. No ETF will have a net market exposure greater than 100% of its net asset value.

15. Each ETF may issue more than one series of securities, including, but not limited to:

    a. Listed Securities; and

    b. Unlisted Securities.

16. The Listed Securities of the ETFs may be IPUs if they:

    a. hold securities that are included in a specified widely quoted index in substantially the same proportion as those securities are reflected in that index; or

    b. invest in a manner that causes the ETF to replicate the performance of that index.

17. The Unlisted Securities of the ETFs will not be IPUs, since they will not be listed on a stock exchange in Canada or the United States.

18. The Filer has filed a long form prospectus prepared in accordance with NI 41-101 in respect of the Listed Securities of the ETFs, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

19. Because the Listed Securities will be distributed pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2, each ETF will be a reporting issuer in the Jurisdictions in which its securities are distributed.

20. The Listed Securities will be listed on the TSX or another Marketplace.

21. The net asset value per Listed Security will be calculated on any day when there is a trading session on the TSX or other Marketplace and will be made available daily on the Filer's website.

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

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

24. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of Listed Securities to be issued, payment consisting of, in the Filer's discretion, a Basket of Securities and cash, cash only or securities other than Baskets of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash, cash or securities and cash delivered is equal to the net asset value of the Listed Securities subscribed for next determined following the receipt of the subscription order.

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

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

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

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

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

30. Holders of Unlisted Securities of an ETF may redeem Unlisted Securities of an ETF in any number for cash at a redemption price per Unlisted Security equal to the net asset value per Unlisted Security of the ETF on the effective day of redemption.

***Fund of Fund Investments***

31. The investment objective of each Top Fund will disclose that the Top Fund seeks to provide a return that is similar to its corresponding Underlying ETF by investing all or substantially all of its assets in securities of the Underlying ETF. Certain Underlying ETFs may invest all or substantially all of their assets in the securities of a Third-Tier ETF, which Third-Tier ETF will be named in the investment strategies of those Underlying ETFs.

32. The ultimate investment strategies and performance achieved by each Underlying ETF that invests in a Third Tier ETF will be similar to the investment strategies and performance of the Third Tier ETF, except that the Underlying ETF may use derivatives to hedge against the exposure between two currencies, the cost of which will generally result in a lower return for the Underlying ETF as compared to the Third Tier ETF.

33. An investment in an Underlying ETF by a Top Fund should pose little investment risk to the Top Fund because the Underlying ETF and any corresponding Third Tier ETF are both subject to NI 81-102, subject to any exemption therefrom that has been, or may in the future be, granted by the securities regulatory authorities.

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

35. No Underlying ETF or Third-Tier ETF will pay management or incentive fees which to a reasonable person would duplicate a fee payable by the applicable Top Fund for the same service.

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

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

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

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

40. If a Top Fund invests all or substantially all of its assets in securities of an Underlying ETF that invests all or substantially all of its assets in the securities of a Third Tier ETF, the Top Fund will comply with the requirement under National Instrument 81-106 *Investment Fund Continuous Disclosure* relating to the top 25 positions portfolio holdings disclosure in its management report of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its fund facts as if the Top Fund were investing directly in the Third Tier ETF.

***Third Tier ETFs***

41. Absent the Third-Tier ETF Exemption, an investment by a Top Fund in an Underlying ETF that invests substantially all of its assets in the securities of a Third-Tier ETF that are not IPUs would be prohibited by paragraph 2.5(2)(b) of NI 81-102, as more than 10% of the net asset value of the Underlying ETF would be invested in securities of other investment funds that are not IPUs.

42. An investment by a Top Fund in an Underlying ETF may not qualify for the exception in paragraph 2.5(4)(a) of NI 81-102, as the Underlying ETF may not meet the strict definition of "clone fund" where such Underlying ETF has not adopted a fundamental investment objective to track the performance of another investment fund. NI 81-102 defines a "clone fund" to mean an "investment fund that has adopted a fundamental investment objective to track the performance of another investment fund".

43. Other than the fact that the Underlying ETF's investment objective does not specifically state that it will track the performance of another investment fund, the Underlying ETF would satisfy the definition of "clone fund", as it has adopted a fundamental investment objective akin to its corresponding Third-Tier ETF, except that the Underlying ETF may use derivatives to hedge against the exposure between two currencies. In this decision, such an Underlying ETF is referred to as a "**Technical Clone Fund**".

44. In addition, the Top Fund will, itself, be a "clone fund", as its investment objective will be to track its corresponding Underlying ETF.

45. The Filer submits that to the extent that a Top Fund is a clone fund and the corresponding Underlying ETF is a Technical Clone Fund, a three-tier "fund-on-fund" structure should be permissible.

***Borrowing Requirement***

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

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

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

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

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

**Decision**

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

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

    a. the investment by a Top Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Top Fund;

    b. a Top Fund does not short sell securities of an Underlying ETF;

    c. the Underlying ETF is not a commodity pool governed by NI 81-104;

    d. other than exemptive relief granted in favour of an Underlying ETF, the Underlying ETF complies with the requirements of:

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

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

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

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

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

    g. the prospectus of each Top Fund discloses, or will disclose in the next renewal of its prospectus after the date of this decision, the fact that the Top Fund has obtained the Exemption Sought in respect of the Underlying Fund Exemptions.

2. The decision of the principal regulator under the Legislation is that the Exemption Sought in respect of the Third Tier ETF Exemption is granted, provided that:

    a. the investment by a Top Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Top Fund;

    b. a Top Fund does not invest in securities of an Underlying ETF that in turn invests more than 10% of its net asset value in securities of another investment fund unless the other investment fund is the Third Tier ETF that is identified in the investment strategies of the Underlying ETF;

    c. the Underlying ETF is a Technical Clone Fund; and

    d. the prospectus of each Top Fund discloses, or will disclose in the next renewal of its prospectus after the date of this decision, the fact that the Top Fund has obtained the Exemption Sought in respect of the Third Tier ETF Exemption.

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

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

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

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

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

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

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

## SCHEDULE A

## PROPOSED TOP FUNDS

Fidelity Canadian High Dividend Index ETF Fund
Fidelity U.S. High Dividend Index ETF Fund
Fidelity U.S. High Dividend Currency Neutral Index ETF Fund
Fidelity U.S. Dividend for Rising Rates Index ETF Fund
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF Fund
Fidelity International High Dividend Index ETF Fund

**SCHEDULE B**

**PROPOSED ETFS**

Fidelity Canadian High Dividend Index ETF
Fidelity U.S. Dividend for Rising Rates Index ETF
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF
Fidelity U.S. High Dividend Index ETF
Fidelity U.S. High Dividend Currency Neutral Index ETF
Fidelity International High Dividend Index ETF

### 2.1.9 Pierre Beaudoin et al. and Bombardier Inc.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – reporting insiders party to automatic securities disposition plan – relief granted from section 3.3 of National Instrument 55-104 Insider Reporting Requirements and Exemptions and subsection 107(2) of the Securities Act (Ontario), provided that the filers remain in compliance with certain representations and that the reporting insiders file an insider report with respect to dispositions under the plan during the year by March 31 of the next calendar year.

**Applicable Legislative Provisions**

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

**Order Nº 2018-SMV-0040**

**September 14, 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**
**PIERRE BEAUDOIN,**
**ALAIN BELLEMARE,**
**DANIEL BRENNAN,**
**FRANÇOIS CAZA,**
**DAVID COLEAL,**
**FRED CROMER,**
**DANIEL DESJARDINS,**
**JOHN DI BERT,**
**MICHAEL RYAN,**
**LAURENT TROGER,**
**LOUIS VÉRONNEAU AND**
**JIM VOUNASSIS**
**(collectively, the Insiders)**

**AND**

**BOMBARDIER INC.**
**(Bombardier and collectively with the Insiders, the Filers)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Insiders from the requirement of the Legislation to file an insider report within five days following the acquisition or disposition under the ASDP (as defined below) of the securities subject to the ASDP described herein (the **Exemption Sought**).

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

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

b) the Filers provided notice that Subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in each of the provinces of Canada other than Ontario; and

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

**Interpretation**

Terms defined in *Regulation 14-101 respecting Definitions* and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

**Representations**

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

***The Filers***

**Bombardier**

1 Bombardier is a corporation existing under the laws of Canada and is a reporting issuer under the securities legislation of each of the provinces of Canada and is not in default of securities legislation in any jurisdiction.

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

3 The authorized share capital of Bombardier, as of the date hereof, consists of (i) an unlimited number of preferred shares without nominal or par value issuable in series (the **Preferred Shares**), of which 12,000,000 have been designated as the Series 2 Preferred Shares, 12,000,000 have been designated as the Series 3 Preferred Shares and 9,400,000 have been designated as the Series 4 Preferred Shares, (ii) 3,592,000,000 Class A shares (multiple voting) (the **Class A Shares**), and (iii) 3,592,000,000 Class B subordinate voting shares (the **Class B Shares**). As at the date hereof, Bombardier had outstanding 5,811,736 Series 2 Preferred Shares, 6,188,264 Series 3 Preferred Shares, 9,400,000 Series 4 Preferred Shares, 308,756,749 Class A Shares and 2,110,455,896 Class B Shares.

4 Bombardier's Class A Shares and Class B Shares (collectively, the **Shares**), Series 2 Preferred Shares, Series 3 Preferred Shares and Series 4 Preferred Shares are listed for trading on the Toronto Stock Exchange under the symbols "BBD.A", "BBD.B", "BBD.PR.B", "BBD.PR.D" and "BBD.PR.C", respectively.

5 Bombardier grants awards to certain current or former officers of Bombardier and its subsidiaries (collectively, the **Participants** and each, a **Participant**), including the Insiders, from time to time pursuant to Bombardier's incentive plans, which vest according to a fixed schedule and/or the achievement of certain performance targets. These awards include:

(a) stock options (**Options**), each Option entitling the holder to purchase one Class B Share;

(b) restricted share units (**RSUs**), each RSU representing the right to receive one Class B Share or a cash payment, in accordance with the terms of the RSU plan;

(c) deferred share units (**DSUs**), each DSU representing the right to receive one Class B Share or a cash payment, in accordance with the terms of the DSU plan; and

(d) performance share units (**PSUs**), each PSU representing the right to receive, if pre-determined performance targets are attained, one Class B Share or a cash payment, with vesting percentages between 0% and up to 150%, in accordance with the terms of the PSU plan (collectively, the **Entitlements**).

6 Bombardier has established an automatic securities disposition plan dated August 15, 2018 (the **ASDP**) with Solium Capital Inc. (**Solium** or the **Administrator**) in order to facilitate:

a) the automatic exercise of Entitlements granted to eligible Participants by Bombardier;

b) the automatic sale of Class B Shares issuable on exercise or settlement, as the case may be, of the Entitlements; and/or

c) the automatic sale of other Shares; all in accordance with the instructions provided by eligible Participants.

7 Sales of Shares and exercises of Entitlements will be carried out by National Bank Financial Inc. or another registered securities dealer that may be selected by Bombardier for such purposes and which is at arm's length to Bombardier and each Insider (the **Broker**).

**The Insiders**

8 Pierre Beaudoin is Chairman of the Board of Bombardier and is a reporting insider. Pierre Beaudoin is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Pierre Beaudoin beneficially owned, controlled or directed 512,859 Class A Shares (representing approximately 0.163% of the then outstanding Class A Shares), 815,112 Class B Shares (representing approximately 0.039% of the then outstanding Class B Shares), and held 9,801,344 Options, 294,118 RSUs, 1,307,752 PSUs, and 872,896 DSUs.

Pierre Beaudoin holds 2,812,883 Options and 294,118 RSUs, which are subject to the ASDP. Accordingly, Pierre Beaudoin wishes to sell up to 3,107,001 Class B Shares pursuant to the ASDP, resulting from the exercise of 2,812,883 Options and the settlement of 294,118 RSUs.

9 Alain Bellemare is a director and President and Chief Executive Officer of Bombardier and is a reporting insider. Alain Bellemare is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Alain Bellemare beneficially owned, controlled or directed 620,516 Class B Shares (representing approximately 0.029% of the then outstanding Class B Shares), and held 16,502,038 Options, 565,611 RSUs and 4,618,459 PSUs.

Alain Bellemare holds 7,036,430 Options which are subject to the ASDP. Accordingly, Alain Bellemare wishes to sell up to 7,036,430 Class B Shares pursuant to the ASDP, resulting from the exercise of 7,036,430 Options.

10 Daniel Brennan is Senior Vice President, Human Resources of Bombardier and is a reporting insider. Daniel Brennan is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Daniel Brennan beneficially owned, controlled or directed 234,668 Class B Shares (representing approximately 0.011% of the then outstanding Class B Shares), and held 2,504,723 Options and 1,237,896 PSUs.

Daniel Brennan holds 994,845 Options, which are subject to the ASDP. Accordingly, Daniel Brennan wishes to sell up to 994,845 Class B Shares pursuant to the ASDP, resulting from the exercise of 994,845 Options.

11 François Caza is Vice President, Product Development and Chief Engineer, Aerospace of Bombardier and is a reporting insider. François Caza is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, François Caza beneficially owned, controlled or directed 23,845 Class B Shares (representing approximately 0.001% of the then outstanding Class B Shares), and held 2,398,128 Options, 79,186 RSUs, 740,543 PSUs and 19,246 DSUs.

François Caza holds 1,459,050 Options and 253,807 PSUs, which are subject to the ASDP. Accordingly, François Caza wishes to sell up to 1,839,761 Class B Shares pursuant to the ASDP, resulting from the exercise of 1,459,050 Options and the settlement of 253,807 PSUs.

12 David Coleal is President, Business Aircraft of Bombardier and is a reporting insider. David Coleal is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, David Coleal held 9,031,997 Options, 260,181 RSUs and 2,367,649 PSUs.

David Coleal holds 4,223,760 Options, which are subject to the ASDP. Accordingly, David Coleal wishes to sell up to 4,223,760 Class B Shares pursuant to the ASDP, resulting from the exercise of 4,223,760 Options.

13 Fred Cromer is President, Commercial Aircraft of Bombardier and is a reporting insider. Fred Cromer is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Fred Cromer held 8,388,483 Options, 260,181 RSUs and 2,367,649 PSUs.

Fred Cromer holds 3,580,246 Options and 260,181 RSUs, which are subject to the ASDP. Accordingly, Fred Cromer wishes to sell up to 3,840,427 Class B Shares pursuant to the ASDP, resulting from the exercise of 3,580,246 Options and the settlement of 260,181 RSUs.

14 Daniel Desjardins is Senior Vice President, General Counsel and Corporate Secretary of Bombardier and is a reporting insider. Daniel Desjardins is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Daniel Desjardins beneficially owned, controlled or directed 82,380 Class B Shares (representing approximately 0.004% of the then outstanding Class B Shares), and held 4,768,824 Options, 138,575 RSUs, 1,392,253 PSUs and 117,353 DSUs.

Daniel Desjardins holds 2,875,670 Options, 138,575 RSUs, 418,782 PSUs and 117,353 DSUs, which are subject to the ASDP. Accordingly, Daniel Desjardins wishes to sell up to 3,759,771 Class B Shares pursuant to the ASDP, resulting from the exercise of 2,875,670 Options, and the settlement of 138,575 RSUs, 418,782 PSUs and 117,353 DSUs.

15 John Di Bert is Senior Vice President and Chief Financial Officer of Bombardier and is a reporting insider. John Di Bert is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, John Di Bert beneficially owned, controlled or directed 48,687 Class B Shares (representing approximately 0.002% of the then outstanding Class B Shares), and held 9,171,095 Options, 477,817 RSUs and 2,367,649 PSUs.

John Di Bert holds 4,362,858 Options, which are subject to the ASDP. Accordingly, John Di Bert wishes to sell up to 4,362,858 Class B Shares pursuant to the ASDP, resulting from the exercise of 4,362,858 Options.

16 Michael Ryan is President, Aerostructures & Engineering Services of Bombardier and is a reporting insider. Michael Ryan is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Michael Ryan beneficially owned, controlled or directed 75,937 Class B Shares (representing approximately 0.004% of the then outstanding Class B Shares), and held 1,635,542 Options, 67,873 RSUs and 641,309 PSUs.

Michael Ryan holds 696,464 Options, which are subject to the ASDP. Accordingly, Michael Ryan wishes to sell up to 696,464 Class B Shares pursuant to the ASDP, resulting from the exercise of 696,464 Options.

17 Laurent Troger is President, Transportation of Bombardier and is a reporting insider. Laurent Troger is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Laurent Troger beneficially owned, controlled or directed 168,714 Class B Shares (representing approximately 0.008% of the then outstanding Class B Shares), and held 7,297,367 Options, 245,413 RSUs and 2,367,649 PSUs.

Laurent Troger holds 117,973 Class B Shares, 2,419,130 Options and 245,413 RSUs, which are subject to the ASDP. Accordingly, Laurent Troger wishes to sell up to 2,782,516 Class B Shares pursuant to the ASDP, by selling 117,973 Class B Shares and Class B Shares resulting from the exercise of 2,419,130 Options and the settlement of 245,413 RSUs.

18 Louis Véronneau is Senior Vice President, Strategy and Corporate Development of Bombardier and is a reporting insider. Louis Véronneau is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Louis Véronneau held 4,085,329 Options, 158,371 RSUs and 1,375,399 PSUs.

Louis Véronneau holds 2,255,175 Options, 158,371 RSUs and 401,928 PSUs, which are subject to the ASDP. Accordingly, Louis Véronneau wishes to sell up to 3,016,438 Class B Shares pursuant to the ASDP, resulting from the exercise of 2,255,175 Options, and the settlement of 158,371 RSUs and 401,928 PSUs.

19 Jim Vounassis is Chief Operating Officer, Transportation of Bombardier and is a reporting insider. Jim Vounassis is not in default of securities legislation in any jurisdiction in Canada.

As at August 15, 2018, Jim Vounassis beneficially owned, controlled or directed 900 Series 4 Preferred Shares, and held 3,908,929 Options, 79,186 RSUs and 1,258,994 PSUs.

Jim Vounassis holds 400,000 Options, which are subject to the ASDP. Accordingly, Jim Vounassis wishes to sell up to 400,000 Class B Shares pursuant to the ASDP, resulting from the exercise of 400,000 Options.

***Automatic Securities Disposition Plan***

20 On August 15, 2018, Bombardier published a press release and announced that it has established the ASDP.

21 Each Insider has completed and executed the standard-form ASDP with Bombardier to participate in and become subject to the terms of the ASDP, including making certain representations to both Bombardier and the Administrator.

22 Each Insider has deposited exercise forms with the Administrator containing the Insider's trading instructions with respect to:

a) the automatic exercise of Entitlements granted to them by Bombardier;

b) the automatic sale of Class B Shares issuable on exercise or settlement, as the case may be, of the Entitlements; and/or

c) the automatic sale of other Shares.

23 An Insider's trading instructions will remain in effect until the occurrence of an event described in paragraphs 27 hereof.

24 The Broker will exercise Entitlements and make dispositions of Shares in accordance with the trading instructions provided by that Insider to the Administrator.

25 The ASDP includes a waiting period of thirty (30) days between the date of execution of the ASDP and the date that the first exercise or disposition may be made on behalf of an Insider under the ASDP.

26 At the time of execution and participation in the ASDP and the communication of trading instructions to the Administrator, each Insider represented that (a) to the best of his knowledge, there was no blackout period (defined as any time an insider, employee or consultant is restricted by the terms of Bombardier's insider trading policies or applicable securities law, subject to limited exceptions, from trading in securities of Bombardier) in effect for Bombardier; (b) he was not aware or in possession of an undisclosed material fact or material change about Bombardier or any securities of Bombardier; and (c) he was entering into the ASDP in good faith and not as part of a plan or scheme to evade the insider trading prohibitions under applicable Canadian securities legislation.

27 As regards an Insider, the ASDP will automatically terminate on the earlier of:

a) the second anniversary of the date of execution of the ASDP;

b) the date on which all of the applicable Shares and Entitlements have been sold or exercised, as applicable, pursuant to the terms and conditions of the ASDP;

c) the date the ASDP is voluntarily terminated in accordance with the terms and conditions described in paragraph 28 and 29 hereof;

d) the date on which Solium receives notice or otherwise becomes aware of

i. Bombardier having entered into a definitive agreement pursuant to which Bombardier will be subject to a take-over bid, tender or exchange offer with respect to the Shares or Entitlements or an arrangement, merger, acquisition, reorganization, recapitalization or comparable transaction affecting the securities of Bombardier as a result of which the Shares are to be exchanged or converted into shares of another company;

ii. the death or mental incapacity of the Insider; or

iii. the commencement or impending commencement of any proceedings in respect of or triggered by the bankruptcy or insolvency of the Insider.

28 Prior to the occurrence of a termination event described in paragraph 27 hereof, the ASDP may be suspended or terminated by Bombardier at any time upon three business days' prior written notice to Solium and to the public by way of press release. Bombardier cannot amend or modify the ASDP.

Any such suspension or termination shall be made in good faith and not as a part of a plan or scheme to evade the prohibitions of applicable Canadian securities laws.

29 An Insider cannot terminate the ASDP unless all of the following conditions are met:

a) a blackout period (defined as any time an insider, employee or consultant is restricted by the terms of the Bombardier's insider trading policies or applicable securities law, subject to limited exceptions, from trading in securities of Bombardier) is not currently in effect for Bombardier;

b) the Insider has no knowledge of a material fact or material change with respect to Bombardier or any securities of Bombardier that has not been generally disclosed.

c) any applicable regulatory approval has been obtained;

d) prior written consent of Solium and Bombardier has been obtained, which shall include a certificate from Bombardier confirming that Bombardier has pre-cleared the termination in accordance with Bombardier's disclosure policy;

e) notice to the public by way of a filing on SEDI has been made, including the retrocession of the securities subject to the ASDP in his direct ownership, which shall include a representation that at such time the Insider is not aware of or in possession of an undisclosed material fact or material change about Bombardier or any securities of Bombardier, and, if required or advisable in the opinion of Bombardier in order to ensure compliance with applicable securities laws, by way of a news release, which shall include a representation that at such time the Insider is not aware of or in possession of an undisclosed material fact or material change about Bombardier or any securities of Bombardier;

f) any such termination shall be made in good faith and not as a part of a plan or scheme to evade the prohibitions of applicable Canadian securities laws.

For the purpose of the Exemption Sought, the Insider has no ability to amend or modify the ASDP or the trading instructions.

The ASDP provides for a 90-day waiting period following voluntary termination by an Insider before such Insider may enroll again in a new automatic securities disposition plan.

30 Neither the Administrator nor the Broker otherwise acts for the Insiders nor, to the Filers' knowledge, communicates with any other broker involved in a disposition of securities of Bombardier for the Insiders outside of the ASDP, except as may be required under applicable corporate law or securities legislation.

31 Except to set trading instructions in the manner described in paragraph 22, none of the Insiders will have the authority to make investment decisions or influence or control any exercise or disposition effected by the Broker pursuant to the ASDP and neither the Administrator nor the Broker will consult any of the Insiders regarding any exercise or disposition.

32 Other than the agreed upon trading instructions set out in the ASDP, the Insiders will have no authority, influence or control over any sale of Shares or exercise of Entitlements effected by the Broker pursuant to the ASDP, and will not:

a) attempt to exercise any authority, influence or control over such sales or exercises;

b) communicate at any time to the Administrator or the Broker any instructions on how to execute any order; or

c) disclose to the Administrator or the Broker any information concerning Bombardier that may influence the Broker in its execution of any sales or exercises under the ASDP.

33 The ASDP is structured to comply with applicable securities legislation and guidance.

34 The Shares covered by the ASDP are not subject to any liens, security interests or other impediments to transfer (except for limitations imposed by any applicable laws).

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted in respect of each Insider, provided that the Filers comply with the representations in paragraphs 28, 29, 31 and 32 of this decision and that by March 31 of each calendar year, the Insider files a report through SEDI of all acquisitions and dispositions under the ASDP during the prior calendar year not previously disclosed in a SEDI filing, disclosing either of the following:

a) each acquisition and disposition on a transaction-by-transaction basis;

b) all acquisitions as a single transaction using the average unit price of the securities, and all dispositions as a single transaction using the average unit price of the securities.

“Gilles Leclerc”
Superintendent, Securities Markets
Autorité des marchés financiers

## 2.2 Orders

### 2.2.1 Lightstream Resources Ltd.

**Headnote**

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application for partial revocation of a failure-to-file cease trade order issued by the Commission and Alberta Securities Commission – variation of cease trade order to permit certain trades for the purpose of closing out outstanding short positions held by fund entities and to facilitate wind-up of fund entity – Commission opt-in to partial revocation order issued by Alberta Securities Commission, as principal regulator.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

**ALBERTA SECURITIES COMMISSION**

**PARTIAL REVOCATION ORDER**
**Under the securities legislation of Alberta and Ontario (the Legislation)**

**LIGHTSTREAM RESOURCES LTD.**

**Citation:** *Re Lightstream Resources Ltd.*, 2018 ABASC 135

August 20, 2018

**Background**

1. Lightstream Resources Ltd. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of Alberta (the **Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on May 8, 2017.

2. Picton Mahoney Asset Management (the **Applicant**) has applied to each of the Decision Makers for a partial revocation order of the FFCTO.

3. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

**Interpretation**

4. Terms defined in National Instrument 14-101 *Definitions* or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

**Representations**

5. This order is based on the following facts represented by the Applicant:

   (a) The Applicant is the portfolio manager and the investment fund manager of Picton Mahoney Market Neutral Equity Fund and Picton Mahoney Long Short Global Resource Fund (together, the **Funds**).

   (b) The Funds collectively hold aggregate short positions (the **Short Positions**) in respect of 668,751 common shares of the Issuer (**Common Shares**).

   (c) The Picton Mahoney Market Neutral Equity Fund established the portion of the Short Positions held by that fund on or about May 28, 2013 and the Picton Mahoney Long Short Global Resource Fund established the portion of the Short Positions held by that fund on or about March 4, 2014. At the times the Short Positions were established, the Applicant had no information concerning potential cease trade orders in respect of securities of the Issuer and the FFCTOs were not reasonably foreseeable considering the information then available to the Applicant. At the times the Short Positions were established, the Common Shares were listed on the Toronto Stock Exchange.

   (d) The Funds' prime broker (the **Prime Broker**) lent Common Shares to the Funds for the purposes of establishing the Short Positions. In order to close out of the Short Positions, the Funds must acquire Common Shares and deliver them to the Prime Broker. It is more efficient to close out of the Short Positions at or about the same time.

   (e) After the Funds close out of the Short Positions, the Applicant intends to wind-up the Picton Mahoney Long Short Global Resource Fund as soon as practicable.

   (f) Neither the Applicant nor either of the Funds is an insider or control person of the Issuer as defined under applicable securities legislation.

   (g) Neither the Applicant nor either of the Funds is in default under any applicable securities legislation in a jurisdiction of Canada.

   (h) The Applicant is seeking a partial revocation of the FFCTOs under the Legislation to permit the Funds to close

out of the Short Positions and, thereafter, wind-up the Picton Mahoney Long Short Global Resource Fund.

**Order**

6. Each of the Decision Makers is satisfied that a partial revocation of the FFCTO meets the test set out in the Legislation for the Decision Maker to make the order.

7. The decision of the Decision Makers under the Legislation is that the FFCTO is partially revoked solely to permit the Funds to acquire and deliver to the Prime Broker only those Common Shares necessary to close out of the Short Positions, provided that the acquisition of the Common Shares is made through:

   (a) the OTC Pink Marketplace; and

   (b) an investment dealer registered in a jurisdiction of Canada in accordance with applicable securities legislation.

"Timothy Robson"
Manager, Legal
Corporate Finance

### 2.2.2 iShares Gold Trust – s. 1(10)(a)(ii)

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application by a reporting issuer for an order that it is not a reporting issuer in Ontario – based on diligent inquiry, residents of Canada (i) do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide, and (ii) do not directly or indirectly comprise more than 2% of the total number of securityholders of the issuer worldwide – issuer is subject to U.S. securities law requirements – issuer has provided notice through a press release that it has submitted an application to cease to be a reporting issuer in Ontario.

**Applicable Legislative Provisions**

Securities Act (Ontario), s. 1(10)(a)(ii)

**September 21, 2018**

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

**AND**

**IN THE MATTER OF**
**iSHARES GOLD TRUST**
**(the Filer)**

**ORDER**
**(Subclause 1(10)(a)(ii))**

**UPON** the Director having received an application from the Filer for an order under subclause 1(10)(a)(ii) of the Act that the Filer is not a reporting issuer in Ontario;

**AND UPON** considering the application and the recommendation of the staff of the Ontario Securities Commission (the **Commission**);

**AND UPON** the Filer representing to the Commission as follows:

1. The Filer is a trust established under the laws of New York.

2. iShares Delaware Trust Sponsor LLC is the sponsor of the Filer, with its head office located in San Francisco, California.

3. The Filer has no operations, personnel, assets or premises in Canada; however, JPMorgan Chase Bank N.A., the custodian of the Filer's gold, has a vault in Toronto, Ontario which is a permitted location for storing the Filer's gold.

4. The Bank of New York Mellon is the trustee of the Filer, with its head office located in Brooklyn, New York.

5. The Filer became a reporting issuer in Ontario upon the listing and posting of its shares (the **Shares**) for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "IGT" effective as of December 5, 2005. The Filer is not a reporting issuer in any other jurisdiction of Canada.

6. The Shares are in continuous distribution in the United States of America (the **U.S.**) and are listed on NYSE Arca under the symbol "IAU". The Shares are also cross-listed on the Berlin Stock Exchange under the symbol "I6HB", Lima Stock Exchange under the symbol "IAU", Mexico Stock Exchange under the symbol "IAU" and the Santiago Stock Exchange under the symbols "IAU" and "IAUCL. In addition, the Shares also trade, but are not listed, on other marketplaces in the U.S. and trade in the interdealer market.

7. The Filer is subject to and is in compliance with all requirements applicable to it imposed by the U.S. Securities and Exchange Commission, the Securities Act of 1933 of the U.S., the Securities Exchange Act of 1934 of the U.S., the Sarbanes-Oxley Act of 2002 of the U.S. and the rules of NYSE Arca (collectively, the **U.S. Rules**).

8. The Filer qualifies as a "U.S. issuer" under National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) and as such relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to U.S. issuers under NI 71-101.

9. As of July 31, 2018, the Filer had 878,850,000 Shares issued and outstanding. The Filer has no other types of securities that are issued and outstanding, including any debt securities.

10. The Filer applied to voluntarily delist the Shares from the TSX, and the Shares were delisted from the TSX at the close of trading on June 22, 2016 (the **Delisting Date**).

11. The Filer has made a good faith investigation to confirm the residency of the holders of its outstanding securities. Based on this investigation, as of July 31, 2018, the Filer has concluded that residents of Canada do not: (i) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities, including debt securities, of the Filer worldwide, and (ii) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide. The investigation conducted by the Filer in support of the foregoing representation is as follows:

    (a) The Filer receives reports on a monthly basis from Broadridge Financial Solutions Inc. (**Broadridge**). These reports contain details regarding beneficial accounts based on Broadridge's aggregation of data provided by its intermediary clients. The Filer believes that the Broadridge information is the best readily available information to determine the beneficial holders of Shares.

    (b) The Filer has estimated the number of beneficial holders by counting the number of beneficial accounts in the report. The report includes address information with personally identifiable information removed for, and the amount of Shares held by, each beneficial account. There are certain limitations with this account level information, including (i) Broadridge's data is the result of the aggregation of data provided by a very large number of intermediaries and Broadridge is constrained by the information provided to it by intermediaries, (ii) any individual or entity may be the beneficial owner of one or more account(s), (iii) it is not possible to determine whether there is more than one beneficial owner in respect of any given account (e.g., jointly held accounts), and (iv) Broadridge does not have access to all intermediaries through which beneficiaries may hold Shares, but Broadridge estimated that it does have access to the substantial majority of intermediaries.

    (c) On the basis of this report and subject to the limitations discussed above, the Filer has determined that, as of July 31, 2018, the total number of beneficial accounts worldwide is 592,482, of which 6,405 belong to Canadian residents, representing approximately 1.1% of the total number of beneficial holders worldwide identified in the report.

    (d) On the basis of the report and subject to the limitations discussed above, the Filer has determined that, as of July 31, 2018, 12,360,902 Shares are beneficially owned by Canadian residents, repre-senting approximately 1.4% of the issued and outstanding Shares on the basis of a total of 878,850,000 issued and outstanding Shares. The total issued and outstanding Shares are based on the records of The Bank of New York Mellon.

12. Since the Delisting Date, the Filer has not taken any steps that indicate there is a market for its securities in Canada, including conducting an offering of securities in Canada, establishing or maintaining a listing on an exchange in Canada or having its

securities traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported.

13. The Filer has no current intention to conduct any offerings of its securities in Canada.

14. The Filer has provided advance notice to Canadian resident securityholders in a press release dated December 1, 2017 that it had applied for a decision that it is not a reporting issuer in Ontario and that, if a decision was made, the Filer would no longer be a reporting issuer in any jurisdiction in Canada.

15. The Filer has provided an undertaking to the Commission to deliver to its Canadian securityholders, all disclosure the Filer would be required to deliver to U.S. resident securityholders, in the same manner and at the same time as delivered to its U.S. resident securityholders under the U.S. Rules.

16. The Filer is not in default of securities legislation in Ontario.

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

**IT IS HEREBY ORDERED** pursuant to subclause 1(10)(a)(ii) of the Act that, for purposes of Ontario securities law, the Filer is not a reporting issuer.

"AnneMarie Ryan"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

### 2.2.3 Roy Ping Bai (aka Ping Bai) and RBP Consulting – ss. 127(1), 127(10)

**FILE NO.:** 2018-46

**IN THE MATTER OF**
**ROY PING BAI**
**(aka PING BAI) and**
**RBP CONSULTING**

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

September 21, 2018

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

WHEREAS the Ontario Securities Commission held a hearing in writing to consider a request by Staff of the Ontario Securities Commission (**Staff**) for an order imposing sanctions against Roy Ping Bai (also known as Ping Bai) (**Bai**) and RBP Consulting (**RBP**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the findings of the British Columbia Securities Commission (the **BCSC**) dated February 6, 2018 and the decision of the BCSC dated May 11, 2018 with respect to Bai and RBP and on reading the materials filed by Staff and filed by Bai and RBP;

IT IS ORDERED:

1. against Bai that:

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

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bai shall cease permanently;

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

   (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bai shall resign any positions that he holds as a director or officer of any issuer, regis-trant, or investment fund manager;

   (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bai is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and

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

2. against RBP that:

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

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RBP shall cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RBP permanently; and

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

"D. Grant Vingoe"

### 2.2.4 Benedict Cheng et al.

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

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

September 24, 2018

**ORDER**

WHEREAS on September 24, 2018, the Respondent, Frank Soave, closed his case in this hearing before the Ontario Securities Commission;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and the representatives for the Respondent, both parties consenting;

IT IS ORDERED that:

1. Staff and the Respondent shall file written closing submissions by 4:30 p.m. on October 19, 2018;

2. closing submissions shall be heard on November 9, 2018; and

3. the hearing dates of September 25 and 28 and October 4, 5, 9, 10, 11 and 12, 2018 are vacated.

"Philip Anisman"

"Deborah Leckman"

"Robert P. Hutchison"

### 2.2.5 Enfield Exploration Corp.

**Headnote**

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of cease trade orders issued by the Commission and British Columbia Securities Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Ontario opt-in to revocation order issued by British Columbia Securities Commission, as principal regulator.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s.144.
National Policy 11-207 Failure to File Cease Trade Orders and Revocations in Multiple Jurisdictions.

**Citation:** 2018 BCSECCOM 285

**REVOCATION ORDER**

**ENFIELD EXPLORATION CORP.**
**Under the securities legislation of**
**British Columbia and Ontario**
**(the Legislation)**

**Background**

1 Enfield Exploration Corp. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the British Columbia Securities Commission (the Principal Regulator) and Ontario (each a Decision Maker) respectively on March 7, 2017.

2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocation in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTOs.

3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

**Interpretation**

4 Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

**Order**

5 Each of the Decision makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.

6 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked as it applies to the Issuer.

7 September 20, 2018

"Allan Lim, CPA, CA"
Manager
Corporate Finance

### 2.2.6 Michael Pearson and LeadFX Inc.

**FILE NO.:** 2018-53

**IN THE MATTER OF**
**MICHAEL PEARSON**

**AND**

**IN THE MATTER OF**
**LEADFX INC.**

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

September 24, 2018

**ORDER**

WHEREAS on September 24, 2018, the Ontario Securities Commission (**Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to address scheduling relating to the application brought by Michael Pearson (**Pearson** or the **Applicant**) relating to a special meeting of shareholders of LeadFX Inc. called to consider and approve a special resolution to approve a going-private transaction, to be completed via a statutory plan of arrangement under section 192 of the *Canada Business Corporations Act*;

ON HEARING the submissions of the representatives for Pearson, LeadFX Inc., Sentient Executive GP III Limited and Sentient Executive GP IV, Limited (collectively, **Sentient**), InCoR Energy Materials Limited and Staff of the Commission (**Staff**);

IT IS ORDERED THAT:

1. A motion hearing relating to the issues of standing by the Applicant and any other preliminary motions shall be held on September 28, 2018 commencing at 9:00 a.m. and materials shall be filed as follows:

    a. Pearson shall file all materials by 11:59 p.m. on September 25, 2018;

    b. LeadFX Inc., Sentient and InCoR Energy Materials Limited shall file all responding materials by 10:00 a.m. on September 27, 2018;

    c. Pearson shall file all reply materials by 4:00 p.m. on September 27, 2018; and

    d. Staff shall file its materials by 9:00 p.m. on September 27, 2018.

"D. Grant Vingoe"

# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1 OSC Decisions

### 3.1.1 Roy Ping Bai (aka Ping Bai) and RBP Consulting – ss. 127(1), 127(10)

**IN THE MATTER OF**
**ROY PING BAI (aka PING BAI) AND**
**RBP CONSULTING**

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

**Citation:** *Roy Ping Bai et al. (Re)*, 2018 ONSEC 46
**Date:** 2018-09-21
**File No.** 2018-46

| | | |
|---|---|---|
| **Hearing:** | In Writing | |
| **Decision:** | September 21, 2018 | |
| **Panel:** | D. Grant Vingoe | Vice-Chair and Chair of the Panel |
| **Appearances:** | Christina Galbraith | For Staff of the Commission |
| | Roy Ping Bai | For himself and RBP Consulting |

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**REASONS AND DECISION**

## I. INTRODUCTION AND BACKGROUND

[1] On February 6, 2018, a hearing panel of the British Columbia Securities Commission (the **BCSC**) found that Roy Ping Bai (also known as Ping Bai) (**Bai**) and RBP Consulting (**RBP**) (collectively, the **Respondents**) perpetrated a fraud in the aggregate amount of $1.4 million on nine investors, contrary to section 57(b) of the British Columbia *Securities Act* (the **BC Act**).[1]

[2] On May 11, 2018 the BCSC issued its decision with respect to its order (the **BCSC Order**)[2] and imposed sanctions, conditions, restrictions and requirements on the Respondents, which are set out in Part II of these Reasons.

1 RSBC 1996, c 418.

2 Exhibit 1, Tab 2, BCSC Order dated May 11, 2018 (**BCSC Order**).

[3] Staff of the Ontario Securities Commission (**Staff** or the **Commission**) rely on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)[3] to request that a protective order be issued in the public interest under subsection 127(1) of the Act.

[4] The issues for me to consider are:

a. whether one of the circumstances under subsection 127(10) of the Act applies to the Respondents, namely, are the Respondents subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements (s. 127(10)(4)); and if so

b. whether the Commission should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondents pursuant to subsection 127(1) of the Act.

## II. BRITISH COLUMBIA PROCEEDING AND FINDINGS

### A. The Findings – Breach of section 57(b) of the BC Act

[5] The misconduct occurred between February 2012 and July 2014 (the **Material Time**) when Bai was a resident of Vancouver and West Vancouver, British Columbia.[4]

[6] RBP is a general partnership registered in British Columbia. Bai and his wife were RBP's only partners and Bai confirmed under oath that he was the sole operating and controlling mind of RBP.[5] The BCSC did not make any finding of misconduct against Bai's wife personally.[6]

[7] During the Material Time, Bai, or RBP, received a total of $1,530,000 from nine investors for the purpose of investing in foreign exchange trading. Investors were promised high rates of return, generally 5% per month or 30-60% per annum.[7]

[8] Throughout the Material Time the Respondents corresponded with investors, advising them that, among other things, RBP would be obtaining a public listing of its securities, that the listing was being delayed due to problems with its securities regulatory filings, and that returns on their investments were delayed due to a tax audit.[8] Bai subsequently acknowledged that the substance of these statements was untrue, and admitted that the communications were made to give the Respondents more time to try and pay back the investors and to delay investors from learning of the Respondents' misappropriation of their investments.[9]

[9] The BCSC found that during the Material Time the Respondents deposited approximately $129,000 into foreign exchange trading accounts, and the remainder of the investors' funds were used for other purposes, including payments to other investors and Bai's personal expenditures.[10]

[10] The BCSC concluded that the Respondents contravened section 57(b) of the BC Act by fraudulently misappropriating $1,401,000 from nine investors.[11]

### B. The BCSC Order

[11] The BCSC ordered that:

a. under section 161(1)(d)(i) of the BC Act, Bai resign any position he holds as a director or officer of an issuer or registrant;

b. Bai is permanently prohibited:

i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;

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3 RSO 1990 c S.5.

4 Exhibit 1, Tab 1, BCSC Findings dated February 6, 2018 at paras 8 and 4 (**BCSC Findings**).

5 BCSC Findings at para 5.

6 BCSC Findings at para 50.

7 BCSC Findings at paras 8 and 15.

8 BCSC Findings at para 16.

9 BCSC Findings at para 18.

10 BCSC Findings at paras 13 and 11.

11 BCSC Findings at para 50.

ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

iii. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;

iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

v. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and

vi. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

c. Bai pay to the Commission $1,291,000 pursuant to section 161(1)(g) of the BC Act;

d. Bai pay to the Commission an administrative penalty of $1,000,000 under section 162 of the BC Act; and

e. RBP is permanently prohibited:

i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;

ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

iii. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

iv. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and

v. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities.[12]

## III. THE RESPONDENTS' PARTICIPATION

[12] Staff elected to use the expedited procedure for a written hearing set out in Rule 11(3) of the Commission's *Rules of Procedure and Forms*.[13]

[13] The Respondents were served with a Notice of Hearing issued on August 15, 2018, a Statement of Allegations dated August 13, 2018 and Staff's factum, hearing brief[14] and book of authorities on August 15, 2018. They were subsequently also served with Staff's Reply submissions on September 17, 2018.

[14] On September 4, 2018 Bai filed written submissions with the Commission. These written submissions appear to be identical to the submissions Bai made on behalf of himself and RBP at the BCSC hearing.

[15] I have reviewed the Respondents' submissions and find that they do not contain any new information that was not before the BCSC Panel in the original proceeding.

## IV. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[16] Subsection 127(10) of the Act facilitates the cross-jurisdictional enforcement of judgements for breaches of securities law by providing the Commission with a mechanism to issue protective and preventative orders to ensure that conduct which took place in other jurisdictions will not be repeated in Ontario's capital markets.[15]

[17] Subsection 127(10) of the Act does not itself empower the Commission to make an order, rather it provides a basis for an order under subsection 127(1). On receiving evidence that a respondent is subject to an order made by a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company,[16] the Commission must determine whether an order under subsection 127(1) of the Act should be made.

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12 BCSC Order at para 51.

13 (2017), 40 OSCB 8988.

14 Marked as Exhibit 1.

15 *Black (Re)*, 2014 ONSEC 16, (2014), 37 OSCB 5847 at para 7 (***Black***).

16 *Securities Act*, s. 127(1)4.

[18] Orders made under subsection 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct which could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.[17]

[19] In exercising its jurisdiction to make an order under subsection 127(10) of the Act, the Commission does not require a pre-existing connection to Ontario. However, it is a factor that can be considered by the Commission in exercising its discretion.[18]

## V. ANALYSIS AND DECISION

[20] A hearing pursuant to subsection 127(10) of the Act is meant to be an efficient tool for issuing protective orders and is not a mechanism for re-litigating findings made by another jurisdiction.[19]

[21] As mentioned above, the Respondents' written submissions in this proceeding are not new. These submissions were made at the BCSC hearing, and the BCSC Panel made findings after considering the evidence before it. The Respondents' written submissions deny perpetuating a fraud of approximately $1.4 million on nine investors, deny using investor funds for purposes other than foreign exchange investing, and deny making misrepresentations to investors in correspondence. The BCSC made findings to the contrary on all these issues.[20]

[22] I therefore decline to reconsider the issues raised in the Respondents' submissions, as these issues were considered by the BCSC in the original proceeding and are the subject of findings made by the BCSC Panel.

[23] The Commission's approach to subsection 127(10) hearings is well-established and to deviate from this approach would be inappropriate. The decision of another jurisdiction stands as a determination of fact for the purpose of the Commission's consideration of a matter under subsection 127(10) of the Act. My task is to determine whether, based on those findings of fact, the sanctions proposed by Staff would be in the public interest in Ontario.[21]

[24] The threshold has been met under paragraph 4 of subsection 127(10) of the Act, as the Respondents are subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon them. Since the threshold in subsection 127(10) has been met, it is now open to me to make one or more orders under subsections 127(1) if it is my opinion that it is in the public interest to do so.

[25] The Commission may consider a number of factors in determining the nature and scope of sanctions, including:

a. the seriousness of the allegations proved;

b. the respondent's experience in the marketplace;

c. the level of a respondent's activity in the marketplace;

d. whether or not there has been a recognition of the seriousness of the improprieties;

e. the need to deter a respondent, and other like-minded persons, from engaging in similar abuses of the capital markets in the future;

f. whether the violations are isolated or recurrent;

g. the size of any profit gained or loss avoided from the illegal conduct;

h. any mitigating factors, including the remorse of the respondent;

i. the effect any sanction might have on the ability of the respondent to participate without check in the capital markets;

j. in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and

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17 *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43.

18 *Biller (Re)* (2005), 28 OSCB 10131 at paras 32-35.

19 *Black* at paras 14, 24-25.

20 BCSC Findings at paras 8, 10-13, 16-18, 29, 41-42, 50.

21 *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at para 16; *Black* at para 24.

k. the size of any financial sanctions or voluntary payment when considering other factors.[22]

[26] In this case, the harm suffered by investors and the enrichment of the Respondents are important factors to consider. The BCSC Panel noted that "fraud is the most serious misconduct found in the Act."[23] They went on to state, "This case is at the upper end of the scale of fraudulent misconduct that the Commission oversees in terms of the deceit perpetrated on investors."[24]

[27] The harm suffered by investors was significant. Although the BCSC Panel found that some amounts were returned to investors, their losses totalled $1,291,000.[25]

[28] Conversely, the Respondents received all of the funds from investors, in the amount of $1,401,000, and were therefore unjustly enriched by that amount.[26]

[29] Bai has not recognized the seriousness of the misconduct in which he and RBP engaged, nor has he shown remorse for his actions. The BCSC Panel found that Bai, "lacks any appreciation of the deceitful nature of his misconduct."[27]

[30] The sanctions imposed by the Commission in this case must deter Bai and other like-minded persons from engaging in similar misconduct in Ontario.

[31] The fraudulent activity continued throughout the Material Time, a period of almost two and a half years. Therefore, it involved persistent wrongdoing.

[32] No aggravating or mitigating factors were considered by the BCSC Panel[28] or brought to my attention in this matter.

[33] Therefore, in considering the factors set out above, I find it appropriate to grant an order in the public interest pursuant to the authority provided in subsection 127(1) of the Act, and as requested by Staff. This order will protect the Ontario capital markets from the Respondents, as well as deter other persons who may wish to conduct similar fraudulent activities in Ontario.

## VI. ORDER

[34] For the reasons provided above, I make the following Order:

1. against Bai that:

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

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bai shall cease permanently;

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

   (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bai shall resign any positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;

   (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bai is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and

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

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22 *Beltco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136.

23 BCSC Order at para 9.

24 BCSC Order at para 10.

25 BCSC Order at para 13.

26 BCSC Order at paras 16, 18.

27 BCSC Order at para 21.

28 BCSC Order at para 19.

2. against RBP that:

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

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RBP shall cease permanently;

   (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RBP permanently; and

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

Dated at Toronto this 21st day of September, 2018.

"D. Grant Vingoe"

### 3.1.2 X.X. – ss. 17.1, 17.4

**IN THE MATTER OF**
**AN ACCESS TO INFORMATION REQUEST SUBMITTED BY**
**X.X.**

**REASONS AND DECISION**
**(Subsections 17(1) and 17(4) of the**
***Securities Act*, RSO 1990, c S.5)**

**Citation:** *X.X. (Re)*, 2018 ONSEC 45
**Date:** 2018-09-24
**File No.:** 2018-52

| | | |
|---|---|---|
| **Hearing:** | September 19, 2018 | |
| **Decision:** | September 24, 2018 | |
| **Panel:** | Timothy Moseley | Vice-Chair and Chair of the Panel |
| **Appearances:** | Kai Olson<br>Christopher Berzins | For Staff of the Commission |

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V. CONCLUSION

**REASONS AND DECISION**

## I. OVERVIEW

[1] An individual, whose identity is to remain confidential, submitted a request for access to records that are in the possession of the Ontario Securities Commission (the **Commission**). The individual is referred to in this decision as "X.X.". X.X. made his request (the **Access Request**) pursuant to the *Freedom of Information and Protection of Privacy Act* (**FIPPA**).[1] The Access Request relates to documents referring to X.X. that fall within a specified period of time.

[2] Thirty-three of the records responsive to that request are subject to section 16 of the *Securities Act*,[2] which provides that they cannot be disclosed without an order of the Commission. In responding to the Access Request, the Ministry of Finance's (**Ministry**) Manager of Access, Privacy and Information Management, who makes access decisions under

[1] RSO 1990, c F.31.
[2] RSO 1990, c S.5.

FIPPA on behalf of the Commission, decided to withhold the 33 records, as recommended by Staff of the Commission (**Staff**).

[3] X.X. has appealed that decision to the Information and Privacy Commissioner of Ontario (**IPC**). The appeal is entering a mediation process. In response to a request from IPC staff for production of the 33 records, Staff now applies to this Commission for an order permitting disclosure of those records to specified individuals at the Ministry and the IPC, for the purpose of responding to the appeal and participating in the mediation.

[4] On September 19, 2018, Staff appeared before me at a confidential hearing of this application, without notice to any other party. The following day, I issued a confidential order authorizing the requested disclosure in respect of 29 of the 33 records. The remaining four records are all copies (in slightly different formats) of the same transcript of one examination by Staff of an individual, whose identity is also to remain confidential. That individual is referred to in this decision as "Y.Y.". I ordered that only the front page of each copy of the transcript (the Y.Y. Transcript), with Y.Y.'s name redacted, be disclosed.

[5] I n the order, which is described more fully in paragraph [48] below, I indicated that reasons for my decision would follow. These are those reasons.

## II. STATUTORY FRAMEWORK

[6] Two statutory schemes are at play here. The first is under the *Securities Act*. The second is under FIPPA.

### A. The Securities Act

[7] Sections 11 through 17 of the *Securities Act* govern what are commonly referred to as "formal investigations". Section 11 authorizes the Commission to issue an order appointing one or more persons (typically, members of Staff) to conduct an investigation. A person who is so appointed has certain powers, including the power under section 13 to compel the production of documents or to compel the attendance of an individual to testify.

[8] Section 16 of the *Securities Act* protects the confidentiality of information related to, and obtained through, a formal investigation. It provides that unless authorized by a Commission order, no person or company shall disclose the nature or content of the section 11 investigation order, or other specified information regarding the production of documents or testimony given under section 13. That prohibition applies equally to the persons appointed by the section 11 order as it does to anyone else, including individuals who testify or who produce documents.

[9] Despite that confidentiality requirement, the Commission may authorize disclosure of protected information. Subsection 17(1) provides that if the Commission "considers that it would be in the public interest", it may make the necessary order.

[10] Where a party applies for such an order, subsection 17(2) states that persons or companies who provide information or give testimony pursuant to section 13 are entitled, "where practicable", to reasonable notice of the application, and to an opportunity to be heard.

[11] Subsection 17(2.1) allows for an exception to that requirement. Under certain specified circumstances (which exist in this case), and if the Commission "considers that it would be in the public interest", the order under subsection 17(1) may be made without notice to such persons or companies.

### B. FIPPA

[12] FIPPA sets out a comprehensive framework regarding requests for access to information held by provincial and municipal government institutions. Two provisions in FIPPA are particularly relevant in this case.

[13] Subsection 52(4) of FIPPA empowers the IPC to require an institution to produce records for examination when the IPC is reviewing a decision regarding an access request.

[14] Paragraph 9 of subsection 67(2) of FIPPA explicitly provides that sections 16 and 17 of the *Securities Act* "prevail over this Act [i.e., FIPPA]". As discussed below, there is a potential issue regarding the extent to which this provision of FIPPA applies in this case.

## III. CONFIDENTIALITY OF THIS APPLICATION

[15] In my view, adherence to the confidentiality restrictions imposed by section 16 of the *Securities Act* outweighs the desirability that this proceeding be fully open to the public. Clause 9(1)(b) and subsection 9(1.1) of the *Statutory Powers Procedure Act* (**SPPA**)[3] and Rule 22 of the Commission's *Rules of Procedure and Forms* (**Rules**)[4] provide that in such circumstances, the Commission may hold a hearing in the absence of the public, and documents submitted may be withheld from the public.

[16] I therefore ordered that the hearing of this application be held in the absence of the public, and that the hearing transcript and material filed with the Commission be kept confidential. Pursuant to Rule 34(2) of the Rules, the order I issued on September 20, 2018, to which these reasons relate, shall also remain confidential. However, I am releasing these reasons to the public, without disclosing the identities of the individuals involved. In my view, doing so strikes an appropriate balance between the competing principles identified above.

## IV. ANALYSIS

### A. Introduction

[17] Staff submits that it would be in the public interest to authorize disclosure of the 33 records to Ministry and IPC staff, mediators and adjudicators involved with the appeal of the Access Request.

[18] I accept Staff's submission that there are at least two compelling reasons that support the requested disclosure. First, the Commission and the Ministry have various obligations under FIPPA, and compliance with those obligations is desirable. Second, the contemplated disclosure is to a limited group of individuals, for the valid purpose of facilitating the conduct of the appeal of the Access Request decision and the related mediation.

[19] I also note that in this case, unlike some other cases, there is no potential prejudice to an ongoing investigation or enforcement proceeding.

[20] My analysis below addresses two subsets of the 33 records. The first subset consists of 29 records. The second subset consists of the four copies of the Y.Y. Transcript, as referred to in paragraph [4] above.

### B. The 29 records

[21] Twenty-nine of the subject records (i.e., all of the 33 records except for the four copies of the Y.Y. Transcript) do not raise any real privacy considerations, given the limited disclosure that Staff seeks to make. Had Staff sought an order authorizing disclosure to a broader group of people, including perhaps X.X., the analysis might be different.

[22] Some of the 29 records are transcripts of examinations of X.X., but X.X. is the very person requesting access to the records, so I need not be concerned about any prejudice to his privacy interest.

[23] In relation to the 29 records, I have no difficulty concluding that the public interest considerations referred to in paragraph [18] above favour granting the order requested by Staff.

### C. The four copies of the Y.Y. Transcript

#### 1. Introduction

[24] The four copies of the Y.Y. Transcript are more problematic.

[25] The public interest considerations described in paragraph [18] above, which support disclosure, apply equally to those documents as they do to the remaining 29 records. However, the copies of the Y.Y. Transcript present a potentially countervailing privacy interest, because they set out testimony of Y.Y. that was obtained by way of a summons issued pursuant to section 13 of the *Securities Act*.

[26] Y.Y. is therefore presumptively entitled to notice of this application, pursuant to subsection 17(2) of the *Securities Act*.

[27] Staff has not given Y.Y. notice. Staff relies on subsection 17(2.1) of the Act, which, when read together with paragraph 5 of section 153 of the Securities Act, provides that if the contemplated disclosure is to a governmental authority (as is the

[3] RSO 1990, c S.22.

[4] (2017), 40 OSCB 8988.

case here), and the Commission considers it to be in the public interest, the Commission may make the disclosure order without notice.

[28] In considering whether to accede to Staff's submission, I am guided by the words of the Supreme Court of Canada in *Deloitte & Touche LLP v Ontario (Securities Commission)* (***Deloitte***). *Deloitte* involved an application for an order authorizing disclosure of documents and testimony that had been obtained from individuals at Deloitte:

> [T]he OSC has a duty to parties like Deloitte to protect its privacy interests and confidences. That is to say that [the] OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act.[5]

**2. Staff's submission that Y.Y. should not be given notice**

[29] Staff cites two factors in support of its submission that notice of the application to Y.Y. would be contrary to the public interest:

a. the contemplated disclosure is to the limited group of individuals and solely for the purpose described above; and

b. making an order without notice to Y.Y. would allow the IPC appeal to proceed in a timely manner.

[30] I accept the first of those two factors. The limitations on the proposed order are appropriate. However, the possibility remains that Y.Y. would still have concerns and would argue that only partial disclosure should be authorized.

[31] With respect to the second factor, there is no evidence before me that giving Y.Y. notice of this application would unduly delay the IPC appeal. Equally, there is no evidence about any anticipated difficulty in contacting Y.Y., about Y.Y.'s likely response if contacted, or about any urgency from X.X.'s or the IPC's perspective.

[32] Having said that, I accept that giving Y.Y. notice might cause the process to take more time than it otherwise would. As Staff pointed out in oral submissions, in order to give Y.Y. meaningful notice, Staff might have to disclose X.X.'s identity to Y.Y.. X.X.'s permission might be required to allow that to happen. Would the additional time required for those steps be problematic? Without more information, I am not in a position to answer that question.

**3. Considerations supporting the giving of notice to Y.Y.**

[33] In deciding whether it would be in the public interest to waive the notice to which Y.Y. would normally be entitled, I have considered whether Y.Y. might have any reasonable argument as to why the requested disclosure ought not to be made, or as to why it ought to be made but in a more limited fashion. That exercise is admittedly imperfect, because only Y.Y. can truly advocate for his own interests. However, it is still a useful exercise.

[34] At least three arguments may be available to Y.Y.

***(a) Has the IPC formally required production?***

[35] First, while staff of the IPC has requested production of the records, it is not clear that the IPC has formally required production, as contemplated in subsection 52(4) of FIPPA.

***(b) Does section 16 of the Securities Act prevail over a formal requirement to produce?***

[36] Second, even if the IPC's request constitutes a formal requirement under subsection 52(4) of FIPPA, it may be argued that subsection 67(2) of FIPPA governs, and that as a result, sections 16 and 17 of the *Securities Act* prevail over FIPPA and any steps taken under FIPPA, including a subsection 52(4) requirement for production.

[37] In 1995, in *Ontario (Minister of Health) v Holly Big Canoe*,[6] the Court of Appeal for Ontario rejected a similar argument. The Minister of Health argued that certain records were "clinical records" under the *Mental Health Act*[7] and that they were therefore excluded from the FIPPA disclosure regime, pursuant to a provision similar to subsection 67(2). The court held that the IPC could require production of the relevant records nonetheless, so that the IPC could determine whether the records were properly excluded.

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5 [2003] 2 SCR 713, 2003 SCC 61 (CanLII) at para 29.

6 1995 CanLII 512 (ON CA).

7 RSO 1990, c M.7.

[38] Arguably, however, that case features an important distinction from the present application. In the 1995 case, examination of the records themselves may have been necessary to determine whether they fell within the definition of "clinical records". In this case, the Y.Y. Transcript exists only because it records an examination conducted under section 13 of the *Securities Act*. The confidentiality of the copies of the Y.Y. Transcript is protected by section 16 of the *Securities Act* regardless of the transcript's content. If Y.Y. had been present at the hearing of this application, he might have argued that an examination of the records' content could not possibly assist in determining whether they fall within subsection 67(2) of FIPPA. He might therefore have argued that *Ontario (Minister of Health) v. Holly Big Canoe* does not apply.

[39] The interaction between section 16 of the *Securities Act* and subsection 67(2) of FIPPA has previously been considered. In a 1999 decision, an IPC adjudicator concluded that without having the opportunity to examine the subject records, she was unable to determine whether the records should be excluded.[8]

[40] Whether that case was correctly decided, and if so whether it applies to transcripts as well as produced documents, are questions that Y.Y. may or may not wish to raise.

***(c) Would authorizing disclosure of a portion of the subject records suffice?***

[41] Third, if Y.Y. had been present at the hearing of this application, he might have argued that any valid purpose in authorizing disclosure could be fully satisfied by permitting disclosure of only a portion of the subject records. For example, disclosure of the cover page of a transcript would establish that the transcript recorded an examination conducted under section 13 of the *Securities Act*.

[42] Arguably, an order that is limited in that way is consistent with the Supreme Court of Canada's direction in *Deloitte* (i.e., it is "only to the extent necessary"), and may meet the IPC's needs. This latter possibility may be true, even if the IPC is of the view that it could legally require production of the entire records if it chose to do so.

***(d) Conclusion as to available arguments***

[43] In deciding this application, I need not, and I expressly do not, resolve any of the three arguments described above. In my view, the mere fact that those arguments might reasonably be made is relevant to my determination of whether it is in the public interest to waive notice to Y.Y.

**V. CONCLUSION**

[44] This application, as it relates to the copies of the Y.Y. Transcript, requires balancing of the numerous considerations set out above. In accordance with the Supreme Court of Canada's direction in *Deloitte*, I should authorize disclosure in a way that both respects the spirit of FIPPA and intrudes as minimally as possible on Y.Y.'s privacy interests.

[45] Without Y.Y.'s participation, I cannot fully consider his privacy interests or arguments he might make, including those outlined above. The record before me is insufficient to overcome that concern, or to justify authorizing disclosure of the four records without affording Y.Y. an opportunity to be heard. I therefore concluded that the public interest is best served by authorizing disclosure of the front page only of the copies of the Y.Y. Transcript, with Y.Y.'s name redacted from those records. This result should cause no prejudice to Y.Y., and may afford the Ministry and the IPC the information they require, as a practical matter, to engage in the mediation and the appeal.

[46] With respect to the remaining 29 records, I concluded that disclosure should be authorized as requested.

[47] Because the Ministry or the IPC may be dissatisfied with the result and may choose to take further steps, and because Staff may choose to give notice to Y.Y., I concluded that this decision should be made without prejudice to the right of any party to bring a further application under subsection 17(1) of the *Securities Act*, with respect to the four records, should circumstances change following the date of the order.

[48] Accordingly, my order of September 20, 2018, provided as follows:

a. pursuant to subsection 9(1) of the SPPA and Rule 22 of the Rules:

   i. the transcript of the hearing of this application shall be kept confidential; and

   ii. the material filed with the Commission in connection with this application shall be kept confidential;

[8] *Ontario Securities Commission (Re)*, 1999 CanLII 14324 (ON IPC) at p5. The adjudicator later reconsidered but reaffirmed that decision: *Ontario Securities Commission (Re)*, 1999 CanLII 14325 (ON IPC).

b. pursuant to clause 17(1)(b) of the Securities Act, Staff is authorized to disclose to:

   i. staff, mediators and adjudicators at the IPC; and

   ii. staff of the Ministry's Freedom of Information and Privacy Office,

   involved in the mediation and appeal of the Access Request, for purposes relating to the mediation and appeal of the Access Request, and for no other purpose, the following:

   i. the 29 records referred to in paragraphs [21] to [23] above;

   ii. the first page only of each copy of the Y.Y. Transcript, and in all four cases with Y.Y's name redacted;

   iii. the nature or content of any demands by Staff for the production of any of the 29 records; and

   iv. the fact that any of the 29 records were produced under section 13 of the *Securities Act*;

c. pursuant to Rule 34(2) of the Rules, the order shall be kept confidential; and

d. pursuant to subsection 17(4) of the *Securities Act*, the order is without prejudice to the right of any party to bring a further application pursuant to subsection 17(1) of the *Securities Act*, with respect to the copies of the Y.Y. Transcript, based upon a change in circumstances from the date of the order.

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

"Timothy Moseley"

# 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 |
|---|---|---|
| Enfield Exploration Corp. | 07 March 2017 | 20 September 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

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 11

# IPOs, New Issues and Secondary Financings

**INVESTMENT FUNDS**

**Issuer Name:**
Investors Canadian Money Market Class
Investors Dividend Class
Investors Canadian Equity Class (to be known as Investors North American Equity Class II)
Investors Canadian Growth Class (to be known as Investors North American Equity Class IV)
Investors Canadian Large Cap Value Class (to be known as Investors North American Equity Class V)
Investors Canadian Small Cap Class (to be known as Investors Canadian Small/Mid Cap Class II)
Investors Canadian Small Cap Growth Class (to be known as Investors Canadian Small/Mid Cap Class)
IG Franklin Bissett Canadian Equity Class II
Investors Low Volatility Canadian Equity Class
Investors Quebec Enterprise Class
Investors Summa SRITM Class
IG Beutel Goodman Canadian Equity Class
IG FI Canadian Equity Class
IG Fiera Canadian Small Cap Class
IG Franklin Bissett Canadian Equity Class
IG Mackenzie Canadian Equity Growth Class (to be known as Investors North American Equity Class III)
Investors Core U.S. Equity Class
Investors U.S. Large Cap Value Class (to be known as Investors Core U.S. Equity Class II)
Investors U.S. Opportunities Class
Investors U.S. Small Cap Class
IG AGF U.S. Growth Class
IG T. Rowe Price U.S. Large Cap Equity Class (formerly known as IG FI U.S. Large Cap Equity Class)
IG Putnam Low Volatility U.S. Equity Class (to be known as Investors Core U.S. Equity Class III)
IG Putnam U.S. Growth Class
Investors European Equity Class
Investors European Mid-Cap Equity Class
Investors Global Class
Investors Pan Asian Equity Class II
IG Mackenzie Ivy European Class II
Investors International Small Cap Class
Investors Low Volatility Global Equity Class
Investors North American Equity Class
Investors Pacific International Class
Investors Pan Asian Equity Class
IG AGF Global Equity Class
IG Mackenzie Cundill Global Value Class (to be known as Investors Global Class II)
IG JPMorgan Emerging Markets Class (formerly known as IG Mackenzie Emerging Markets Class)
IG Mackenzie Ivy European Class
IG Mackenzie Ivy Foreign Equity Class
IG Mackenzie Ivy European Class III
Investors Global Consumer Companies Class
Investors Global Financial Services Class
Investors Global Health Care Class
Investors Global Infrastructure Class
Investors Global Natural Resources Class
Investors Global Science & Technology Class
IG Mackenzie Global Precious Metals Class
Allegro Income Balanced Portfolio Class (to be known as IG Core Portfolio Class – Income Balanced)
Allegro Balanced Portfolio Class (to be known as IG Core Portfolio Class – Balanced)
Allegro Balanced Growth Portfolio Class (to be known as IG Core Portfolio Class – Balanced Growth)
Allegro Balanced Growth Portfolio Class II (to be known as IG Core Portfolio Class – Balanced Growth II)
Allegro Growth Portfolio Class (to be known as IG Core Portfolio Class – Growth)
Allegro Growth Portfolio Class II (to be known as IG Core Portfolio Class – Growth II)
Maestro Income Balanced Portfolio Class (to be known as IG Managed Risk Portfolio Class – Income Balanced)
Maestro Balanced Portfolio Class (to be known as IG Managed Risk Portfolio Class – Balanced)
Maestro Growth Focused Portfolio Class (to be known as IG Managed Risk Portfolio Class – Growth Focus)
Principal Regulator – Manitoba
**Type and Date:**
Amended and Restated to Final Simplified Prospectus dated September 20, 2018
Received on September 24, 2018
**Offering Price and Description:**
**–**
**Underwriter(s) or Distributor(s):**
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Inc.
Investors Financial Services Inc.
**Promoter(s):**
I.G. Investment Management Ltd.
**Project** #2776337

**Issuer Name:**
Investors Canadian Money Market Fund
Investors U.S. Money Market Fund
Investors Mortgage and Short Term Income Fund
Investors Canadian Bond Fund
Investors Canadian Corporate Bond Fund
Investors Global Bond Fund
Investors Canadian High Yield Income Fund
IG Mackenzie Income Fund
IG Mackenzie Floating Rate Income Fund
IG Putnam U.S. High Yield Income Fund
IG Putnam Emerging Markets Income Fund
Investors Mutual of Canada
Investors Dividend Fund
Investors U.S. Dividend Registered Fund
Investors Global Dividend Fund
IG Beutel Goodman Canadian Balance Fund
IG CI Canadian Balanced Fund
IG Mackenzie Ivy Canadian Balanced Fund
IG Mackenzie Strategic Income Fund
Investors Fixed Income Flex Portfolio (to be known as IG Core Portfolio – Income)
Investors Global Fixed Income Flex Portfolio (to be known as IG Core Portfolio – Global Income)
Investors Canadian Large Cap Value Fund
Investors Canadian Equity Fund
Investors Canadian Growth Fund
Investors Canadian Small Cap Fund
Investors Canadian Small Cap Growth Fund
Investors Quebec Enterprise Fund
IG Fiera Canadian Small Cap Fund
IG Beutel Goodman Canadian Equity Fund
IG Beutel Goodman Canadian Small Cap Fund
Investors Summa SRI™ Fund
IG FI Canadian Equity Fund
IG Mackenzie Dividend Growth Fund
IG Mackenzie Canadian Equity Growth Fund
IG Franklin Bissett Canadian Equity Fund
Investors Canadian Natural Resource Fund
Investors Canadian Equity Income Fund
Investors Low Volatility Canadian Equity Fund
Investors Core U.S. Equity Fund
Investors U.S. Large Cap Value Fund
Investors U.S. Dividend Growth Fund
Investors U.S. Opportunities Fund
IG AGF U.S. Growth Fund
Investors Global Fund
Investors North American Equity Fund
Investors European Equity Fund
Investors European Mid-Cap Equity Fund
Investors Pacific International Fund
Investors Pan Asian Equity Fund
IG Mackenzie Ivy European Fund
IG Mackenzie Cundill Global Value Fund
IG AGF Global Equity Fund
Investors Low Volatility Global Equity Fund
Investors Global Science & Technology Fund
Investors Global Financial Services Fund
Investors Global Real Estate Fund
Allegro Income Portfolio (to be known as IG Core Portfolio –Income Focus)
Allegro Income Balanced Portfolio (to be known as IG Core Portfolio –Income Balanced)
Allegro Balanced Portfolio (to be known as IG Core Portfolio – Balanced)
Allegro Balanced Growth Portfolio (to be known as IG Core Portfolio – Balanced Growth)
Allegro Growth Portfolio (to be known as IG Core Portfolio –Growth)
Maestro Income Balanced Portfolio (to be known as IG Managed Risk Portfolio
Maestro Balanced Portfolio (to be known as IG Managed Risk Portfolio – Balanced)
Investors Growth Portfolio
Investors Income Plus Portfolio
Investors Growth Plus Portfolio
Investors Retirement Growth Portfolio
Investors Retirement Plus Portfolio
Investors Cornerstone Portfolio (formerly known as Investors Cornerstone II Portfolio)
IG T. Rowe Price U.S. Large Cap Equity Fund (formerly known as IG FI U.S. Large Cap Equity Fund)
IG Putnam U.S. Growth Fund
IG Putnam Low Volatility U.S. Equity Fund
Alto Monthly Income Portfolio (to be known as IG Managed Payout Portfolio)
Alto Monthly Income and Growth Portfolio (to be known as IG Managed Payout Portfolio with Growth)
Alto Monthly Income and Enhanced Growth Portfolio (to be known as IG Managed Payout Portfolio with Enhanced Growth)
Alto Monthly Income and Global Growth Portfolio
Maestro Growth Focused Portfolio (to be known as IG Managed Risk Portfolio – Growth Focus)
Principal Regulator – Manitoba
**Type and Date:**
Amended and Restated to Final Simplified Prospectus dated September 20, 2018
Received on September 24, 2018
**Offering Price and Description:**
**–**
**Underwriter(s) or Distributor(s):**
Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Inc.
**Promoter(s):**
I.G. Investment Management, Ltd.
**Project** #2776318

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**Issuer Name:**
Canadian Equity Alpha Pool
International Equity Value Currency Hedged Pool
US Equity Value Currency Hedged Pool
Principal Regulator – Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated September 17, 2018
NP 11-202 Preliminary Receipt dated September 18, 2018
**Offering Price and Description:**
Class A, E, E3, E4, E5, F, F3, F4, F5, I, OF and W units
**Underwriter(s) or Distributor(s):**
Assante Capital Management Ltd.
**Promoter(s):**
CI Investments Inc.
**Project** #2823165

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**Issuer Name:**
Exemplar Growth and Income Fund
Principal Regulator – Ontario
**Type and Date:**
Amendment #1 to Final Simplified Prospectus dated September 19, 2018
Received on September 21, 2018
**Offering Price and Description:**
–
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
Arrow Capital Management Inc.
**Project** #2780252

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**Issuer Name:**
Fidelity Balanced Managed Risk Portfolio
Fidelity Conservative Managed Risk Portfolio
Fidelity Conservative Income Fund
Principal Regulator – Ontario
**Type and Date:**
Amendment #8 to Final Annual Information Form dated September 21, 2018
Received on September 24, 2018
**Offering Price and Description:**
–
**Underwriter(s) or Distributor(s):**
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
**Promoter(s):**
June 4, 2018
**Project** #2675619

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**Issuer Name:**
Fidelity Conservative Income Private Pool
Principal Regulator – Ontario
**Type and Date:**
Amendment #3 to Final Annual Information Form dated September 21, 2018
Received on September 24, 2018
**Offering Price and Description:**
–
**Underwriter(s) or Distributor(s):**
Fidelity Investments Canada ULC
**Promoter(s):**
Fidelity Investments Canada ULC
**Project** #2661253

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**Issuer Name:**
Lawrence Park Alternative Investment Grade Credit Fund
Marret Alternative Absolute Return Bond Fund
Munro Alternative Global Growth Fund
Principal Regulator – Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 21, 2018
**Offering Price and Description:**
Class A, F, I units
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
CI Investments Inc.
**Project** #2824182

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**Issuer Name:**
Purpose Behavioural Opportunities Fund (formerly, Redwood Behavioural Opportunities Fund)
Purpose Canadian Financial Income Fund
Purpose Conservative Income Fund
Purpose Emerging Markets Dividend Fund (formerly, Redwood Emerging Markets Dividend Fund)
Purpose Energy Credit Fund (formerly, Redwood Energy Credit Fund)
Purpose Enhanced Dividend Fund
Purpose High Interest Savings ETF
Purpose International Dividend Fund
Purpose International Tactical Hedged Equity Fund
Purpose Pension Portfolio Fund (formerly, Redwood Pension Class)
Purpose Premium Money Market Fund
Purpose Premium Yield Fund
Purpose Tactical Investment Grade Bond Fund
Purpose US Cash ETF
Purpose US Dividend Fund
Purpose US Preferred Share Fund (formerly Redwood U.S. Preferred Share Fund)
Principal Regulator – Ontario
**Type and Date:**
Combined Preliminary and Pro Forma Simplified Prospectus dated September 18, 2018
NP 11-202 Preliminary Receipt dated September 20, 2018
**Offering Price and Description:**
**–**
**Underwriter(s) or Distributor(s):**
Redwood Asset Management Inc.
**Promoter(s):**
Purpose Investments Inc.
**Project** #2823273

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**Issuer Name:**
Sentry All Cap Income Fund
Sentry Canadian Income Class
Sentry Canadian Income Fund
Sentry Diversified Equity Class
Sentry Diversified Equity Fund
Sentry Global Growth and Income Class
Sentry Global Growth and Income Fund
Sentry Global Infrastructure Fund
Sentry Global Mid Cap Income Fund
Sentry Growth and Income Fund
Sentry Small/Mid Cap Income Class
Sentry Small/Mid Cap Income Fund
Sentry U.S. Growth and Income Class
Sentry U.S. Growth and Income Currency Neutral Class
Sentry U.S. Growth and Income Fund
Sentry Resource Opportunities Class (formerly, Sentry Canadian Resource Class)
Sentry Energy Fund
Sentry Global REIT Class
Sentry Global REIT Fund
Sentry Precious Metals Class
Sentry Precious Metals Fund
Sentry Alternative Asset Income Fund1
Sentry Conservative Balanced Income Class
Sentry Conservative Balanced Income Fund
Sentry Conservative Monthly Income Fund
Sentry Global Monthly Income Fund
Sentry U.S. Monthly Income Fund
Sentry Canadian Bond Fund
Sentry Corporate Bond Class
Sentry Corporate Bond Fund
Sentry Global High Yield Bond Class
Sentry Global High Yield Bond Fund
Sentry Money Market Class
Sentry Money Market Fund
Sentry Growth Portfolio
Sentry Growth and Income Portfolio
Sentry Balanced Income Portfolio
Sentry Conservative Income Portfolio
Sentry Defensive Income Portfolio
Principal Regulator – Ontario
**Type and Date:**
Amendment #1 to Final Simplified Prospectus dated September 24, 2018
Received on September 24, 2018
**Offering Price and Description:**
**–**
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
N/A
**Project** #2773843

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**Issuer Name:**
TD Active Preferred Share ETF
TD Active Short Term Corporate Bond Ladder ETF
TD Active U.S. Short Term Corporate Bond Ladder ETF
Principal Regulator – Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 20, 2018
**Offering Price and Description:**
–
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
TD Asset Management Inc.
**Project** #2823716

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**Issuer Name:**
TD Canadian Aggregate Bond Index ETF
TD International Equity Index ETF
TD International Equity CAD Hedged Index ETF
TD S&P 500 Index ETF (to be renamed TD U.S. Equity Index ETF)
TD S&P 500 CAD Hedged Index ETF (to be renamed TD U.S. Equity CAD Hedged Index ETF)
TD S&P/TSX Capped Composite Index ETF (to be renamed TD Canadian Equity Index ETF)
Principal Regulator – Ontario
**Type and Date:**
Amendment #1 to Final Long Form Prospectus dated September 20, 2018
Received on September 20, 2018
**Offering Price and Description:**
–
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
TD Asset Management Inc.
**Project** #2705854

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**Issuer Name:**
Capital Group Canadian Focused Equity Fund (Canada)
Capital Group Emerging Markets Total Opportunities Fund (Canada)
Capital Group Global Equity Fund (Canada)
Capital Group International Equity Fund (Canada)
Capital Group U.S. Equity Fund (Canada)
Capital Group Canadian Core Plus Fixed Income Fund (Canada)
Capital Group Global Balanced Fund (Canada)
Capital Group World Bond Fund (Canada)
Principal Regulator – Ontario
**Type and Date:**
Amendment #1 to Final Simplified Prospectus dated September 12, 2018
NP 11-202 Receipt dated September 21, 2018
**Offering Price and Description:**
Series A, T4, D, E, F, F4, I, O, AH, EH, and FH units
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
Capital International Asset Management (Canada), Inc.
**Project** #2760771

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**Issuer Name:**
Chou Asia Fund
Chou Associates Fund
Chou Bond Fund
Chou Europe Fund
Chou RRSP Fund
Principal Regulator – Ontario
**Type and Date:**
Final Simplified Prospectus dated September 14, 2018
NP 11-202 Receipt dated September 19, 2018
**Offering Price and Description:**
Series A and F units @ net asset value
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
N/A
**Project** #2806060

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**Issuer Name:**
DFA Global Fixed Income Portfolio
Principal Regulator – British Columbia
**Type and Date:**
Final Simplified Prospectus dated September 19, 2018
NP 11-202 Receipt dated September 20, 2018
**Offering Price and Description:**
Class A, F and I Units
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
Dimensional Fund Advisors Canada ULC
**Project** #2804149

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**Issuer Name:**
Global Real Estate & E-Commerce Dividend Fund
Principal Regulator – Alberta (ASC)
**Type and Date:**
Final Long Form Prospectus dated September 19, 2018
NP 11-202 Receipt dated September 20, 2018
**Offering Price and Description:**
Maximum – $150,000,000 – 15,000,000 Units @ $10/unit
Minimum – $20,000,000 – 2,000,000 Units @ $10/unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
National Bank Financial Inc.
Raymond James Ltd.
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Desjardins Securities Inc.
Mackie Research Capital Corporation
Middlefield Capital Corporation
**Promoter(s):**
Middlefield Limited
**Project** #2811036

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**Issuer Name:**
Invesco S&P Europe 350 Equal Weight Index ETF
Principal Regulator – Ontario
**Type and Date:**
Final Long Form Prospectus dated September 17, 2018
NP 11-202 Receipt dated September 18, 2018
**Offering Price and Description:**
CAD units and CAD Hedged units @ net asset value
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
Invesco Canada Ltd.
**Project** #2803036

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**Issuer Name:**
Ninepoint 2018-II Flow-Through Limited Partnership
Principal Regulator – Ontario
**Type and Date:**
Final Long Form Prospectus dated September 19, 2018
NP 11-202 Receipt dated September 20, 2018
**Offering Price and Description:**
Limited Partnership Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Ltd.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
**Promoter(s):**
Ninepoint 2018-II Corporation
**Project** #2811177

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**Issuer Name:**
Picton Mahoney Fortified Active Extension Alternative Fund
Picton Mahoney Fortified Market Neutral Alternative Fund
Picton Mahoney Fortified Multi-Strategy Alternative Fund
Principal Regulator – Ontario
**Type and Date:**
Final Simplified Prospectus dated September 21, 2018
NP 11-202 Receipt dated September 24, 2018
**Offering Price and Description:**
Class A, Class F and Class I Units
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
Picton Mahoney Asset Management
**Project** #2820761

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**Issuer Name:**
TD Canadian Aggregate Bond Index ETF
TD International Equity CAD Hedged Index ETF
TD International Equity Index ETF
TD S&P 500 CAD Hedged Index ETF
TD S&P 500 Index ETF
TD S&P/TSX Capped Composite Index ETF
Principal Regulator – Ontario
**Type and Date:**
Amendment #1 to Final Long Form Prospectus dated September 20, 2018
NP 11-202 Receipt dated September 24, 2018
**Offering Price and Description:**
**–**
**Underwriter(s) or Distributor(s):**
N/A
**Promoter(s):**
TD Asset Management Inc.
**Project** #2705854

## NON-INVESTMENT FUNDS

**Issuer Name:**
Antera Ventures I Corp.
Principal Regulator – British Columbia
**Type and Date:**
Preliminary CPC Prospectus (TSX-V) dated September 21, 2018
Received on September 21, 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):**
Arinder Mahal
**Project** #2824306

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**Issuer Name:**
CanWel Building Materials Group Ltd.
Principal Regulator – British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 21, 2018
NP 11-202 Preliminary Receipt dated September 21, 2018
**Offering Price and Description:**
$60,000,000.00
6.375% Senior Unsecured Notes
Price: $1,000.00 per $1,000.00 principal amount of Notes
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Raymond James Ltd.
RBC Dominion Securities Inc.
Haywood Securities Inc.
**Promoter(s):**
**–**
**Project** #2822841

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**Issuer Name:**
iAnthus Capital Holdings, Inc.
Principal Regulator – Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 19, 2018
**Offering Price and Description:**
$30,004,800.00
4,512,000 Common Shares
Price: $6.65 per Common Share
**Underwriter(s) or Distributor(s):**
GMP Securities L.P.
Canaccord Genuity Corp.
Cormark Securities Inc.
Beacon Securities Limited
Echelon Wealth Partners Inc.
PI Financial Corp.
**Promoter(s):**
Hadley Ford
**Project** #2823590

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**Issuer Name:**
IntelGenx Technologies Corp.
Principal Regulator – Quebec
**Type and Date:**
Preliminary Prospectus – MJDS dated September 24, 2018
NP 11-202 Preliminary Receipt dated September 24, 2018
**Offering Price and Description:**
Common Stock
Preferred Stock
Debt Securities
Warrants
Rights
Subscription Receipts
Units
**Underwriter(s) or Distributor(s):**
**–**
**Promoter(s):**
**–**
**Project** #2824634

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**Issuer Name:**
Liberty Gold Corp. (formerly Pilot Gold Inc.)
Principal Regulator – British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 18, 2018
NP 11-202 Preliminary Receipt dated September 18, 2018
**Offering Price and Description:**
C$10,050,000.00 – 25,125,000 Units
Price C$0.40 per Unit
**Underwriter(s) or Distributor(s):**
Sprott Private Wealth LP
CIBC World Markets Inc.
Haywood Securities Inc.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
–
**Project** #2823256

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**Issuer Name:**
Lithium Energi Exploration Inc.
Principal Regulator – Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 20, 2018
NP 11-202 Preliminary Receipt dated September 21, 2018
**Offering Price and Description:**
Minimum Offering: $1,000,000.00 or 3,846,154 Units
Maximum Offering: $6,500,000.00 or 25,000,000 Units
Price: $0.26 per Unit
**Underwriter(s) or Distributor(s):**
Gravitis Securities Inc.
**Promoter(s):**
–
**Project** #2824081

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**Issuer Name:**
Meteorite Capital Inc.
Principal Regulator – Quebec
**Type and Date:**
Amendment dated September 17, 2018 to Final CPC Prospectus (TSX-V) dated July 17, 2018
Received on September 18, 2018
**Offering Price and Description:**
Minimum of $255,000.00 – 1,700,000 Common Shares
Maximum of $750,000.00 – 5,000,000 Common Shares
Price: $0.15 per Common Share
**Underwriter(s) or Distributor(s):**
Leede Jones Gable Inc.
**Promoter(s):**
–
**Project** #2776497

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**Issuer Name:**
Newmont Mining Corporation
Principal Regulator – Ontario
**Type and Date:**
Preliminary Prospectus – MJDS dated September 21, 2018
NP 11-202 Preliminary Receipt dated September 24, 2018
**Offering Price and Description:**
Debt Securities
Depositary Shares
Common Stock
Preferred Stock
Warrants
Units
**Underwriter(s) or Distributor(s):**
–
**Promoter(s):**
–
**Project** #2824359

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**Issuer Name:**
Prairie Provident Resources Inc.
Principal Regulator – Alberta (ASC)
**Type and Date:**
Preliminary Short Form Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 20, 2018
**Offering Price and Description:**
$1,500,060.00 -3,261,000 Flow-Through Shares
$0.46 per Flow-Through Share
$2,500,290.00 – 6,411,000 Subscription Receipts
each representing the right to receive one Unit
$0.39 per Subscription Receipt
**Underwriter(s) or Distributor(s):**
Mackie Research Capital Corporation
**Promoter(s):**
–
**Project** #2823697

---

**Issuer Name:**
TMAC Resources Inc.
Principal Regulator – Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 19, 2018
**Offering Price and Description:**
$*
* Common Shares
Price: $* per Offered Share
$* per Flow-Through Share
$* per Charity Flow-Through Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Sprott Private Wealth LP
Desjardins Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Ltd.
Echelon Wealth Partners Inc.
**Promoter(s):**
–
**Project** #2823563

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**Issuer Name:**
TMAC Resources Inc.
Principal Regulator – Ontario
**Type and Date:**
Amendment dated September 20, 2018 to Preliminary Short Form Prospectus dated September 19, 2018
NP 11-202 Preliminary Receipt dated September 20, 2018
**Offering Price and Description:**
$23,604,400.00
4,814,200 Common Shares
Price: $4.25 per Offered Share
$4.90 per Flow-Through Share
$5.75 per Charity Flow-Through Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Sprott Private Wealth LP
Desjardins Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Ltd.
Echelon Wealth Partners Inc.
**Promoter(s):**
–
**Project** #2823563

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**Issuer Name:**
Transcanna Holdings Inc.
Principal Regulator – British Columbia
**Type and Date:**
Amendment dated September 20, 2018 to Preliminary Long Form Prospectus dated June 22, 2018
NP 11-202 Preliminary Receipt dated September 21, 2018
**Offering Price and Description:**
Minimum of 4,000,000 Units up to a Maximum of 4,400,000 Units
Price: $0.50 per Unit
Minimum of $2,000,000.00 up to a Maximum of $2,200,000.00
Each Unit comprises one common share and one share purchase warrant
**Underwriter(s) or Distributor(s):**
Haywood Securities Inc.
**Promoter(s):**
James Pakulis
**Project** #2788290

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**Issuer Name:**
Valens Groworks Corp. (formerly Genovation Capital Corp.)
Principal Regulator – British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 21, 2018
Received on September 18, 2018
**Offering Price and Description:**
$25,000,000.00 – 12,820,513 Units
$1.95 per Unit
**Underwriter(s) or Distributor(s):**
AltaCorp Capital Inc.
Mackie Research Capital Corp.
Beacon Securities Limited
**Promoter(s):**
–
**Project** #2823260

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**Issuer Name:**
Aecon Group Inc.
Principal Regulator – Ontario
**Type and Date:**
Final Short Form Prospectus dated September 19, 2018
NP 11-202 Receipt dated September 19, 2018
**Offering Price and Description:**
$160,000,000.00 – 5.00% Convertible Unsecured Subordinated Debentures
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Scotia capital Inc.
GMP Securitieis L.P.
Industrial Alliance Securities Inc.
**Promoter(s):**
–
**Project** #2820415

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**Issuer Name:**
Alexco Resource Corp.
Principal Regulator – British Columbia
**Type and Date:**
Final Shelf Prospectus dated September 21, 2018
NP 11-202 Receipt dated September 21, 2018
**Offering Price and Description:**
CDN$50,000,000.00 – COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, UNITS
**Underwriter(s) or Distributor(s):**
–
**Promoter(s):**
–
**Project** #2811238

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**Issuer Name:**
Algonquin Power & Utilities Corp.
Principal Regulator – Ontario
**Type and Date:**
Final Shelf Prospectus dated September 18, 2018
NP 11-202 Receipt dated September 19, 2018
**Offering Price and Description:**
US$3,000,000,000.00
Debt Securities (unsecured)
Subscription Receipts
Preferred Shares
Common Shares
Warrants
Units
**Underwriter(s) or Distributor(s):**
–
**Promoter(s):**
–
**Project** #2820751

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**Issuer Name:**
Captiva Verde Land Corp.
Principal Regulator – British Columbia
**Type and Date:**
Final Long Form Prospectus dated September 20, 2018
NP 11-202 Receipt dated September 20, 2018
**Offering Price and Description:**
Offering of $500,000.00 (5,000,000 Common Shares)
Offering Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
PI Financial Corp.
**Promoter(s):**
Jeffery Ciachurski
**Project** #2788367

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**Issuer Name:**
Euro Manganese Inc.
Principal Regulator – British Columbia
**Type and Date:**
Final Long Form Prospectus dated September 21, 2018
NP 11-202 Receipt dated September 21, 2018
**Offering Price and Description:**
$2,500,000 or 10,000,000 Common Shares
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
**Promoter(s):**
Marco Romero
Roman Shklanka
**Project** #2750420

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**Issuer Name:**
MedMen Enterprises Inc. (formerly Ladera Ventures Corp.)
Principal Regulator – British Columbia
**Type and Date:**
Final Short Form Prospectus dated September 21, 2018
NP 11-202 Receipt dated September 21, 2018
**Offering Price and Description:**
$75,000,002.00
13,636,364 Units
Price: $5.50 per Unit
**Underwriter(s) or Distributor(s):**
Eight Capital
Cormark Securities Inc.
GMP Securities L.P.
**Promoter(s):**
Adam Bierman
Andrew Modlin
Christopher Ganan
**Project** #2820450

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**Issuer Name:**
Pro Real Estate Investment Trust
Principal Regulator – Quebec
**Type and Date:**
Final Short Form Prospectus dated September 21, 2018
NP 11-202 Receipt dated September 21, 2018
**Offering Price and Description:**
$35,032,000.00 – 15,100,000 Trust Units
Price: $2.32 Per Trust Unit
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Haywood Securities Inc.
Industrial Alliance Securities Inc.
Raymond James Ltd.
Laurentian Bank Securities Inc.
Leede Jones Gable Inc.
**Promoter(s):**
**–**
**Project #**2821390

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**Issuer Name:**
Profound Medical Corp. (formerly Mira IV Acquisition Corp.)
Principal Regulator – Ontario
**Type and Date:**
Final Shelf Prospectus dated September 19, 2018
NP 11-202 Receipt dated September 19, 2018
**Offering Price and Description:**
$20,000,000.00
Common Shares
Warrants
Units
**Underwriter(s) or Distributor(s):**
**–**
**Promoter(s):**
**–**
**Project #**2820315

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Rocaton Investment Advisors, LLC | Portfolio Manager | September 20, 2018 |
| New Registration | Kwajamii Financial Inc. | Portfolio Manager | September 21, 2018 |
| New Registration | Markham Centre Financial Securities Inc. | Exempt Market Dealer | September 24, 2018 |

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# Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

## 13.2 Clearing Agencies

### 13.2.1 CDS – Proposed Amendments to the CDS Fee Schedule – New York Link/DTC Direct Link Services – Notice of Commission Approval

**CDS CLEARING AND DEPOSITORY SERVICES INC.**

**NOTICE OF COMMISSION APPROVAL**

**PROPOSED AMENDMENTS TO THE CDS FEE SCHEDULE – NEW YORK LINK/DTC DIRECT LINK SERVICES**

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on September 25, 2018 proposed amendments to the CDS Fee Schedule related to to the Depository Trust and Clearing Corporation (DTCC) Mark-up and New York and DTC Direct Link Liquidity Services Premium.

A copy of the CDS notice was published for comment on June 15, 2018 on the Commission's website at: http://www.osc.gov.on.ca.

**Summary of Comments**

CDS received one comment letter in response to its Notice and Request for Comments. A summary of the comment submitted, together with CDS's response, is included below.

| Comment Summary | CDS Response |
|---|---|
| The commenter suggested that CDS provide further detail with respect to the calculations and methodology in order to provide your members with the comfort that CDS's proposal is necessary to ensure PFMI compliance. | The fee setting methodology employed in calculating the present increase to the DTCC Mark-up and New York Link and DTC Direct link liquidity premium fee is the same as that which was used in calculating the 2015 increase. |
| The commenter noted that it was unclear the extent to which CDS involved participants outside its Fee Committee in developing the proposal or whether participants were consulted with to identify opportunities to better manage activities contributing to the settlement obligations underpinning the Services. | The increased fees to cover the cost of the facility were driven by a risk management requirement. The RAC presentation included an analysis of the liquidity requirements for both the NYL and CNS Services. The presentation noted that the increase to the size of the facility would result in higher costs; the exact quantum of those costs was not discussed.<br><br>CDS presented the proposed fee, to recover the costs of liquidity for CNS, to the Fee Committee for discussion at meetings on December 15, 2017, and January 15, 2018. The proposal was discussed and recommended by the Fee Committee at the January meeting, and subsequently presented to and approved by the CDS Board of Directors on February 8, 2018. |
| The commenter queried whether alternatives other than a syndicated bank credit facility were explored by CDS to bridge its liquidity gap for the Services and suggested that CDS organise discussion forums to that end. | CDS did explore several options for the provision of the required liquidity, including the possibility of using US, or foreign, institutions for the provision of liquidity. In light of existing banking relationships, participant relationships, and by virtue of the fact that CDS already maintains a liquidity facility with domestic banks for cross-border liquidity, CDS ultimately determined that the proposed facility was the most efficient and effective course the changes in liquidity |

| | |
|---|---|
| | requirements which resulted in a consequential increase in fees were presented and discussed in multiple consultative fora including the RAC, the Fee Committee, and the CDS Board of Directors itself. Rules, Procedures, and Fees are, of course, also published for public comment. |

# Chapter 25

# Other Information

## 25.1 Consents

### 25.1.1 Schyan Exploration 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 British Columbia Business Corporations Act.

**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.

**Regulations 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**
**SCHYAN EXPLORATION INC.**

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

**UPON** the application (the "**Application**") of Schyan Exploration Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting a consent from the Commission to continue into another jurisdiction pursuant to section 181 of the OBCA;

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

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

1. The Applicant is an offering corporation existing under the provisions of the OBCA.

2. The Applicant has applied to the Director under the OBCA for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), S.B.C. 2002, c.57 (the "**BCBCA**") pursuant to section 181 of the OBCA (the "**Application for Continuance**").

3. This Application is being made in connection with the proposed continuance of the Applicant under the BCBCA (the "**Proposed Transaction**") wherein the Applicant, a mining issuer, will merge its business with Trulieve, Inc., a Florida based company (the "**Merged Company**"), and the Merged Company will: (i) become a marijuana issuer; and (ii) the directors of the Merged Company will all be non-residents upon completion of the Proposed Transaction.

4. The name of the Applicant is Schyan Exploration Inc. Pursuant to the Proposed Transaction the name of the Merged Company will be Trulieve Cannabis Corp.

5. The Applicant was incorporated under the OBCA pursuant to letters patent dated September 14, 1940.

6. The Applicant's common shares are not listed and have never been listed on any stock exchange. As at September 12th, 2018, the Applicant had 16,188,972 common shares issued and outstanding. The Applicant does not have securities listed on any other stock exchange.

7. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c.S. 5, as amended (the "**Act**") and will remain a reporting issuer in such jurisdiction following continuance.

8. The Applicant is not in default of any of the provisions of the OBCA or the Act, including the regulations made thereunder.

9. The Applicant is not subject to any proceeding under the OBCA, BCBCA or the Act.

10. The Applicant is not in default of any provision of the rules, regulations or policies of any exchange, as the Applicant's common shares are not listed on any exchange.

11. The Commission is the principal regulator for the Applicant and the Applicant's registered office is currently located in Ontario. The Merged Company will be relocated to British Columbia and intends to have the British Columbia Securities Commission be its principal regulator.

12. The Applicant's current registered office is 365 Bay Street, Suite 400, Toronto, Ontario, M5H 2V1. Upon completion of the Proposed Transaction, the head office of the Merged Company will be located at 6749 Ben Bostic Road, Quincy, Florida 32351. The registered office of the Merged Company will be located at Suite 2800, Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2Z7.

13. The Applicant's management information circular dated July 18, 2018 (the "**Information Circular**") for its annual and special meeting of shareholders on August 15, 2018 (the "**Shareholders' Meeting**") described the Proposed Transaction and disclosed the reasons for it and its implications. The Information Circular disclosed to the shareholders their dissent rights in connection with the Proposed Transaction pursuant to section 185 of the OBCA.

14. The Applicant's shareholders authorized the Proposed Transaction at the Shareholders' Meeting by a special resolution that was approved by 100% of the votes cast; no shareholder exercised dissent rights pursuant to section 185 of the OBCA.

15. The material rights, duties and obligations of a corporation, governed by the BCBCA are substantially similar to those under the OBCA, with the exception that there is not a Canadian residency requirement for the members of the board of directors under the BCBCA.

16. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must 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 BCBCA.

**DATED** at Toronto, Ontario this 18th day of September, 2018.

"Anne Marie Ryan"
Commissioner
Ontario Securities Commissioner

"Robert P Hutchison"
Commissioner
Ontario Securities Commissioner

### 25.1.2 Speakeasy Cannabis Club Ltd. – 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 Business Corporations Act (British Columbia).

**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.

**Regulations 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**
**SPEAKEASY CANNABIS CLUB LTD.**

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

**UPON** the application of Speakeasy Cannabis Club Ltd. (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 the 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 authorized share capital consists of an unlimited number of common shares, of which 52,459,312 were issued and outstanding as of September 11, 2018. The Applicant's common shares are listed for trading on the Canadian Securities Exchange (the **CSE**) under the symbol "EASY" and on the Frankfurt Stock Exchange (together with the CSE, the **Exchanges**) under the symbol "39H".

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 *Business Corporations Act* (British Columbia), S.B.C. 2002, c. 57 (the **BCBCA**).

4. The principal reason for the Continuance is that the Applicant's head office and principal place of business are located, and all members of the Applicant's management reside, in British Columbia.

5. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

6. 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 and Alberta (the **Legislation**). The Applicant intends to remain a reporting issuer in Ontario, British Columbia and Alberta following the Continuance.

7. The British Columbia Securities Commission is the Applicant's principal regulator.

8. The Applicant is not in default under any provision of the OBCA, the Act or the Legislation, including the regulations made thereunder.

9. The Applicant is not subject to any proceeding under the OBCA, the Act, or the Legislation.

10. The Applicant is not in default of any provision of the rules, regulations or policies of the Exchanges.

11. The Applicant's management information circular dated May 15, 2018 for its annual general and special meeting of holders of the Applicant's common shares (the **Shareholders**), held on June 19, 2018 (the **Shareholders' Meeting**), described the proposed Continuance and disclosed the reasons for it and its implications. It also disclosed full particulars of the dissent rights of the Shareholders under section 185 of the OBCA.

12. The Shareholders approved the proposed Continuance at the Shareholders' Meeting by a special resolution that was approved by 99.99 % of the votes cast; no Shareholders exercised dissent rights pursuant to section 185 of the OBCA.

13. 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 as a corporation under the BCBCA.

**DATED** at Toronto, Ontario on this 21st day of September 2018.

"AnneMarie Sandler"
Commissioner
Ontario Securities Commission

"Robert P. Kordyback"
Commissioner
Ontario Securities Commission

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