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CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-357
Staff Review of Reporting Issuers in the Cannabis Industry

October 10, 2018

1. EXECUTIVE SUMMARY

Staff of the Canadian Securities Administrators (**Staff** or **we**) are publishing this notice based on a review conducted by the securities regulatory authorities in Alberta, British Columbia, Ontario and Québec. Staff reviewed the disclosure of 70 reporting issuers operating in the cannabis[1] industry. This review included reporting issuers with varying levels of involvement in the industry and with operations in different countries.

The purpose of this notice is to highlight good disclosure practices for issuers in the cannabis industry so that investors are provided with transparent information about financial performance and risks and uncertainties, to support informed investing decisions.

The cannabis industry has benefited from increasingly permissive legal frameworks and has grown significantly as an emerging public market sector. Our review identified industry specific disclosure deficiencies, which are notable given the recent rapid growth of this industry.

Our results identified the following key areas where we expect issuers to improve their disclosure:

- Licensed cannabis producers (**LPs**) often did not provide sufficient information in their financial statements and management's discussion and analysis (**MD&A**) for an investor to understand their financial performance. International Financial Reporting Standards (**IFRS**) require issuers to record growing cannabis plants at their fair value[2]. 100% of the LPs we reviewed needed to improve their fair value and fair value related disclosures,
- Some issuers did not consistently comply with securities requirements for forward-looking information, guidance for providing balanced disclosure and certain other requirements, and
- 74% of issuers with cannabis operations in the U.S. did not provide sufficient disclosure about the risks related to their U.S. operations to satisfy the disclosure expectations set out in CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities* (the **U.S. Disclosure Expectations Notice**).

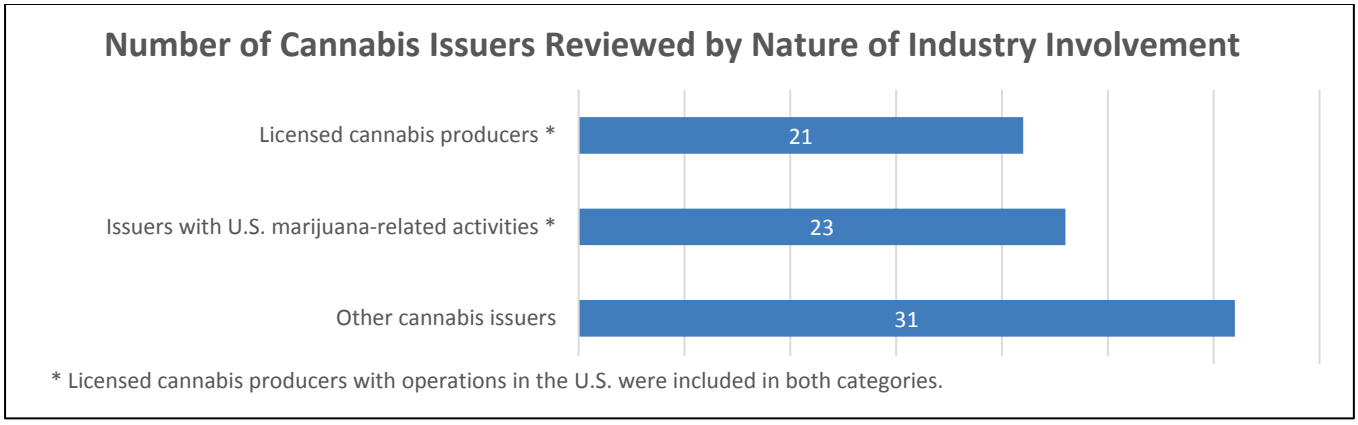
Where deficient disclosure was identified during our review, issuers either committed to prospective improvements or, when the deficiencies were pervasive, refiled certain documents.

[1] The terms cannabis and marijuana are used interchangeably in this notice.

[2] In the context of growing cannabis plants intended for harvest, references throughout this notice to fair value are understood to represent fair value less costs to sell. Refer to International Accounting Standard 41 *Agriculture* (**IAS 41**).

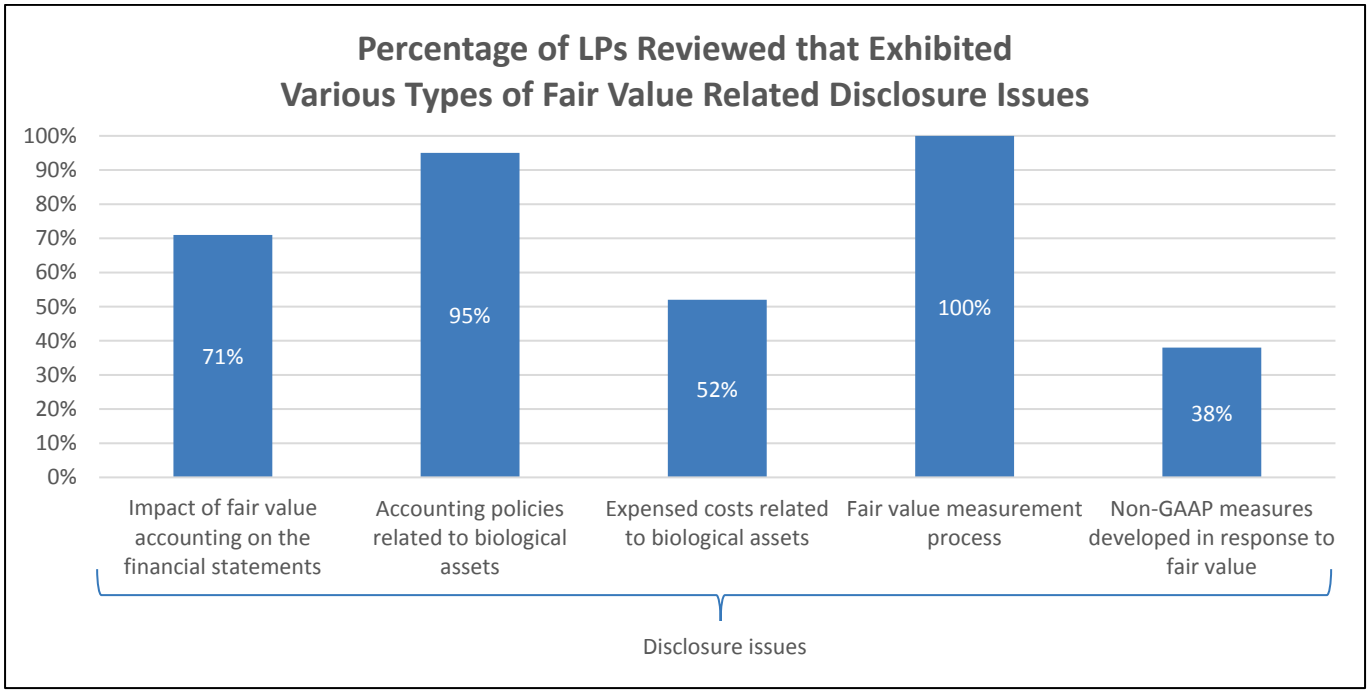
2. Review Scope

As outlined in the following table, we reviewed issuers with any type of involvement in the cannabis industry, including issuers that are not directly involved in the production or sale of cannabis and issuers that are planning cannabis-related activities but have not yet commenced operations.

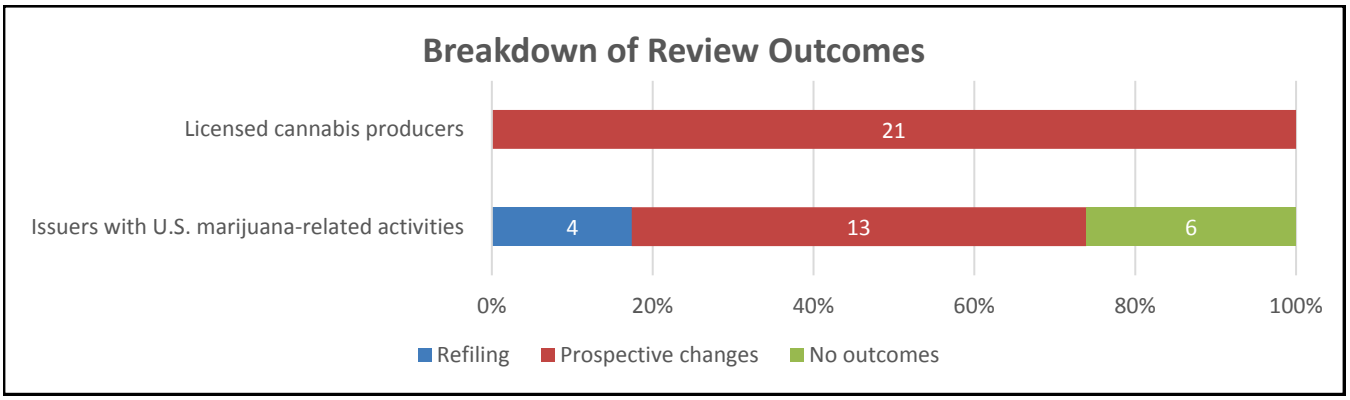


3. Review Outcomes

All of the LPs that we reviewed took action to improve their disclosure in response to issues raised in five main categories, which are summarized below and further explained in section 4. Some of the disclosure concerns that we identified were industry-wide, with most or all LPs having the same or similar issues.



Our review also resulted in 74% of issuers with U.S. marijuana-related activities taking action to improve their disclosure, with 17% refiling their most recent MD&A to correct more pervasive deficiencies.



While some of the review outcomes discussed in this notice may be useful for other types of cannabis issuers, our review results focus on licensed cannabis producers and issuers with U.S. marijuana-related activities. We encourage all issuers in the cannabis sector, including those in ancillary businesses, to consider applicable findings in this notice.

4. Findings for Licensed Cannabis Producers

4.1 Disclosure About the Impact of Fair Value Accounting on the Financial Statements

Issuers with agricultural activities are required to measure living plants, or biological assets, at their fair value under IFRS. As a result, the statement of profit and loss (**P&L**) of an LP often includes unrealized fair value gains related to the growth of biological assets which have not yet been sold.

During our review, we noted that 71% of LPs did not separately disclose all fair value amounts included in the P&L. In these cases, fair value adjustments were often embedded in cost of goods sold. It is critical for investors to be able to understand how much it costs a company to produce its product. Since fair value amounts in the P&L of an LP are not costs that have been incurred related to cannabis sold, it is important for all fair value amounts to be separately disclosed, so that investors can understand a company's cost of sales excluding any fair value amounts.

To ensure investors understand an LPs financial performance, issuers should separately disclose each of the following:[3]

- Unrealized gains/losses resulting from fair value changes on growth of biological assets, and
- Realized fair value amounts included in the cost of inventory sold.

[3] Paragraph 85 of IAS 1 *Presentation of Financial Statements* (**IAS 1**) states that "an entity shall present additional line items… in the statement(s) presenting profit or loss and other comprehensive income when such presentation is relevant to an understanding of the entity's financial performance." Paragraph 97 further states that material income or expense items should be disclosed separately.

The following example illustrates the type of disclosure which was observed during our review, followed by an example of how disclosure can be enhanced.

Example 4.1(a) – Observed disclosure of fair value impacts on the P&L

In the P&L excerpt shown below, changes in fair value of $500,000 arising from the growth of biological assets (unrealized fair value changes) have been separately disclosed as required by paragraph 40 of IAS 41. However, fair value amounts included in inventory sold (realized fair value changes) have not been separately disclosed. Issuers should separately disclose these amounts in order to provide more clear and transparent information to investors.

Revenue	$ 1,000,000
Cost of finished cannabis inventory sold	(1,100,000)
Unrealized fair value gain on growth of biological assets	500,000
Gross profit	**$ 400,000**

Example 4.1(b) – Enhanced disclosure of fair value impacts on the P&L

In the enhanced example, both unrealized and realized fair value amounts are presented as separate line items on the face of the P&L.

Revenue	$ 1,000,000
Cost of finished cannabis inventory sold	(700,000)
Gross profit, excluding fair value items	**300,000**
Realized fair value amounts included in inventory sold	(400,000)
Unrealized fair value gain on growth of biological assets	500,000
Gross profit	**$ 400,000**

While presentation of these amounts as separate line items on the face of the P&L would provide clear and transparent information, disclosure in the financial statement notes may be an acceptable alternative.

During our review, we also noted instances where fair value changes initially appeared to be separately disclosed but in fact were not, for example, because they were disclosed on an aggregate basis with other items such as inventory write-downs. A financial statement line item labelled ‘fair value gain on growth of biological assets and other’ would be inappropriate in the absence of additional disclosure separating fair value changes from any ‘other’ items.

4.2 Disclosure of Accounting Policies Related to Biological Assets

IAS 41 does not prescribe an accounting policy for determining what costs are directly or indirectly attributable to biological assets, nor whether those costs should be capitalized to biological assets or expensed as incurred. Rather, IAS 41 requires biological assets to be measured at their fair value[4], regardless of what costs may or may not be capitalized to them.

While most issuers had a P&L line item within the gross profit subtotal called 'production costs' or 'cost of goods sold' they generally did not discuss the composition of those line items, such as whether they included all of the direct and indirect costs related to biological assets and inventory sold. In some cases we found that items such as depreciation expense for equipment related to biological asset production was included in a 'depreciation and amortization' P&L line item below gross profit, without any disclosure to indicate that not all the direct and/or indirect costs of production were included within gross profit. In these cases, the use of the subtotal 'gross profit' could be misleading for investors since it may be understood as revenue less costs of goods sold, where cost of goods sold is determined using the principles outlined in IAS 2 *Inventories* (**IAS 2**).

We similarly found that most issuers did not clearly disclose whether they were capitalizing or expensing costs directly and indirectly related to biological assets.

As noted in section 4.1 above, investors may refer to the P&L subtotal 'gross profit, excluding fair value items' to understand an LPs financial performance.[5] It is important for investors to understand what costs are included in this subtotal and when those costs are recognized as an expense. Therefore, as part of their significant accounting policy disclosure, we expect issuers to clearly disclose: [6]

- What they consider to be the direct and indirect costs of production associated with biological assets,
- Which P&L line item(s) these direct and indirect costs are recorded in,[7] and
- Whether the direct and indirect costs of biological assets are capitalized, or whether they are expensed as incurred.

We sent comment letters to all of the LPs that we reviewed seeking clarification about their accounting policies for biological assets. The following example illustrates the type of disclosure which was observed, followed by an example of how disclosure can be enhanced.

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[4] Refer to paragraph 12 of IAS 41.

[5] If this subtotal is not presented, investors may rely on similar information derived from the issuer's other disclosure, including disclosure in the financial statement notes. As a result, the disclosure expectations outlined in this section are important regardless of whether this subtotal is presented.

[6] Paragraph 117 of IAS 1 requires disclosure of significant accounting policies. Refer also to paragraph 10 of IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*.

[7] Paragraph 104 of IAS 1 requires additional disclosure about the nature of expenses within P&L line items classified by function.

Example 4.2(a) – Observed disclosure of biological asset accounting policies

Biological assets are measured at their fair value less costs to sell and inventory is measured at the lower of cost and net realizable value, with the initial cost of inventory being the fair value of the biological asset at the time of harvest. All direct and indirect costs related to harvested inventory are capitalized.

Example 4.2(b) – Enhanced disclosure of biological asset accounting policies

Biological Assets
While the Company's biological assets are within the scope of IAS 41 *Agriculture*, the direct and indirect costs of biological assets are determined using an approach similar to the capitalization criteria outlined in IAS 2 *Inventories.* They include the direct cost of seeds and growing materials as well as other indirect costs such as utilities and supplies used in the growing process. Indirect labour for individuals involved in the growing and quality control process is also included, as well as depreciation on production equipment and overhead costs such as rent to the extent it is associated with the growing space. All direct and indirect costs of biological assets are capitalized as they are incurred and they are all subsequently recorded within the line item 'cost of goods sold' on the P&L in the period that the related product is sold. Unrealized fair value gains/losses on growth of biological assets are recorded in a separate line on the face of the P&L. Biological assets are measured at their fair value less costs to sell on the balance sheet.

Inventory
The direct and indirect costs of inventory initially include the fair value of the biological asset at the time of harvest. They also include subsequent costs such as materials, labour and depreciation expense on equipment involved in packaging, labeling and inspection. All direct and indirect costs related to inventory are capitalized as they are incurred and they are subsequently recorded within 'cost of goods sold' on the P&L at the time cannabis is sold, except for realized fair value amounts included in inventory sold which are recorded as a separate line on the face of the P&L. Inventory is measured at lower of cost or net realizable value on the balance sheet.

4.3 Disclosure Issues for LPs that Expense Costs Related to Biological Assets as Incurred

48% of the LPs that we reviewed capitalized all direct and indirect costs related to biological assets. The findings in this section relate specifically to the remaining 52% of LPs who expensed these costs as incurred.

4.3.1 Disclosure About the Cost of Cannabis Sold in the Period

When issuers elect to expense direct and indirect costs related to biological assets, the P&L will typically include costs incurred in the current period related to cannabis which has not yet been sold. As a result, investors may not be able to determine which costs relate to cannabis sold in the period. Issuers in other industries (e.g. manufacturing) that are within the scope of IAS 2, but that do not have biological assets, will generally provide this information because IAS 2 requires the capitalization of costs which are directly and indirectly related to the production of inventories. Investors in the cannabis industry may want information about the cost of cannabis sold in the period, regardless of whether an issuer elects to capitalize or expense biological asset costs under IAS 41.

Issuers who expense biological asset costs as incurred should consider whether this accounting policy results in information that is relevant to the decision-making needs of investors[8]. These issuers are encouraged to provide supplemental information in their MD&A such as, for example, information about the impact that capitalization of direct and indirect costs related to biological assets would have had on the P&L.[9] This type of information may be useful to investors who want to compare gross profit between different issuers.

4.3.2 Presentation of a Gross Profit Subtotal

The presentation of a gross profit subtotal may be misleading when that amount does not include all of the direct and indirect costs of production for cannabis sold during the period. The term 'gross profit' may be understood to consist exclusively of the direct and/or indirect costs of cannabis sold during the period. Since the P&L of issuers that expense the direct and indirect costs of biological assets includes costs incurred on goods which have not yet been sold, these issuers should consider whether the presentation of a gross profit P&L subtotal could mislead investors.

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[8] Paragraph 10 of IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* indicates that "in the absence of an IFRS that specifically applies to a transaction, other event or condition, management shall use its judgement in developing and applying an accounting policy that results in information that is… relevant to the economic decision-making needs of users."

[9] Issuers who provide such disclosure should ensure they meet the disclosure expectations outlined in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures and Additional GAAP Measures* (**SN 52-306**).

4.4 Disclosure About the Fair Value Measurement Process

The processes and assumptions used by LPs to determine the fair value of biological assets are subjective and involve significant judgements. Growing cannabis plants may progress through various stages prior to harvest, requiring management to make judgements at each financial reporting date. Investors should be able to understand these judgements. While IFRS requires certain disclosures about these processes and assumptions[10], all of the LPs we reviewed were providing deficient disclosure in this area. In most cases, LPs were not providing:

- A description of the valuation techniques and processes,
- A description of the inputs used in the fair value measurement including quantitative information about significant unobservable inputs,
- The level of the fair value hierarchy within which the fair value measurement is categorized,
- The sensitivity of the fair value measurement to changes in certain inputs, and
- A discussion of any interrelationships between significant unobservable inputs and how they may affect fair value measurement.

The following example illustrates the type of disclosure which was observed, followed by an example of how disclosure could be enhanced.

Example 4.4(a) – Observed disclosure about the fair value measurement process

Biological assets are measured at their fair value less costs to sell. Significant assumptions used in determining fair value include the sales price of finished cannabis inventory and post-harvest costs. A 10% increase/decrease in these significant assumptions on a combined basis would have increased/decreased the fair value of biological assets by $1,000 in aggregate.

[10] Refer to paragraphs 91, 92 and 93 of IFRS 13 *Fair Value Measurement*.

Example 4.4(b) – Enhanced disclosure about the fair value measurement process

The Company measures its biological assets at their fair value less costs to sell. This is determined using a model which estimates the expected harvest yield in grams for plants currently being cultivated, and then adjusts that amount for the expected selling price per gram and also for any additional costs to be incurred, such as post-harvest costs.

The following significant unobservable inputs, all of which are classified as level 3 on the fair value hierarchy, were used by management as part of this model:

- Selling price – calculated as the weighted average historical selling price for all strains of cannabis sold by the Company, which is expected to approximate future selling prices
- Stage of growth – represents the weighted average number of weeks out of the 15 week growing cycle that biological assets have reached as of the measurement date
- Yield by plant – represents the expected number of grams of finished cannabis inventory which are expected to be obtained from each harvested cannabis plant
- Wastage – represents the weighted average percentage of biological assets which are expected to fail to mature into cannabis plants that can be harvested
- Post-harvest costs – calculated as the cost per gram of harvested cannabis to complete the sale of cannabis plants post harvest, consisting of the cost of direct and indirect materials and labour related to labelling and packaging

The following table quantifies each significant unobservable input, and also provides the impact a 10% increase/decrease in each input would have on the fair value of biological assets.

	December 31 20X7	**December 31 20X6**	**10% Change as at 12/31/20X7**	**10% Change as at 12/31/20X6**
Selling price	$7.50	$7.00	$10,000	$9,000
Stage of growth	12 weeks	6 weeks	$9,000	$8,000
Yield by plant	100 grams	90 grams	$7,000	$6,000
Wastage	1%	5%	$1,000	$5,000
Post-harvest costs	$0.50	$0.60	$4,000	$5,000

Biological assets were on average at a more advanced stage of growth in 20X7 (i.e. 12 weeks grown vs. 6 in 20X6). As a plant matures the likelihood of wastage declines. As a result, wastage estimates were lower in 20X7.

The Company accretes fair value on a straight line basis according to stage of growth. As a result, a cannabis plant that is 50% through its 15 week growing cycle would be ascribed approximately 50% of its harvest date expected fair value (subject to wastage adjustments).

4.5 Disclosure About Non-GAAP Financial Measures Developed in Response to Fair Value

48% of LPs that we reviewed disclose a non-GAAP financial measure similar to 'cash cost per gram' to portray their cost of production, after excluding non-cash fair value adjustments. While this measure is often calculated differently by individual LPs, the way in which it has been calculated should be understandable to investors.[11]

In many cases, the composition of a non-GAAP financial measure was unclear because it was difficult to understand what costs had been included in the GAAP measure that formed the starting point in calculating cash cost per gram. Sections 4.1, 4.2 and 4.3 above provide examples of how issuers can ensure that investors understand the nature of costs included in a line item presented in the financial statements, from which a non-GAAP financial measure such as cash cost per gram may be derived.

In other cases, the composition of a non-GAAP financial measure was unclear because the reconciling items used to calculate it were not sufficiently explained. Issuers should ensure that the nature of any reconciling items is sufficiently explained and that any significant judgements made in quantifying the reconciling item are also provided.

For example, several issuers did not sufficiently explain significant judgements used in determining what represents a gram for the purposes of calculating cash cost per gram. In some cases a gram represented a gram sold and in other cases it represented a gram harvested. In other cases, for LPs that sell both dried cannabis as well as cannabis oils, an undisclosed equivalency factor was used to determine how many grams of dried cannabis were used in the production of a millilitre of oil sold. These and any other significant assumptions should be clearly disclosed.

We also noted instances where a non-GAAP financial measure similar to cash cost per gram had been disclosed without being identified as a non-GAAP financial measure. Issuers should ensure that all non-GAAP financial measures are identified as non-GAAP financial measures and that they are reconciled to the most directly comparable GAAP measure presented in the financial statements, with the appropriate related disclosures.[12]

While cash cost per gram gives investors information about an issuer's cash cost incurred, it generally does not provide a fulsome understanding of the cost of cannabis sold for issuers who expense the costs of biological assets as they are incurred. We refer issuers that expense direct and indirect costs of biological assets to the disclosure expectations outlined in section 4.3 above, in addition to the disclosure expectations noted in this section.

[11] Refer to the disclosure expectations outlined in SN 52-306.
[12] ibid

5. OTHER REVIEW FINDINGS

During the course of our review, we noted the following other issues which issuers should consider in preparing their public filings.

5.1 Production Estimates

Issuers who make announcements about anticipated production capacity in a new facility under construction should disclose the material factors and assumptions related to that projection. Assumptions for financial projections should be specific and comprehensive, particularly with respect to quantitative details, such that an investor is able to clearly understand how each assumption contributes to the projection. Issuers should also ensure that this forward looking information is updated, as required by securities law.[13]

The following example illustrates the type of disclosure which was observed, followed by an example of how disclosure could be enhanced.

Example 5.1(a) – Observed disclosure about production estimates

The Company is in the process of building a second greenhouse directly adjacent to its current facility. While construction has commenced, it is still at an early stage, with only the foundation having been poured. The second greenhouse, once constructed and approved/licensed by Health Canada, will be able to produce approximately 100,000 kilograms of dried cannabis per year.

Example 5.1(b) – Enhanced disclosure about production estimates

The Company is in the process of building a second greenhouse directly adjacent to its current facility. While construction has commenced, it is still at an early stage, with only the foundation having been poured. The second greenhouse, once constructed and approved/licensed by Health Canada, will be able to produce approximately 100,000 kilograms of dried cannabis per year. This forward looking estimate is based on the following material factors and assumptions:

- The facility size will be approximately 800,000 square feet(1), with all of that space being used for cultivation.
- The ratio of dried cannabis cultivated per square foot of facility space will be consistent with historical output in our existing facility.
- Costs to construct the facility will be approximately $100 million(1), where only a deminimis amount has been incurred to date.
- The second greenhouse facility is expected to be fully constructed and ready for final inspection by Health Canada by December 1, 20X9(1).

(1) These statements constitute forward-looking information related to possible events, conditions or financial performance based on future economic conditions and courses of action. These statements involve known and unknown risks, assumptions, uncertainties and other factors that may cause actual results or events to differ materially. The Company believes there is a reasonable basis for the expectations reflected in the forward-looking statements, however these expectations may not prove to be correct.

[13] Refer to Part 4A *Forward-Looking Information* and Section 5.8 *Disclosure Relating to Previously Disclosed Material Forward-Looking Information* of National Instrument 51-102 *Continuous Disclosure Obligations*.

5.2 Misleading or Unbalanced Disclosure

Issuers considering entering the cannabis industry, or issuers considering new investments in the cannabis industry, should ensure that announcements about these new opportunities are balanced and that they are not misleading to investors as a result.[14]

The following example illustrates disclosure that is unbalanced because it does not fully discuss material contingencies and terms to events being announced, followed by an example of how this disclosure can be improved.

Example 5.2(a) – Unbalanced disclosure about plans to enter the cannabis industry

On July 5, 20X8 the Company entered in to a binding arrangement to acquire Cannabis Co., an entity that has applied for a recreational marijuana dispensary licence in the U.S. state of Colorado. Other than the license application, Cannabis Co. has no other material assets. The expected purchase price of $50 million will be paid in cash.

We expect the acquisition to close on December 1, 20X8.

Example 5.2(b) – Enhanced disclosure about plans to enter the cannabis industry

On July 5, 20X8 the Company entered in to a binding arrangement to acquire Cannabis Co., an entity that has applied for a recreational marijuana dispensary licence in the U.S. state of Colorado. Other than the license application, Cannabis Co. has no other material assets. The expected purchase price of $50 million will be paid in cash.

The acquisition is subject to a number of contingencies which must be satisfied prior to closing, including that Cannabis Co. must obtain regulatory approval for its dispensary license on or before December 1, 20X8. If the dispensary licence application is not approved by the state regulator on or prior to December 1, 20X8 then the binding acquisition arrangement may be terminated by either party without penalty.

5.3 Impairment

Issuers with material cannabis-related assets should perform appropriate impairment testing[15] in response to any impairment event, including in the event of an industry-wide change in cannabis-related asset valuations. For example, this may include adverse changes in a regulatory framework with potentially negative impacts on current or future cash flows or revenues.

5.4 Material Contracts

Generally speaking, issuers who are substantially dependent on licenses to cultivate or sell cannabis, or on leased facilities in which those activities are performed, should consider filing the related licenses/agreements as material contracts.

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[14] Refer to National Policy 51-201 *Disclosure Standards* as well as the disclosure requirements in Part 1(a) of Form 51-102F1 *MD&A*.

[15] Refer to IAS 36 *Impairment of Assets*.

5.5 Regulatory Frameworks

Issuers with cannabis operations outside North America should provide disclosure about the foreign regulatory frameworks that are applicable to them, as they would for operations in Canada and the U.S.

We also remind issuers that in light of the illegal treatment of cannabis under U.S. federal law any engagement in cannabis-related activities, both in Canada as well as in foreign jurisdictions, may lead to heightened scrutiny by regulatory bodies and other authorities. For example, recent statements made by the U.S. Customs and Border Protection agency about working in or facilitating the legal cannabis industry, and the impact this involvement may have on admissibility to the U.S. Issuers should ensure that their risk factor disclosure addresses these risks, as well as other relevant risks, as they evolve.

6. FINDINGS FOR ISSUERS WITH U.S. MARIJUANA-RELATED ACTIVITIES

Staff published the U.S. Disclosure Expectations Notice in February 2018 to provide specific disclosure expectations for issuers that currently have, or are in the process of developing, marijuana-related activities in the U.S. where such activity has been authorized within a state regulatory framework (**U.S. Marijuana Issuers**). These disclosure expectations include, but are not limited to:

- A description of the nature of an issuer's involvement in the U.S. marijuana industry,
- Disclosure that marijuana is illegal under U.S. federal law and that enforcement of relevant laws is a significant risk,
- Related risks including, among others, the risk that third party service providers could suspend or withdraw services and the risk that regulatory bodies could impose certain restrictions on the issuer's ability to operate in the U.S.,
- A discussion of the issuer's ability to access public and private capital, including which financing options are and are not available to support continuing operations,
- A quantification of the issuer's balance sheet and operating statement exposure to U.S. marijuana-related activities, and
- As further described in the U.S. Disclosure Expectations Notice, additional disclosures are expected depending on whether an issuer has direct, indirect or ancillary involvement with U.S. marijuana-related activities. For example, issuers with direct involvement are expected to provide a description of applicable regulatory frameworks, a discussion of internal procedures for monitoring compliance and a statement confirming compliance, amongst other things.

These are critically important disclosures about material risks that arise as a result of the unique legal and regulatory environment surrounding marijuana in the U.S. Our review noted inadequate disclosure provided by most U.S. Marijuana Issuers. As noted in section 3 above, our review resulted in 74% of issuers with U.S. marijuana-related activities taking action to improve their disclosure, with 17% refiling their most recent MD&A.

As stated in the U.S. Disclosure Expectations Notice, these disclosures and any related risks should be evaluated, monitored and reassessed by U.S. Marijuana Issuers on an ongoing basis and provided to investors in public filings, including in the event of government policy changes or the introduction of new or amended guidance, laws or regulations.

7. CONCLUSION

In light of the relatively recent emergence of the cannabis industry, accounting and disclosure requirements and best practices are evolving. The guidance outlined in this notice aims to help issuers understand their disclosure obligations in order to provide high quality information to the public. We will continue to monitor these areas in our review program activities moving forward. Issuers who do not provide appropriate disclosure may be subject to additional regulatory action.

8. QUESTIONS

Please refer your questions to any of the following:

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1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 eToro (Europe) Limited – ss. 127, 127.1

FILE NO.: 2018-44

IN THE MATTER OF
ETORO (EUROPE) LIMITED

NOTICE OF HEARING
Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: October 10, 2018 at 9:00 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 26, 2018 between Staff of the Commission and eToro (Europe) Limited in respect of the Statement of Allegations filed by Staff of the Commission dated October 3, 2018.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 5th day of October, 2018

"Grace Knakowski"
Secretary to the Commission

For more information

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

IN THE MATTER OF
ETORO (EUROPE) LIMITED

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and (2) and Section 127.1 of the
Securities Act, RSO 1990, c S 5 as amended)

A. ORDER SOUGHT

1. Staff of the Enforcement Branch ("**Staff**") of the Ontario Securities Commission (the "**Commission**") requests that the Commission make an order pursuant to subsections 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990 c S.5, as amended (the "**Act**") to approve the settlement agreement dated September 17, 2018 between Staff and eToro (Europe) Limited ("**eToro**").

B. FACTS

2. Foreign companies in the business of online trading of securities or derivatives for Ontario residents, including contracts for difference ("**CFDs**") based on exposure to underlying assets which include cryptocurrencies and stocks, are subject to the registration and prospectus requirements of the Act. The registration and distribution requirements of the Act foster integrity, fairness and enhance protection for Ontario investors.

3. Enforcement Staff make the following allegations of fact:

(a) Overview

4. Between 2008 until approximately October 2, 2017 (the "**Material Time**"), eToro contravened section 25 and 53 of the Act by opening and operating trading accounts for Ontario residents in which CFDs based on exposure to underlying assets including cryptocurrencies and stocks, were traded without registration or proper reliance on available exemptions from the requirement to register. The majority of these accounts were opened by eToro in 2017, after Staff had already raised concerns with eToro about access by Ontario residents to eToro's online trading platform (the "**eToro Platform**").

(b) eToro

5. eToro is a brokerage firm resident in Cyprus which operates the eToro Platform.

6. eToro is regulated by the Cyprus Securities and Exchange Commission.

7. eToro is not a reporting issuer in Ontario and has not filed a prospectus or a preliminary prospectus with the Commission. eToro is not registered to engage in the business of trading in accordance with Ontario securities law.

(c) Ontario Clients

8. During the Material Time, eToro opened and operated nearly 2,500 accounts for clients resident in Ontario (the "**Ontario Accounts**").

9. The Ontario Accounts were opened using an online account application process accessed through eToro's website.

10. During the Material Time, eToro earned revenues from the Ontario Accounts totalling USD $1,791,163. This amount includes all revenues of eToro in relation to the Ontario Accounts, including amounts attributable to rollover (margin) fees and bid-ask spreads with respect to the underlying assets.

11. Ontario investors traded CFDs based on exposure to underlying assets which included cryptocurrencies and stocks through the eToro Platform. eToro was the counterparty to the CFD trades.

(d) eToro Communications with Staff

12. In November 2010, Staff raised concerns with eToro that it was breaching Ontario securities law by offering Ontario residents to participate in the eToro Platform. Staff indicated that it was contemplating adding eToro to its Investor Warning List published on the Commission's website.

13. In December 2010, in order to alleviate Staff's concerns, eToro offered and agreed to, among other things, ensure that all of eToro's sales and support team members were made aware that eToro does not accept trades from Ontario customers and that eToro is not registered in Ontario.

14. In September 2011 and May 2015, in response to further inquiries by Staff, eToro informed Staff that:

- "all our Sales and Support team members are familiar and have been refreshed as to our customer acceptance policy"; and
- eToro had "not changed any of [its] policies towards residents from Ontario".

15. In fact, during the Material Time, unknown to Staff, eToro's sales and support team members did not play any role in reviewing or screening prospective new clients to ensure that they were not from Ontario. Further, eToro had no written policies regarding Ontario residents.

16. Accordingly, during the Material Time, eToro had no meaningful controls in place to prevent Ontario residents from opening accounts and accessing its trading platform. As a result, eToro continued to open accounts and accept trades from Ontario residents.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

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

a. engaging in the business of trading in securities without registration in accordance with Ontario securities law or an applicable exemption from registration, contrary to section 25 of the Act; and

b. engaging in trading in securities which constitute distributions without complying with the prospectus requirements or without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act.

18. Staff reserves the right to amend these allegations and to make such further and other allegations as Staff deems fit and the Commission may permit.

Dated this 3rd day of October, 2018

1.4 Notices from the Office of the Secretary

1.4.1 Jason Michael Currey et al.

FOR IMMEDIATE RELEASE
October 4, 2018

JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.,
File No. 2018-48

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 October 3, 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)

1.4.2 Omega Securities Inc.

FOR IMMEDIATE RELEASE
October 4, 2018

OMEGA SECURITIES INC.,
File No. 2017-66

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and Omega Securities Inc. in the above named matter.

A copy of the Order dated October 4, 2018, Settlement Agreement dated September 21, 2018 and Reasons for Approval of Settlement dated October 4, 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)

1.4.3 eToro (Europe) Limited

FOR IMMEDIATE RELEASE
October 5, 2018

ETORO (EUROPE) LIMITED,
File No. 2018-44

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 eToro (Europe) Limited in the above named matter.

The hearing will be held on October 10, 2018 at 9:00 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 October 5, 2018 and Statement of Allegations dated October 3, 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 Maria Psihopedas

FOR IMMEDIATE RELEASE
October 5, 2018

MARIA PSIHOPEDAS,
File No. 2018-18

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

A copy of the Order dated October 5, 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 Mackenzie Financial Corporation and Quadrus Investment Services Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation of prior relief – Relief from the requirement in s.3.2.01 of NI 81-101 to deliver a fund facts document to investors who purchase mutual fund securities of a high net worth series pursuant to switches from a regular retail series upon meeting certain eligibility requirements based on the amount of the investor's investments – Relief is expansion of prior relief to include all existing, new and future series – Relief otherwise identical to prior relief – High net worth series securities are identical to regular retail series securities except that the high net worth series have lower combined management and administration fees – Investment fund manager initiating switches on behalf of investors when their investments satisfy eligibility requirements of high net worth series – Switches between series of a fund triggering a distribution of securities attracting the requirement to deliver a fund facts – Relief granted from requirement to deliver a fund facts to investors for purchases of high net worth series securities made pursuant to such switches subject to compliance with certain notification and prospectus/fund facts disclosure requirements – National Instrument 81-101 Mutual Fund Prospectus Disclosure.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01, 6.1.

June 28, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
QUADRUS INVESTMENT SERVICES LTD.
(the Dealer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer and the Dealer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for the revocation (the **Revocation**) of the decision granted by the principal regulator on July 4, 2016 (the **Previous Decision**) and an exemption from the requirement in the Legislation for a dealer to deliver or send the most recently filed fund facts documents (**Fund Facts**) in the manner as required under the Legislation (the **Fund Facts Delivery Requirement**) in respect of purchases of High Net Worth Series (as

defined below) securities of the Quadrus Funds (as defined below) that are made pursuant to Lower Fee Switches (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission is the principal regulator for this application; 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (the **Other Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario. The Filer is registered as a portfolio manager, exempt market dealer and investment fund manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in the Other Jurisdictions, as well as an investment fund manager in each of Quebec and Newfoundland & Labrador. The manager is also registered under the *Commodity Futures Act* (Ontario) as a commodity trading manager.

2. The head office of the Filer is located in Toronto, Ontario. The Filer is not in default of the securities legislation of Ontario or the Other Jurisdictions.

3. The Filer is the manager of mutual funds (the **Existing Funds**), each of which is subject to the requirements of National Instrument 81-102 *Mutual Funds* (**NI 81-102**). The Filer may in the future become the manager of additional mutual funds that are subject to the requirements of NI 81-102 (the **Future Funds**, and together with the Existing Funds, the **Funds**, and individually, a **Fund**).

4. Certain of the Funds are or will be available for purchase only through the Dealer (the **Quadrus Funds**), which is the principal distributor for the Quadrus Funds.

5. Each Quadrus Fund is, or will be, an open-end mutual fund trust created under the laws of the Province of Ontario or an open-end mutual fund that is a class of shares of a mutual fund corporation.

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

7. The Quadrus Funds are not in default of the securities legislation of Ontario or the Other Jurisdictions.

8. The Dealer is registered as a dealer in Ontario and each of the Other Jurisdictions. The Dealer is not in default of the securities legislation of Ontario or the Other Jurisdictions.

9. The Quadrus Funds currently offer up to 16 series of securities – D5 series, D8 series, H series, H5 series, H8 series, L series, L5 series, L8 series, N series, N5 series, N8 series, Quadrus series, QF series, QF5 series, RB series and Series R – under a simplified prospectus, annual information form and Fund Facts dated June 28, 2017.

10. Certain Quadrus Funds intend to also offer HW series, HW5 series, HW8 series, QFW series and QFW5 series (the **New Series**), which will be qualified for distribution by way of a simplified prospectus, annual information form and Fund Facts to be dated on or around June 28, 2018. The Filer may also offer additional series of the Quadrus Funds in the future.

11. Securities in L series, L5 series, L8 series, HW series, HW5 series, HW8 series, QFW series, QFW5 series and any future applicable preferred pricing series of the Quadrus Funds (the **High Net Worth Series**) have, or will have, lower combined management and administration fees than securities in their corresponding retail series, specifically,

Quadrus series, D5 series, D8 series, H series, H5 series, H8 series, QF series, QF5 series and any future applicable retail series securities of the Quadrus Funds (the **Retail Series**), as applicable. Securities in the High Net Worth Series are, or will be, only available to investors who have invested at least $100,000 in securities of the High Net Worth Series and who also have a minimum total holdings of $500,000 across a group of accounts of which the investor is a member, including segregated fund policies with the London Life Insurance Company or The Great-West Life Assurance Company (the **Eligibility Criteria**).

12. The Filer currently has a program whereby investors holding Quadrus series, D5 series or D8 series are automatically switched into L series, L5 series or L8 series, as applicable, if they meet the Eligibility Criteria (the **Current Lower Fee Switches**). If an investor holding L series, L5 series or L8 series ceases to be eligible to hold that series, the Filer may switch the applicable High Net Worth Series into the applicable Retail Series securities.

13. The Filer intends to extend this automatic switching program to all Retail Series and all High Net Worth Series on or about August 1, 2018 (the **Implementation Date**) so that upon meeting the Eligibility Criteria, investors holding Retail Series securities will automatically be switched into the corresponding High Net Worth Series (the **Lower Fee Switches**), and an investor who ceases to meet the Eligibility Criteria of the High Net Worth Series may be switched into the applicable Retail Series (the **Higher Fee Switches**, and together with the Lower Fee Switches, the **Switches**).

14. Lower Fee Switches will generally take place when the investor purchases additional securities of Quadrus Funds or when positive market movement moves the investor into High Net Worth Series eligibility.

15. Higher Fee Switches may occur because of redemptions that decrease the amount of total investments with the Filer for purposes of calculating the investor's eligibility for High Net Worth Series. However, in no circumstances will market value declines lead to Higher Fee Switches.

16. The Filer will aggregate total investments across the group of eligible accounts in order to determine whether investors are eligible to purchase and to continue to hold High Net Worth Series securities. London Life Insurance Company, as a service provider to the Filer, will monitor investors' investments in each particular series and monitor the total investments across the group of eligible accounts in order to provide the Filer with the information necessary to determine whether investors are eligible to purchase and continue to hold High Net Worth Series securities. If an investor is no longer eligible to hold High Net Worth Series securities, the Filer may effect a Higher Fee Switch.

20. Once an account has qualified for High Net Worth Series, the account will continue to enjoy the benefit of lower combined management and administration fees associated with the applicable High Net Worth Series, even if fund performance reduces the account value below the Eligibility Criteria.

21. Investors may access High Net Worth Series securities by (a) initially investing in High Net Worth Series securities if they meet the Eligibility Criteria, or (b) initially investing in Retail Series securities and then, upon meeting the Eligibility Criteria, having those Retail Series securities switched into High Net Worth Series securities by way of a Lower Fee Switch.

22. Investors may access Retail Series securities by (a) initially investing in Retail Series securities, or (b) initially investing in High Net Worth Series securities and then, upon no longer meeting the Eligibility Criteria for the High Net Worth Series securities, having those High Net Worth Series securities switched into Retail Series securities by way of a Higher Fee Switch.

23. Further to each Lower Fee Switch, an investor's account would continue to hold securities of the same Quadrus Fund(s) as before the Lower Fee Switch, with the only material difference to the investor being that the combined management and administration fees would be lower than those charged prior to the Lower Fee Switch.

24. Further to each Higher Fee Switch, an investor's account would continue to hold securities of the same Quadrus Fund(s) as before the Higher Fee Switch, with the only material difference to the investor being that the combined management and administration fees would be higher than those charged prior to the Higher Fee Switch.

25. The trailing commissions for High Net Worth Series and Retail Series securities are, or will be, identical.

26. Implementation of the Switches has, and will have, no adverse tax consequences on investors under current Canadian tax legislation.

27. There are, and will be, no sales charges, switch fees or other fees payable by the investor upon a Switch.

28. Each Switch will entail (a) a redemption of the applicable Retail Series security, immediately followed by a purchase of the corresponding High Net Worth Series security, or (b) a redemption of the applicable High Net Worth Series

security, immediately followed by a purchase of the corresponding Retail Series security. Each purchase of a Quadrus Fund security done as part of a Switch will be a "distribution" under the Legislation that triggers the Fund Facts Delivery Requirement.

29. Pursuant to the Fund Facts Delivery Requirement, a dealer is required to deliver the most recently filed Fund Facts of a series of a fund to an investor before the dealer accepts an instruction from the investor for the purchase of securities of that series of the fund.

30. While the Filer will initiate each trade done as part of a Switch, the Filer and the Dealer do not propose to deliver the Fund Facts to investors in connection with the purchase of High Net Worth Series securities made pursuant to a Lower Fee Switch for the following reasons:

    (a) at no time will an account that qualifies for High Net Worth Series securities pay more than the combined management and administration fees of the Retail Series securities for which it initially subscribed; and

    (b) since Retail Series securityholders would have received a prospectus or Fund Facts disclosing the higher level of fees which applied to the Retail Series for which they initially subscribed, the investor would derive little benefit from receiving a further Fund Facts relating to the applicable High Net Worth Series for each Lower Fee Switch.

31. The Dealer will deliver the Retail Series Fund Facts to investors in connection with the purchase of Retail Series securities made pursuant to a Higher Fee Switch, as required by the Fund Facts Delivery Requirement.

32. The Filer or the Dealer will deliver, or will arrange for the delivery of, trade confirmations to investors in connection with each trade done further to a Switch. Furthermore, details of the changes in series of securities held will be reflected in the account statements sent to investors for the quarter in which the change occurred.

33. The Filer will communicate extensively with the Dealer and London Life Insurance Company about the Switches so that the Filer will be equipped to appropriately notify existing investors in H series, H5 series, H8 series, QF series and QF5 series of the changes applying to their Retail Series investments and appropriately advise new Retail Series investors about the Switches.

34. The Filer and the Dealer previously received exemptive relief from the Fund Facts Delivery Requirement for the Current Lower Fee Switches pursuant to the Previous Decision.

35. However, the Filer's intention to extend the automatic switching program to all Retail Series and all High Net Worth Series, including the New Series, has triggered the need for the Revocation and the Exemption Sought.

36. In the absence of the Exemption Sought, the Filer may not carry out the Lower Fee Switches aside from the Current Lower Fee Switches without compliance with the Fund Facts Delivery Requirement.

Decision

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

The decision of the principal regulator under the Legislation is that:

1. the Revocation is granted; and

2. the Exemption Sought is granted provided that:

    (a) for investors invested in H series, H5 series, H8 series, QF series and QF5 series prior to the Implementation Date, the Filer will liaise with the Dealer to devise and implement a notification plan for such investors regarding the Switches to communicate:

        (i) that their investment may be switched to a High Net Worth Series with lower fees upon meeting the Eligibility Criteria;

        (ii) that, other than a difference in fees, there will be no other material difference between the Retail Series and the High Net Worth Series;

(iii) that if they cease to meet the Eligibility Criteria for the High Net Worth Series, their investment will be switched into a series with higher management and administration fees which will not exceed the management and administration fees associated with the Retail Series; and

(iv) that they will not receive the Fund Facts when they purchase High Net Worth Series securities further to a Lower Fee Switch, but that:

a. they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

b. the most recently filed Fund Facts will be sent or delivered to them at no cost;

c. the most recently filed Fund Facts may be found either on the SEDAR website or on the Quadrus website; and

d. they will not have a right to withdraw from an agreement of purchase and sale (a Withdrawal Right) in respect of a purchase of series securities made pursuant to a Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts;

(b) the Filer will incorporate disclosure in the simplified prospectus for the Retail Series and the High Net Worth Series that sets out:

(i) the eligibility requirements for both the Retail Series and the High Net Worth Series;

(ii) the fees applicable to investments in both the Retail Series and the High Net Worth Series; and

(iii) that if investors cease to meet the Eligibility Criteria, their investment may be switched into a series with higher management and administration fees which will not exceed the applicable Retail Series fees;

(c) in each Fund Facts of each Retail Series and each High Net Worth Series of the Quadrus Funds, as applicable, the Filer will disclose:

(i) under the heading “How much does it cost?”, a summary of the Switches consisting of:

a. a statement explaining that the Filer offers combined management and administration fee decreases upon meeting the Eligibility Criteria;

b. in the case of the Retail Series only, a statement explaining the scenarios in which the Lower Fee Switches will be made;

c. a statement that Higher Fee Switches may be made due to the investor no longer meeting the Eligibility Criteria;

d. a cross-reference to the disclosure described below under paragraph 2(c)(ii);

e. a cross-reference to specific sections of the simplified prospectus of the Quadrus Funds for more details about the Switches; and

f. a statement disclosing that investors should speak to their representative for more details about the Switches; and

(ii) at the end of the disclosure under the sub-heading “Fund expenses”, a statement that discloses the combined management and administration fee decrease of the applicable High Net Worth Series from the combined management and administration fee of the applicable Retail Series, shown in percentage terms; and

(d) for Retail Series investors, the Filer sends these investors an annual reminder notice advising that they will not receive the Fund Facts when they purchase High Net Worth Series securities further to a Lower Fee Switch, but that:

(i) they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

(ii) the most recently filed Fund Facts will be sent or delivered to them at no cost;

(iii) the most recently filed Fund Facts may be found either on the SEDAR website or on the Quadrus website; and

(iv) they will not have a Withdrawal Right in respect of a purchase of securities made pursuant to a Switch, but they will have a right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

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

2.1.2 Ninepoint Partners LP

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(1)(f), 2.3(1)(h), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102Investment Funds to permit mutual funds to invest up to 10% of net asset value in leveraged ETFs, inverse ETFs and commodity ETFs traded on Canadian or U.S. stock exchanges.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.3(1)(f), 2.3(1)(h), 2.5(2)(a), 2.5(2)(c), 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

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from Ninepoint Partners LP on behalf of the Specified, Enumerated and Future Funds (defined below) managed and/or advised by Ninepoint Partners LP or an affiliate thereof (together, the **Filer**) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies other than Ninepoint Gold Bullion Fund and Ninepoint Silver Bullion Fund, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 19.1 of NI 81-102:

(a) exempting the Funds from sections 2.3(1)(f) and 2.3(1)(h) of NI 81-102 to permit each Fund to invest indirectly in physical commodities other than gold through investments in Commodity ETFs (as defined below) (the **Commodity Relief**):

(b) exempting the Funds from sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to invest in the following categories of exchange-traded funds (**ETFs**) traded on a stock exchange in Canada or the United States that do not qualify as "index participation units" (**IPUs**) (as defined in NI 81-102) (the following ETFs are each referred to as an **Underlying ETF** and collectively as **Underlying ETFs**) (the **FOF Relief**):

(i) ETFs that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the **Underlying Inde**x) by a multiple of up to 200% (Leveraged Bull ETFs) or an inverse multiple of up to 200% (**Leveraged Bear ETFs**, which, together with Leveraged Bull ETFs are collectively referred to as **Leveraged ETFs**):

(ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of up to 100% (**Inverse ETFs**):

(iii) ETFs that seek to provide daily results that replicate the daily performance of gold or silver or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis (the **ETF's Underlying Gold or Silver Interest**), by a multiple of up to 200% (**Leveraged Gold ETFs** and **Leveraged Silver ETFs**, respectively); and

(iv) ETFs that have exposure to one or more physical commodities, including but not limited to gold and silver, on an unlevered basis (**Unlevered Commodity ETFs**, which, together with Leveraged Gold ETFs and Leveraged Silver ETFs, are collectively referred to as **Commodity ETFs**),

(collectively, the **Requested Relief**).

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

(A) the Ontario Securities Commission is the principal regulator for the Application: and

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

Interpretation

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

The term **Enumerated Funds** when used herein means the investment funds set out in Exhibit A hereto under the heading "Enumerated Funds."

The term **Future Funds** when used herein means investment funds that will be reporting issuers to which NI 81-102 applies and of which the Filer will act as manager and/or portfolio adviser in the future.

The term **Specified Funds** when used herein means the investment funds set out in Exhibit A hereto under the heading "Specified Funds."

The term **Funds** when used herein means collectively the Specified Funds, the Enumerated Funds and the Future Funds (each, a Fund).

Representations

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

Ninepoint Partners LP and the Funds

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.

3. The Filer acts, or will act, as manager and portfolio manager of each of the Funds.

4. Each Fund is, or will be, a mutual fund governed by the laws of Canada or a jurisdiction in Canada and a reporting issuer under the laws of one or more provinces and territories of Canada.

5. Neither Ninepoint Partners LP nor the Funds that are currently managed by Ninepoint Partners LP are in default of securities legislation in any of the provinces or territories of Canada.

6. Securities of each Fund are, or will be, qualified for distribution in some or all of the jurisdictions of Canada under a simplified prospectus, annual information form and fund facts prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

Existing Relief

7. 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.

8. 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.

9. Each of the Specified Funds obtained the same relief as the Requested Relief evidenced by a decision dated December 16, 2015 (the **Specified Prior Relief**). Ninepoint Partners LP, as the current manager and portfolio advisor 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.

10. 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.

11. In addition to the Specified Prior Relief, each of Ninepoint Resource Class, Ninepoint Silver Equities Class and Ninepoint Gold and Precious Minerals Fund has, in relation to their respective investment strategies, already obtained an exemption from the requirements of sections 2.3(1)(e), 2.3(1)(f) and/or 2.3(1)(h) of NI 81-102, as applicable, to invest in certain physical commodities, as described below (collectively, the **Other Relief**). In respect of these Funds, Ninepoint Partners LP seeks to extend and complement the Other Relief.

12. Ninepoint Resource Class obtained relief to invest up to 10% of its total net assets, taken at market value at the time of purchase, in gold, permitted gold certificates, silver, silver certificates and/or specified derivatives of which the underlying interest is gold or silver in a decision document dated January 31, 2012.

13. Ninepoint Silver Equities Class is a “precious metals fund” as defined in National Instrument 81-104 *Commodity Pools* (**NI 81-104**). Ninepoint Silver Equities Class obtained relief to invest up to 20% of its total net assets, taken at market value at the time of purchase, in silver, silver certificates and/or specified derivatives of which the underlying interest is silver in a decision document dated January 31, 2012.

14. Ninepoint Gold and Precious Minerals Fund is a “precious metals fund” as defined in NI 81-104. Ninepoint Gold and Precious Minerals Fund obtained relief (i) to invest more than 10% of its net assets, taken at the market value thereof at the time of investment, in gold, gold certificates or specified derivatives of which the underlying interest is gold, and (ii) to permit the Fund to obtain indirect exposure to, or invest directly in, precious metals and minerals in a decision document dated October 24, 2001.

The Underlying ETFs

15. Each Leveraged ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.

16. Each Inverse ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed 100% of the corresponding daily performance of its Underlying Index.

17. Each Leveraged Gold ETF and Leveraged Silver ETF will be generally rebalanced daily to ensure that its performance and exposure to its Underlying Gold or Silver Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold or Silver Interest. Each Leveraged Gold ETF and Leveraged Silver ETF provides a Fund with market value exposure to the underlying physical commodity (i.e. gold or silver) that is two times the net asset value of the ETF on a daily basis.

18. Each Underlying ETF is, or will be, a “mutual fund” as such term is defined under the *Securities Act* (Ontario).

19. The securities of each Underlying ETF trade, or will trade, on a stock exchange in Canada or the United States.

20. The assets of a Leveraged Gold ETF and Leveraged Silver ETF consist primarily of gold or silver, as the case may be, or derivatives the underlying interest of which is gold or silver on an unlevered basis, as the case may be. The objective of these ETFs is to reflect the price of gold or silver, as the case may be, (less the ETF's expenses and liabilities) on a leveraged basis.

21. The assets of Unlevered Commodity ETFs consist primarily of one or more physical commodities, or derivatives that have an underlying interest in such physical commodity or commodities. These physical commodities may include, without limitation, precious metals commodities (such as gold, silver, platinum, platinum certificates, palladium and palladium certificates), energy commodities (such as crude oil, gasoline, heating oil and natural gas), industrials and/or metals commodities (such as aluminum, copper, nickel and zinc) and agricultural commodities (such as coffee, corn, cotton, lean hogs, live cattle, soybeans, soybean oil, sugar and wheat). The objective of an Unlevered Commodity ETF is to reflect the price of the applicable commodity or commodities (less such Unlevered Commodity ETF's expenses and liabilities) on an unlevered basis, or track the performance of an index which is intended to reflect the changes in the market value of the applicable physical commodity or commodities sector.

Investment in the Underlying ETFs

22. The Funds propose to have the ability to invest in the Underlying ETFs, the securities of which are not IPUs.

23. Each Fund is, or will be, permitted, in accordance with its investment objectives and investment strategies, to invest in the Underlying ETFs.

24. An investment by a Fund in securities of an Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

25. Any regulatory concerns, such as undue risk, liquidity concerns or lack of transparency, in connection with investing in the Underlying ETFs are mitigated by the following facts:

    (a) The Underlying ETFs trade on a Canadian or U.S. exchange and are generally relatively liquid. The Underlying ETFs will either be "registered" investment companies in the United States or reporting issuers in one or more jurisdictions in Canada, which means that there will be clear disclosure about the Underlying ETFs readily available in the marketplace.

    (b) The amount of loss that can result from an investment by a Fund in an Underlying ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF.

    (c) Investments by the Funds in Commodity ETFs will be very limited. In accordance with the investment strategies of the Funds, no more than 10% of the net asset value of the Fund will be invested in a combination of Underlying ETFs taken at market value at the time of purchase.

    (d) The simplified prospectus of the Funds will disclose: (i) in the investment strategy section: (I) that the Fund has obtained relief to invest in securities of the Underlying ETFs; (II) an explanation of what each type of Underlying ETFs is; (III) to the extent the Fund may invest in securities of a Commodity ETF, that the Fund may indirectly invest in gold and other physical commodities; and (ii) the risks associated with such investments and strategies.

Decision

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

1. The Commodity Relief and FOF Relief is granted, provided that:

    (a) the investment by a Fund in securities of an Underlying ETF is in accordance with the fundamental investment objectives of the Fund:

    (b) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States:

    (c) a Fund does not purchase securities of Inverse ETFs or securities of Leveraged Bear ETFs or sell any securities short if, immediately after the transaction, the Fund's aggregate market value exposure represented

by all such securities purchased and securities sold short would exceed 20% of the net asset value of the Fund, taken at market value at the time of the transaction:

(d) other than Ninepoint Silver Equities Class and Ninepoint Gold and Precious Minerals Fund, a Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to all physical commodities (including gold) does not exceed 10% of the net asset value of the Fund, taken at market value at the time of the transaction:

(e) for Ninepoint Silver Equities Class,

(i) the Fund only purchases Commodity ETFs that provide exposure to silver: and

(ii) the Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to silver does not exceed 20% of the net asset value of the Fund, taken at market value at the time of the transaction;

(f) for Ninepoint Gold and Precious Minerals Fund,

(i) the Fund only purchases Commodity ETFs that provide exposure to gold, silver and other precious metals and minerals: and

(ii) the Fund's market value exposure (whether direct or indirect, including through Commodity ETFs) to gold, silver and other precious metals and minerals does not exceed 100% of the net asset value of the Fund, taken at market value at the time of the transaction:

(g) each Fund does not purchase securities of an Underlying ETF if, immediately after the transaction, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would consist of securities of Underlying ETFs:

(h) the simplified prospectus of each Specified Fund and each Enumerated Fund discloses, and the simplified prospectus of each Future Fund will disclose:

(i) in the investment strategy section:

(A) that the Fund has obtained relief to invest in securities of the Underlying ETFs:

(B) an explanation of what each type of Underlying ETFs is: and

(C) to the extent the Fund may invest in securities of a Commodity ETF, that the Fund may indirectly invest in gold and other physical commodities: and

(ii) the risks associated with such investments and strategies.

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

EXHIBIT A

SPECIFIED FUNDS

1. Ninepoint Diversified Bond Fund
2. Ninepoint Energy Fund
3. Ninepoint Global Infrastructure Fund
4. Ninepoint Global Real Estate Fund
5. Ninepoint Gold and Precious Minerals Fund
6. Ninepoint Short Term Bond Fund
7. Ninepoint Enhanced Balanced Fund
8. Ninepoint Diversified Bond Class
9. Ninepoint Real Asset Class
10. Ninepoint Resource Class
11. Ninepoint Short-Term Bond Class
12. Ninepoint Silver Equities Class
13. Ninepoint Enhanced Balanced Class
14. Ninepoint Enhanced Equity Class
15. Ninepoint Enhanced U.S. Equity Class
16. Ninepoint Focused Global Dividend Class
17. Ninepoint Focused U.S. Dividend Class

ENUMERATED FUNDS

1. Ninepoint Concentrated Canadian Equity Fund
2. Ninepoint International Small Cap Fund
3. Ninepoint UIT Alternative Health Fund

2.1.3 1832 Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure that seeks to engage in alternative investment strategies not otherwise permitted by National Instrument 81-102 Investment Funds – Relief to permit funds to invest up to 20% of net assets in securities of a single issuer – Relief from cash cover and designated rating requirement in respect of use of derivatives – Relief to permit funds to borrow cash for investment purposes and to grant a security interest over assets in connection with such borrowing – Relief to permit funds to engage in short selling in excess of 20% of the net assets of the fund and to use proceeds from short sales to enter into a long position in a security – Relief to permit funds to enter into incentive fee arrangements – Borrowing and short selling subject to a combined maximum limit of 50% of the fund's net asset value – Aggregate gross exposure of the fund (long positions, short positions and notional value of derivatives positions) subject to maximum limit of 3 times the net asset value of the fund – Relief subject to certain limitations on distribution of securities of the funds – Relief subject to the inclusion of certain required disclosures in the simplified prospectus, annual information form, fund facts document and continuous disclosure documents.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.6, 2.6.1(1)(c), (2), and (3), 2.7(1), (2), and(3), 2.8, 2.11, 6.8, 7.1, 19.1.

October 2, 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
1832 ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
DYNAMIC ALPHA PERFORMANCE II FUND,
DYNAMIC PREMIUM YIELD PLUS FUND
(each a Fund and collectively, the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), exempting the Funds from the following provisions of NI 81-102:

(i) subsection 2.1(1) of NI 81-102 , to permit a Fund to invest more than 10% of its net asset value in the securities of a single issuer (**Single Issuer Relief**);

(ii) subsections 2.3(d),(e), (f) and (h) of NI 81-102, to permit a Fund to invest in precious metal certificates (other than permitted gold certificates), if, immediately after the purchase, more than 10% of the Fund's net asset value would be made up of precious metal certificates; to invest in gold certificates, including permitted gold certificates; and to invest in physical commodities other than gold certificates (**Commodities Relief**);

(iii) subsection 2.3(g) of NI 81-102 to purchase, sell or use specified derivatives and/or debt-like securities other than in compliance with subsections 2.7(1),(2) and (3) and section 2.8 of NI 81-102 (**Specified Derivatives Relief**);

(iv) section 2.6 of NI 81-102, to permit a Fund to borrow cash to use for investment purposes in excess of the limits set out in subsection 2.6(a) of NI 81-102 and to grant a security interest of its assets in connection therewith (**Cash Borrowing Relief**);

(v) subsections 2.6.1(1)(c) and 2.6.1(2) and (3) of NI 81-102, to permit a Fund to borrow securities from a borrowing agent to sell securities short whereby: (i) the aggregate market value of all securities of the issuer of the securities sold short by the Fund may exceed 5% of the net asset value of the Fund; (ii) the aggregate market value of all securities sold short by the Fund may exceed 20% of the net asset value of the Fund; (iii) the Fund is not required to hold cash cover in connection with short sales of securities by the Fund; and (iv) the Fund is permitted to use the cash from a short sale to enter into a long-position in a security (**Short Selling Relief**);

(vi) section 6.8 of NI 81-102, to permit a Fund to deposit with its lender, assets over which it has granted a security interest in connection with the Cash Borrowing Relief (**Cash Borrowing Custody Relief**); and

(vii) section 7.1 of NI 81-102 to permit Dynamic Alpha Performance II Fund to pay a performance fee that is based on the cumulative total return of the Fund for the period that began immediately after the last period for which the performance fee was paid (the **Performance Fee Relief**);

(collectively, the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

Background Facts

1. The Filer will be the trustee, investment fund manager and the portfolio manager of the Funds. The Filer is registered as: (i) a portfolio manager in all of the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Québec, Newfoundland and Labrador and the Northwest Territories; and (iv) a commodity trading manager in Ontario.

2. The Funds will be mutual funds created under the laws of the Province of Ontario and will be governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

3. The Filer and the Funds are not in default of securities legislation in any Jurisdiction.

4. Units of the Funds will be offered by simplified prospectus filed in all of the provinces and territories in Canada and, accordingly, each Fund will be a reporting issuer in each of the provinces and territories of Canada.

5. The proposed investment objective of Dynamic Alpha Performance II Fund is to protect capital during a wide range of economic and market environments while earning superior risk-adjusted equity or equity related returns that are not correlated to major stock market indices. The Fund will use alternative investment strategies primarily including engaging in physical short sales and may also include purchasing securities on margin or with borrowed funds. The Fund aims to reduce risk and invest in a diversified portfolio of equity securities from around the world.

6. The proposed investment objective of Dynamic Premium Yield PLUS Fund is to achieve long-term capital appreciation primarily by investing directly in U.S. equity securities, writing call options on these securities, and/or by writing put options, which generate premium yield. The Fund will use alternative investment strategies including the use of leverage, primarily created through the use of derivatives.

7. The Funds may use leverage through a combination of one or more of the following: (i) borrowing cash for investment purposes; (ii) physical short sales on equities, fixed-income securities or other portfolio assets; and/or (iii) through the use of specified derivatives.

8. The Funds may invest in a variety of derivatives and may take both long and short positions. A Fund's use of derivatives may include futures (including commodity futures, index futures, equity futures, bond futures and interest rate futures); currency forwards; and options and swaps (including commodity swaps, swaps on commodity futures, equity swaps, swaps on index futures, total return swaps, interest rate swaps, and credit default swaps). In its use of derivatives, a Fund will aim to contribute to the target return and the volatility objectives of the Fund.

9. The Funds may also invest in foreign currencies and/or physical commodities.

10. The Filer will determine the Funds' risk ratings using the CSA's Mutual Fund Risk Classification Methodology For Use In Fund Facts and ETF Facts as set out in Appendix F of NI 81-102 (the **Risk Methodology**). Given that the Funds do not have established ten-year track records, the Filer will determine the risk rating for each Fund based on the standard deviation of a reference index selected in accordance with Item 5 of the Risk Methodology (the **Reference Index**). In conducting this analysis, the Filer will also consider whether it is appropriate to exercise the discretion accorded by the Risk Methodology to increase the risk rating of the Fund.

11. The Filer acknowledges that additional guidance regarding proficiency for the distribution of alternative funds has not been finalized at this time and will accompany the final publication of the proposed amendments to NI 81-102 (the **Proposed Alternative Fund Investment Restrictions**) and 81-101 *Mutual Funds Prospectus Disclosure* (the **Proposed Alternative Fund Disclosure**) (the Proposed Alternative Fund Investment Restrictions and the Proposed Alternative Fund Disclosure, collectively, the **Proposed Alternative Fund Rules**), which were contemplated within the CSA Notice and Request for Comment – *Modernization of Investment Fund Product Regulation – Alternative Funds* (2016), 39 OSCB 8051 dated September 22, 2016. The Filer will take steps to ensure the Funds are only distributed through dealers that are registered with the Investment Industry Regulatory Organization of Canada (**IIROC**) or to Top Funds (as defined below) managed by the Filer.

12. The Filer also manages other mutual funds, and will manage future mutual funds, subject to NI 81-102 (collectively, the **Top Funds**). A Top Fund may seek to invest up to 10% of its net assets in a Fund provided that such investment is consistent with the Top Fund's investment objectives.

13. The Filer has previously been granted relief to allow mutual funds managed or advised by the Filer to invest up to 10% of their net assets in non-redeemable investment funds (**NRIFs**) and, specifically for Dynamic Alternative Yield Fund (the **Specified Top Fund**), to invest up to 25% of its net assets in NRIFs.

14. Prior to allowing a Top Fund managed by the Filer to invest in a Fund, the Filer will implement policies and procedures to monitor a Top Fund's compliance with the investment limits that will apply to a Top Fund's investment in the Fund and, where applicable, the Top Fund's investment in NRIFs.

15. The Filer believes that it is in the best interest of the Top Funds to be permitted to invest in the Funds and that such investments would be consistent with the requirements in Proposed Alternative Fund Investment Restrictions relating to investments by mutual funds in alternative funds.

Fund Disclosure of Alternative Strategies

16. The Filer proposes to file a simplified prospectus in respect of the Funds that:

    (a) indicates on the prospectus cover that the Funds are alternative funds;

    (b) discloses within the Funds' investment objectives the asset classes and strategies used which are outside the scope of the existing NI 81-102;

    (c) discloses within the Funds' investment objectives the maximum amount of leverage to be employed;

(d) discloses within the Funds' strategies the maximum amount the Fund may borrow, together with a description of how borrowing will be used in conjunction with the Funds' other strategies and a summary of the Funds' borrowing arrangements; and

(e) discloses, in connection with investment strategies that may be used which are outside the scope of the existing NI 81-102, how such strategies may affect investors' chance of losing money on their investment in the Funds.

17. The Filer proposes to file an annual information form in respect of the Funds that:

(a) indicates on the annual information form cover that Funds are alternative funds; and

(b) discloses the name of each person or company that has lent money to a Fund including whether such person or company is an affiliate or associate of the manager of the Fund.

18. The Filer proposes to file Fund Facts documents for the Funds that indicate the Funds are alternative funds and includes text box disclosure to highlight how the Funds differ from other mutual funds in terms of their investment strategies and the assets they are permitted to invest in.

19. The Filer will include within the Funds' financial statements and management reports of fund performance disclosure regarding actual use of leverage within the Funds for the applicable period referenced therein.

20. The Filer submits that the proposed Funds' disclosure accurately describes their investment strategies while emphasizing the particular strategies which are outside the scope of the existing NI 81-102.

Single Issuer Relief

21. A Fund's investment strategies may allow it to invest up to 20% of its net asset value in securities of an issuer.

22. Subsection 2.1(1) of NI 81-102, does not permit an investment fund to purchase a security of an issuer, enter into a specified derivatives transaction or purchase index participation units if, immediately after the transaction, more than 10% of its net asset value would be invested in securities of any issuer.

23. The Filer believes that it is in the best interests of the Funds to be permitted to invest up to 20% of their net assets in one issuer, as such investments will allow the Funds to fully express the convictions of the Funds' portfolio managers.

Specified Derivatives and Debt-Like Security Relief

24. The investment strategies of the Funds contemplate flexible use of specified derivatives for hedging and/or non-hedging purposes. The Funds have the ability to opportunistically use options, swaps, futures and forward contracts and/or other derivatives under different market conditions.

25. Under subsections 2.7(1), (2) and (3) of NI 81-102, a mutual fund cannot purchase an option (other than a clearing corporation 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 (the **Designated Rating Requirement**). The policy rationale behind this is to address, at least in part, a mutual fund's counterparty credit risk by ensuring that counterparties that enter into certain types of derivatives with mutual funds meet a minimum credit rating.

26. The Filer is seeking to have the operational flexibility to deal with a variety of over- the-counter derivative counterparties, including scenarios where at the time of the transaction, the specified derivative or equivalent counterparty (or its guarantor) will not have a designated rating. The Filer submits that this flexibility will provide more competitive pricing and give the Funds access to a wider variety of over-the-counter products.

27. The Filer submits that any increased credit risk which may arise due to an exemption from the Designated Rating Requirements is counterbalanced by the fact that a Fund's mark-to-market exposure to any specified derivatives counterparty (other than for positions in cleared specified derivatives) must not exceed 10% of its net asset value for a period of 30 days or more.

28. Under Section 2.8 of NI 81-102, a mutual fund must not purchase a debt-like security that has an options component, unless, immediately after the purchase, not more than 10% of its net asset value would be made up of those

instruments held for purposes other than hedging. Section 2.8 also imposes a series of requirements for mutual funds to cover their specified derivatives positions for purposes other than hedging, using a combination of cash, cash equivalents, the underlying interest of the specified derivative and/or the right to acquire the underlying interest of the specified derivative (the **Option and Cover Requirements)**.

Commodities Relief

29. The investment strategies of the Funds may permit them to purchase precious metal certificates other than permitted gold certificates, to invest in physical commodities either directly or indirectly, and to invest more than 10% of the net assets of a Fund in physical commodities or precious metal certificates.

30. Subsections 2.3(d), (e), (f) and (h) of NI 81-102, do not permit an investment fund to:

    (a) purchase a gold certificate, other than a permitted gold certificate;

    (b) purchase gold or a permitted gold certificate if, immediately after the purchase, more than 10% of its net asset value would be made up of gold and permitted gold certificates; and

    (c) except for the above conditions, to purchase a physical commodity including indirectly through the use of specified derivatives.

31. The Filer believes that it is in the best interests of the Funds for them to be permitted to invest in physical commodities, other than gold, including indirect exposure to certain physical commodities through the use of certificates, index participation units and/or specified derivatives.

Cash Borrowing Relief

32. The investment strategies of the Funds will permit the Funds to borrow cash in excess of the limits currently described in section 2.6 of NI 81-102, provided that:

    (a) a Fund may only borrow from an entity described in section 6.2 of NI 81-102, except that the requirement set out in subsection 6.2(3)(a) of NI 81-102 will be satisfied if the company has equity, as reported in its most recent audited financial statements that have been made public or that will be made available to the Fund and its custodian upon request, of not less than $10,000,000;

    (b) if the lender is an affiliate of the Filer, the independent review committee shall approve the applicable borrowing agreement under subsection 5.2(2) of NI 81- 107;

    (c) the borrowing agreement entered into is in accordance with normal industry practice and on standard commercial terms for the type of transaction; and

    (d) the total value of cash borrowed shall not exceed 50% of a Fund's net asset value.

33. Subsection 2.6(a) of NI 81-102, restricts investment funds from borrowing cash or providing a security interest over portfolio assets unless the transaction is a temporary measure to accommodate redemptions, the security interest is required to enable the investment fund to effect a specified derivative transaction or short sale under NI 81- 102, the security interest secures a claim for the fees and expenses of the custodian or sub-custodian of the investment fund, or, in the case of an exchange-traded mutual fund, the transaction is to finance the acquisition of its portfolio securities and the outstanding amount of all borrowings is repaid on the closing of its initial public offering.

34. The Proposed Alternative Fund Investment Restrictions give investment funds the ability to borrow up to 50% of their net asset value to use for investment purposes in order to facilitate a wider array of investment strategies.

35. The Filer believes that it is in the best interests of the Funds to be permitted to borrow cash to meet their investment objectives and strategies.

Short Sale Relief

36. The investment strategies of the Funds will permit the Funds to:

    (a) sell securities short, provided the aggregate market value of securities of any one issuer sold short by a Fund does not exceed 10% of the net asset value of the Fund, and the aggregate market value of all securities sold short by a Fund does not exceed 50% of its net asset value;

(b) sell a security short without holding cash cover; and

(c) sell a security short and use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover.

37. Subsection 2.6.1 of NI 81-102, requires that a fund may only sell a security short if, at the time the fund sells the security short, the fund has borrowed or arranged to borrow the security to be sold under the short sale, if the aggregate market value of all securities of the issuer of the securities sold short by the fund does not exceed 5% of the net asset value of the fund, and if the aggregate market value of all securities sold short by the fund does not exceed 20% of the net asset value of the Fund.

38. The Filer believes that it is in the best interests of the Funds to be permitted to sell securities short in excess of the current limits, in a manner that is consistent with the Proposed Alternative Fund Investment Restrictions.

Performance Fee Relief

39. Dynamic Alpha Performance II Fund proposes to pay the Filer an annual performance fee equal to (a) 20% of the amount by which the Net Asset Value per Unit on the last day of such calendar year (before giving effect to any distributions by the Fund since the High Water Mark (as defined in the Fund's simplified prospectus) and adjusted to exclude the accrual of the incentive fee during the calendar year) exceeds 103% of the High Water Mark, multiplied by (b) the average number of Units of that series outstanding during such calendar year.

40. Section 7.1 of NI 81-102 restricts a mutual fund from paying a performance fee unless the payment of the fee is based on the comparison of the total return of the mutual fund against the cumulative total percentage increase or decrease of a benchmark or index.

41. The Proposed Alternative Fund Rules would create an exemption from the requirement in Section 7.1 of NI 81-102 that a performance fee paid by a mutual fund be calculated with reference to a benchmark or index. This exemption is currently available to publically offered Commodity Pools subject to NI 81-104 – Commodity Pools.

42. For the reasons provided above, the Filer respectfully submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

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

1. the Filer will file a standalone simplified prospectus, annual information form and fund facts document for the Funds, which will include the following disclosure:

   (a) the simplified prospectus and annual information form will indicate on the cover page that each Fund is an alternative fund;

   (b) within the simplified prospectus, the Filer will include disclosure within each Fund's investment objectives on the asset classes that the Fund may invest in and the investment strategies that the Fund may engage in pursuant to the Requested Relief and which are outside the scope of NI 81-102;

   (c) within the simplified prospectus, the Filer will include disclosure in each Fund's investment objectives describing the maximum amount of leverage to be employed by the Fund;

   (d) within the simplified prospectus, the Filer will include disclosure in each Fund's investment strategies on the maximum amount of borrowing and short selling that the Fund may engage in, together with a description of how borrowing and short selling will be used in conjunction with the Fund's other strategies;

   (e) within the simplified prospectus, the Filer will include disclosure in each Fund's investment strategies explaining how the investment strategies that the Fund may engage in pursuant to the exemptive relief which are outside the scope of the existing NI 81-102 may affect investors' chance of losing money on their investment in the Fund;

   (f) the annual information form will disclose under Item 10 of Form 81-101F2 the name of each person or company that has lent money to the Fund including whether such person or company is an affiliate or associate of the Filer; and

(g) the fund facts document will include text box disclosure above Item 2 of Part I of Form 81-101F3 identifying each Fund as an alternative fund and highlighting how the Fund differs from other mutual funds in terms of its investment strategies and the assets it is permitted to invest in.

2. The Filer will disclose in each Fund's annual and interim financial statements and each Fund's Management Report of Fund Performance:

(a) the lowest and highest level of leverage experienced by the Fund in the reporting period covered by the financial statements;

(b) a brief explanation of the sources of leverage used (e.g. borrowing, short selling or use of derivatives);

(c) a description of how the Fund calculates leverage; and

(d) the significance to the Fund of the lowest and highest levels of leverage.

3. In the case of the Single Issuer Relief, the Fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 20% of its net asset value would be invested in securities of any one issuer, provided, however, this limitation shall not apply in respect of (i) a government security; (ii) a security issued by a clearing corporation; (iii) a security issued by an investment fund if the purchase is made in accordance with the requirements of section 2.5 of NI 81-102; or (iv) an index participation unit that is a security of an investment fund.

4. In the case of the Specified Derivatives Relief:

(a) each Fund's aggregate gross exposure calculated as the sum of the following, must not exceed three times the Fund's net asset value: (i) the aggregate market value of the Fund's long positions; (b) the aggregate market value of securities sold short by the Fund pursuant to the Short Selling Relief; and (c) the aggregate notional value of the Fund's specified derivatives positions excluding any specified derivatives used for "hedging purposes" as defined in NI 81-102;

(b) in determining each Fund's compliance with the restriction contained in 4(a) above, the Fund must also include in its calculation its proportionate shares of securities of any underlying investment funds for which a similar calculation is required;

(c) each Fund must determine its compliance with the restriction contained in 4(a) above, as of the close of business of each day on which the Fund calculates a net asset value; and

(d) if a Fund's aggregate gross exposure as determined in subsection 4(a) above exceeds three times the Fund's net asset value, the Fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate gross exposure to three times the Fund's net asset value or less.

5. In the case of the Cash Borrowing Relief:

(a) each Fund may only borrow from an entity described in section 6.2 of NI 81-102, except that the requirement set out in subsection 6.2(3)(a) of NI 81-102 will be satisfied if the company has equity, as reported in its most recent audited financial statements that have been made public or that will be made available to the Fund and its custodian upon request, of not less than $10,000,000;

(b) if the lender is an affiliate of the Filer, the independent review committee must approve the applicable borrowing agreement under subsection 5.2(2) of NI 81-107;

(c) the borrowing agreement entered into is in accordance with normal industry practice and on standard commercial terms for the type of transaction; and

(d) the total value of cash borrowed must not exceed 50% of each Fund's net asset value.

6. In the case of Short Selling Relief:

(a) the aggregate market value of all securities sold short by each Fund does not exceed 50% of the net asset value of the Fund; and

(b) the aggregate market value of all securities of the issuer of the securities sold short by each Fund does not exceed 10% of the net asset value of the Fund.

7. In the case of Incentive Fee Relief:

Each Fund must not pay, or enter into arrangements that would require it to pay, an incentive fee that is determined by the performance of the Fund unless:

(a) the payment of the incentive fee is based on the cumulative total return of the Fund for the period that began immediately after the last period for which such incentive fee was paid; and

(b) the method of calculating the incentive fee payable by each Fund shall be described in the simplified prospectus in respect of each Fund.

8. In the case of the Cash Borrowing Relief and the Short Selling Relief:

(a) each Fund must not borrow cash pursuant to the Cash Borrowing Relief or sell securities short pursuant to the Short Selling Relief, if immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund would exceed 50% of the Fund's net asset value; and

(b) if the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by each Fund exceeds 50% of the Fund's net asset value, the Fund must, as quickly as commercially reasonable take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to 50% or less of the Fund's net asset value.

Distribution

9. The Filer will ensure each Fund is only distributed through dealers that are registered with IIROC.

10. The Filer will not distribute securities of the Fund to other mutual funds other than the Top Funds.

11. In the case of Top Funds managed by the Filer, with the exception of the Specified Top Fund, the Filer will ensure that such Top Funds will not purchase securities of the Funds if, immediately after the transaction, more than 10% of the net asset value of the Top Fund, taken at market value at the time of the transaction, would consist of securities of the Funds and NRIFs.

12. In the case of the Specified Top Fund, the Filer will ensure that the Specified Top Fund will not purchase securities of the Funds if, immediately after the transaction: (i) more than 10% of the net asset value of the Specified Top Fund, taken at market value at the time of the transaction, would consist of securities of the Funds; and (ii) more than 25% of the net asset value of the Specified Top Fund, taken at market value at the time of the transaction, would consist of securities of the Funds and NRIFs.

Term

13. This decision shall expire upon the earlier of: (i) the coming into force of the Proposed Alternative Fund Rules or substantially similar rules; and (ii) five years from the date of this decision.

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

2.1.4 Merrill Lynch Canada Inc.

Headnote

Application for a ruling pursuant to section 74 of the Securities Act granting relief from the dealer registration requirement in section 25 of the OSA to allow the Filer, an investment dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC), to use employees of a Designated Foreign Affiliate of the Filer for After-Hours Trading in securities on the Bourse de Montréal Inc. – Relief granted, subject to terms and conditions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.

October 5, 2018

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

AND

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

AND

IN THE MATTER OF
MERRILL LYNCH CANADA INC.
(the Filer)

DECISION

Background

The principal regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Designated Foreign Affiliate Employees (as defined below) of the Filer, when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), from the dealer registration requirement in the Legislation, subject to the terms and conditions set out below (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation formed under the laws of Canada. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment dealer under the securities legislation of all the jurisdictions of Canada except Nunavut; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a dealer under the derivatives legislation of Québec.

3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the MX and a participating organization of the Toronto Stock Exchange.

4. The Filer is not in default of securities or commodity futures legislation in any jurisdiction of Canada.

5. Merrill Lynch International (**MLI** or the **Designated Foreign Affiliate**) is a private unlimited company incorporated in England and Wales. The head office of MLI is located in London, England.

6. The Filer and MLI are each a wholly-owned indirect subsidiary of Bank of America Corporation.

7. MLI is a United Kingdom-based broker dealer in securities and dealer in equity derivatives. MLI is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority.

8. MLI holds memberships and/or has third-party clearing relationships with commodity and financial futures exchanges and clearing associations, including the London Stock Exchange. It also

carries positions reflecting trades executed on other exchanges through affiliates and/or third-party clearing brokers.

The MX Extended Trading Hours Amendments

9. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.

10. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's trading hours. As a result of these amendments, it is anticipated that, commencing October 9, 2018, trading of certain products on the MX will commence at 2:00 a.m. Eastern Time (**ET**) rather than the current 6:00 a.m. ET.

11. As set out in MX Circular 111-18, in order to accommodate this earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or clients of the MX participant's affiliated corporations or subsidiaries.

Application of the dealer registration requirement to Designated Foreign Affiliate Employees

12. The Filer is an MX approved participant and MLI is an affiliated corporation. The Filer wishes to make use of certain designated employees of MLI (the **Designated Foreign Affiliate Employees**) to handle trading requests on the MX from the Filer's clients and clients of the Filer's affiliated corporations or subsidiaries during the MX's extended trading hours from 2:00 a.m. ET to 6:00 a.m. ET each day on which the MX is open for trading (the **Extended Hours Activities**).

13. The dealer registration requirement under the Legislation requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the employees of MLI who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.

14. The Filer seeks an exemption from the dealer registration requirement because, in the absence of such exemption, each employee of MLI who was to trade on behalf of the Filer would be required to become individually registered and licensed in Canada. The Filer believes this would be duplicative since the Designated Foreign Affiliate Employees are certified under applicable United Kingdom law, would be supervised by the Filer's designated supervisors and would otherwise be subject to the conditions set forth below. The Filer believes this would be unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees would be conducting on behalf of the Filer, namely only handling client orders, and only during the period from 2:00 a.m. ET to 6:00 a.m. ET.

15. The Filer has also applied to IIROC for an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2(a) and 18.2(c) and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3.

16. The Filer anticipates that the IIROC Relief, if granted, will be subject to certain conditions, including:

    (a) The Designated Foreign Affiliate Employees must be certified under the applicable laws of the United Kingdom in a category that permits trading the types of products which they will be trading on the MX.

    (b) The Designated Foreign Affiliate Employees will be permitted to accept and enter orders from clients of the Filer or clients of the Filer's affiliated corporations or subsidiaries during the period from 2:00 a.m. ET to 6:00 a.m. ET.

    (c) The Filer retains all responsibilities for its client accounts.

    (d) The actions of the Designated Foreign Affiliate Employees will be supervised by specific designated supervisors of the Filer (the **Designated Supervisors**), each of whom is qualified to supervise trading in futures contracts, futures contract options and options.

17. The Exemption Sought would apply to Designated Foreign Affiliate Employees who are designated and recorded on a list maintained by the Designated Supervisors, which list would be subject to review by IIROC upon request.

18. The Filer and MLI will enter into a services agreement pursuant to which

    (a) MLI will, among other things, agree to designate members of its staff to serve as Designated Foreign Affiliate Employ-

ees who are properly registered, licensed, certified or authorized in their home jurisdiction and sufficiently skilled and familiar to undertake such trading and front office activity, and further agree that the activities of the Designated Foreign Affiliate Employees permitted under this exemptive relief shall be supervised by the Designated Supervisors of the Filer; and

(b) the Filer will assume all responsibility for the actions of the Designated Foreign Affiliate Employees and of MLI that relate to the Filer's clients regarding this trading on MX, and the Filer will acknowledge that it will be liable under IIROC rules for such actions.

19. All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees.

20. Other than individual registration, all other existing Canadian regulatory requirements would continue to apply to this arrangement, including without limitation:

(a) the Filer's client accounts would continue to be carried on the books of the Filer;

(b) all communications with the Filer's clients will continue to be in the name of the Filer; and

(c) the Filer's client account monies, security and property will continue to be held by the Filer or its approved custodian.

21. The Filer will establish and maintain written policies and procedures that address the performance and supervision requirements relating to MX extended trading hours.

22. The Filer will disclose this extended trading hours arrangement to clients for its MX trading services.

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 so long as:

(a) the Designated Foreign Affiliate and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the Designated Foreign Affiliate is located in a category that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;

(b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or clients of the Filer's affiliated corporations or subsidiaries on behalf of the Filer during the period from 2:00 a.m. ET to 6:00 a.m. ET;

(c) the Filer retains all responsibilities for its client accounts;

(d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;

(e) the Filer and the Designated Foreign Affiliate enter into a services agreement substantially as described in paragraph 18, and such agreement remains in effect; and

(f) the Filer has applied for and obtained from IIROC an exemption from the registered representative requirements that are found in the IIROC Dealer Member Rules, and any other requirements of IIROC that IIROC reasonably determines is applicable to the Firm and the Designated Foreign Affiliate Employees in connection with conducting the Extended Hours Activities (collectively, the **IIROC Relief**) and remains in compliance with the terms and conditions of the IIROC Relief.

"Tim Moseley"
Vice-Chair
Ontario Securities Commission

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

2.2 Orders

2.2.1 Metanor Resources Inc.

Headnote

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

Applicable Legislative Provisions

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

File N°: 21036

October 2, 2018

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

AND

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

AND

IN THE MATTER OF
METANOR RESOURCES INC.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

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

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

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

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, in Regulation 11-102 and, in *Regulation 14-501Q respecting Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

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

Order

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

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

“Martin Latulippe”
Director, Continuous Disclosure

2.2.2 Sierra Madre Developments Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Statutes Cited

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

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

AND

IN THE MATTER OF
SIERRA MADRE DEVELOPMENTS INC.

ORDER
(Section 144 of the Act)

WHEREAS the securities of Sierra Madre Developments Inc. (the **Applicant**) are subject to a cease trade order dated August 12, 2014, issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, and as extended by a further cease trade order issued by the Director on August 25, 2014 pursuant to paragraph 2 of subsection 127(1) of the Act (the **Ontario Cease Trade Order**), directing that all trading in the securities of the Applicant, whether direct or indirect, cease until the Ontario Cease Trade Order is revoked by the Director;

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

AND WHEREAS the Applicant has applied to the Commission under section 144 of the Act for a full revocation of the Ontario Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated on April 30, 2009 under the *Business Corporations Act* (British Columbia).

2. The Applicant's head office is located at 8792 Shook Road, Mission, British Columbia V2V 7N1.

3. The Applicant is a junior mineral exploration company focused on a gold property in British Columbia.

4. The Applicant is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta, and Ontario (the **Reporting Jurisdictions**). The Applicant is not a reporting issuer in any other jurisdiction in Canada. The Applicant's principal regulator is the British Columbia Securities Commission (the **BCSC**).

5. The Applicant's authorized share capital consists of an unlimited number of common shares, without nominal or par value (the **Common Shares**). As of the date hereof, there are 53,980,827 Common Shares issued and outstanding.

6. The Applicant has no other securities, including debt securities, issued and outstanding.

7. The Common Shares were suspended from trading on the TSX Venture Exchange on August 7, 2014. The Common Shares have not been, and are not currently listed on any other exchange or market in Canada or elsewhere.

8. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its annual audited financial statements, the accompanying management's discussion and analysis (**MD&A**) and related certifications of annual filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) for the fiscal year ended March 31, 2014 (the **2014 Annual Filings**).

9. The Applicant is also subject to a cease trade order issued by the BCSC dated August 6, 2014 (the **BC Cease Trade Order**), and a cease trade order issued by the Alberta Securities Commission (the **ASC**) dated November 5, 2014 (the **Alberta Cease Trade Order**) (collectively with the Ontario Cease Trade Order, the **Cease Trade Orders**).

10. The Applicant has concurrently applied to the BCSC for a full revocation of the BC Cease Trade Order; and has concurrently applied to the ASC for a full revocation of the Alberta Cease Trade Order.

11. Subsequent to the issuance of the Ontario Cease Trade Order, the Applicant failed to file in the Reporting Jurisdictions the following continuous disclosure documents within the prescribed time-frame in accordance with the requirements of applicable securities laws:

    (i) all audited annual financial statements, accompanying MD&A and related NI 52-109 certificates for the financial years ended March 31, 2015 to March 31, 2017;

(ii) all unaudited interim financial statements, accompanying MD&A and related NI 52-109 certificates for the interim periods ended June 30, 2014 through December 31, 2017; and

(iii) the statements of executive compensation for the financial years ended March 31, 2014 to March 31, 2017.

12. Since the issuance of the Ontario Cease Trade Order, the Applicant has filed in the Reporting Jurisdictions:

(i) the audited annual financial statements, accompanying MD&A and related NI 52-109 certificates for each of the fiscal years ended March 31, 2017 and 2018; and

(ii) the statements of executive compensation for the financial years ended March 31, 2017 and 2018.

13. The Applicant has not filed (i) audited annual financial statements, accompanying MD&A, and related NI 52-109 certificates for the fiscal years ended March 31, 2014, March 31, 2015 and March 31, 2016; (ii) unaudited interim financial statements, accompanying MD&A, and related NI 52-109 certificates for the interim periods ended June 31, 2014 to December 31, 2017 and (iii) statements of executive compensation for the years ended March 31, 2014 to 2016 (collectively, the **Outstanding Filings**) and has requested the Commission to exercise its discretion in accordance with section 6 of National Policy 12-202 *Revocation of Certain Cease Trade Orders* and elect not to require the Applicant to file the Outstanding Filings.

14. Except for the Outstanding Filings, the Applicant is (i) up-to-date with all of its continuous disclosure obligations; (ii) not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in any of the Reporting Jurisdictions, except for the existence of the Cease Trade Orders and that it has not held its annual general shareholders meeting for 2014, 2015, 2016 and 2017; and (iii) not in default of any of its obligations under the Cease Trade Orders.

15. The Applicant's issuer profile on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and issuer profile supplement on the System for Electronic Disclosure by Insiders (**SEDI**) are current and accurate.

16. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

17. The Applicant is not considering nor is it involved in any discussions related to, a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

18. Since the issuance of the Cease Trade Orders, there have not been any material changes in the business, operations or affairs of the Applicant that have not been disclosed to the public.

19. The Applicant has given the Commission a written undertaking that it will hold an annual meeting of its shareholders within three months after the date on which the Ontario Cease Trade Order is revoked.

20. Upon the issuance of this revocation order and concurrent revocation orders from the ASC and BCSC, the Applicant will issue a news release announcing the revocation of the Cease Trade Orders and concurrently file the news release and a related material change report on SEDAR.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is revoked.

DATED at Toronto, Ontario on this 2nd day of October, 2018.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.3 Citigroup Finance Canada ULC

Headnote

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

Applicable Legislative Provisions

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

October 3, 2018

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

AND

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

AND

IN THE MATTER OF
CITIGROUP FINANCE CANADA ULC
(the "Filer")

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

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

Order

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

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

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.4 Avcorp Industries Inc.

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., ss.127, 144.
National Policy 11-207 Failure to File Cease Trade Orders and Revocations in Multiple Jurisdictions.

Citation: 2018 BCSECCOM 270

REVOCATION ORDER

AVCORP INDUSTRIES INC.

Under the securities legislation of British Columbia and Ontario (the Legislation)

Background

1 Avcorp Industries Inc. (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 April 9, 2018.

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.

7 September 12, 2018

"Allan Lim, CPA, CA"
Manager
Corporate Finance

2.2.5 Jason Michael Currey et al. – ss. 127(1), 127(10)

FILE NO.: 2018-48

IN THE MATTER OF
JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.

D. Grant Vingoe, Vice-Chair and Chair of the Panel

October 3, 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 Jason Michael Currey (**Currey**), The Healthy Retirement Group Inc. (**HRG**), Sunset Creek Resources Inc. (**Sunset**) and 1826487 Alberta Ltd. (**182 Alberta**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the decision of the Alberta Securities Commission (the **ASC**) dated February 27, 2018 with respect to Currey, HRG, Sunset and 182 Alberta, and the Statement of Admissions and Joint Submission on Sanction between Currey, HRG, Sunset, 182 Alberta and ASC Staff dated October 6, 2017 and on reading the materials filed by Staff;

IT IS ORDERED:

1. Against Currey that:

   Until the until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the Alberta Securities Commission's Order dated February 27, 2018 (the **ASC Order**) has been paid in full:

   a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by Currey shall cease, except that this order does not preclude Currey from trading in securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

   b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Currey shall cease, except that this order does not preclude Currey from purchasing securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

   c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Currey;

   d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Currey 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, Currey is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager, except that this order does not preclude Currey from becoming or acting as a director or officer of an issuer that is wholly owned by Currey, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public; and

   f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager, or promoter.

2. against HRG, Sunset and 182 Alberta that:

   until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the ASC Order has been paid in full:

   a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by HRG, Sunset and 182 Alberta shall cease;

   b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by HRG, Sunset and 182 Alberta shall cease;

   c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to HRG, Sunset or 182 Alberta; and

d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, HRG is prohibited from becoming or acting as a registrant or investment fund manager.

"D. Grant Vingoe"

2.2.6 Ecopetrol S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – the Filer cannot avail itself of the simplified procedure under National Policy 11-206 as its securities are not beneficially owned by fewer than 51 securityholders in total worldwide and it is in default of the requirement in National Instrument 52-108 Auditor Oversight that its auditor's report be prepared by a public accounting firm that, as of the date of the auditor's report, is a "participating audit firm" – the Filer has a *de minimis* connection to Canada – in the 12 months before applying for the order, the Filer did not take any steps that indicate there is a market for its securities in Canada – The Filer has no current intention to distribute any securities to the public in Canada – The Filer will remain a reporting company in the United States under the Securities and Exchange Act of 1934 and will concurrently deliver to its Canadian security holders all disclosure the Filer is required under U.S. securities laws to deliver to U.S. resident security holders – the Filer is deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, RSA 2000, c S-4, s. 153.
Securities Act, RSO 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: *Re Ecopetrol S.A.*, 2018 ABASC 144

August 29, 2018

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

AND

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

AND

IN THE MATTER OF
ECOPETROL S.A. (the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the laws of Colombia, with its head office in Bogota, Colombia. The Alberta Securities Commission was selected as principal regulator because the Filer is extra-provincially registered in Alberta.

2. The Filer is an oil company with operations in Peru, Brazil and the U.S. Gulf Coast. It does not have assets or operations in any jurisdiction of Canada and none of its officers or directors are Canadian residents.

3. The Filer is a reporting issuer in the Jurisdictions. The Filer became a reporting issuer upon the listing of its American depository receipts (**ADRs**) on the Toronto Stock Exchange (**TSX**) on August 11, 2010.

Common Shares

4. The authorized share capital of the Filer consists of an unlimited number of common shares, par value COP$609 per share (**Common Shares**). As of September 30, 2017, 41,316,694,690 Common Shares were outstanding, 88.49% of which are beneficially owned or controlled by the Republic of Colombia. The remaining 11.51% (the **Public Float**) are listed for trading only on the Colombian Securities Exchange (**BVC**). The Common Shares comprising the Public Float are held in book-entry form through Depósito Centralizado de Valores de Colombia (**DECEVAL S.A.**).

5. Based on information provided by DECEVAL S.A., as of September 30, 2017, there are 350,413 holders of Common Shares, 29 of whom appear to live in Canada (representing 0.008% of holders of Common Shares worldwide) and hold 15,584,928 Common Shares (representing 0.03% of the Public Float). Of those Canadian holders of Common Shares, four institutional investors hold 98.3% of such Common Shares. DECEVAL S.A.'s shareholder position listings do not identify the residency of the underlying beneficial owners of the Common Shares.

ADRs

6. Each ADR represents 20 Common Shares. As of September 30, 2017, there were 35,827,088 ADRs outstanding, representing 1.74% of the total outstanding Common Shares and 15.14% of the Public Float. The ADRs are listed and posted for trading on the New York Stock Exchange (**NYSE**) under the symbol "EC". The ADRs were not offered to Canadian residents. The ADRs were only cross-listed on the TSX and were delisted from the TSX on March 2, 2016 due to their limited trading activity on such exchange.

7. Ownership of the ADRs is held in book-entry form through JPMorgan Chase Bank, National Association (**JPMorgan**), acting as the depositary bank, which is the sole registered holder of the ADRs. Based on information from JPMorgan, as of September 30, 2017, there were 35 participants holding ADRs worldwide, one of whom is located in Canada (representing 2.86% of holders of ADRs worldwide) and holds 742 ADRs (representing 0.002% of the outstanding ADRs). JPMorgan's participant position listings do not identify the residency of the underlying beneficial owners of the ADRs.

8. Based on the information above, on an aggregate basis, there are 350,448 holders of Common Shares and ADRs worldwide, 30 of whom are located in Canada, who hold 15,501,768 Common Shares and ADRs, representing 0.037% of total number of Common Shares and ADRs.

U.S. Notes

9. As of September 30, 2017, the Filer had the following debt securities outstanding in the U.S.:

(a) U.S.$1.5 billion principal amount of 7.625% notes due July 2019 (the **2019 Notes**);

(b) U.S.$350 million principal amount of 4.250% notes due September 2018 (the **2018 Notes**);

(c) U.S.$1.8 billion principal amount of 5.875% notes due September 2023 (the **2023 Notes**);

(d) U.S.$850 million principal amount of 7.375% notes due September 2043 (the **2043 Notes**);

(e) U.S.$2.0 billion principal amount of 5.875% notes due May 2045 (the **2045 Notes**);

(f) U.S.$1.2 billion principal amount of 4.125% notes due January 2025 (the **2025 Notes**); and

(g) U.S.$1.5 billion principal amount of 5.375% notes due June 2026 (the **2026 Notes**)

(collectively, the **U.S. Notes**).

10. The 2018 U.S. Notes, 2023 U.S. Notes, 2043 U.S. Notes, 2045 U.S. Notes, 2025 U.S. Notes and 2026 U.S. Notes were issued in a registered public offering in the U.S. under the 1933 Act. The 2019 U.S. Notes were sold in the United States in a private placement under Rule 144A and Regulation S of the 1933 Act and subsequently registered. The 2045 U.S. Notes and the 2025 U.S. Notes were also offered in Canada in Alberta, British Columbia, Manitoba, Ontario and Québec pursuant to Canadian offering memoranda dated, respectively, May 20, 2014 and September 9, 2014. No U.S. Notes were distributed in any jurisdiction of Canada pursuant to either of these offering memoranda.

11. Ownership of the U.S. Notes is held in book-entry form through Cede & Co., as nominee for The Depositary Trust Company (**DTC**), which is the sole registered holder of the U.S. Notes. Based on information provided by DTC, as of September 26, 2017, participants with a Canadian reporting address hold as follows:

(a) 0.0063% of the principal amount of the 2019 Notes, representing 3.57% of the total participant holders of 2019 Notes;

(b) 0.25% of the principal amount of the 2018 Notes, representing 1.92% of the total participant holders of 2018 Notes;

(c) 0.13% of the principal amount of the 2023 Notes, representing 5.19% of the total participant holders of 2023 Notes;

(d) 0.33% of the principal amount of the 2043 Notes, representing 3.57% of the total participant holders of 2043 Notes;

(e) 0.055% of the principal amount of the 2045 Notes, representing 4.23% of the total participant holders of 2045 Notes;

(f) 0.31% of the principal amount of the 2025 Notes, representing 2.94% of the total participant holders of 2025 Notes; and

(g) 0.12% of the principal amount of the 2026 Notes, representing 2.82% of the total participant holders of 2026 Notes.

12. The DTC participant position listings do not identify the residency of the underlying beneficial owners of the U.S. Notes.

13. Distribution of the U.S. Notes occurred prior to the date on which the Filer became a reporting issuer in the Jurisdictions.

Colombian Notes

14. As of September 30, 2017, the Filer had the following debt securities outstanding in Colombia:

(a) COP $138.7 billion principal amount of floating rate notes due December 2017;

(b) COP$479.9 billion principal amount of floating rate notes due December 2020;

(c) COP$284.3 billion principal amount of floating rate notes due December 2040;

(d) COP$120.95 billion principal amount of floating rate notes due August 2018;

(e) COP$168.6 billion principal amount of floating rate notes due August 2023;

(f) COP$347.5 billion principal amount of floating rate notes due August 2028; and

(g) COP$262.95 billion principal amount of floating rate notes due August 2043

(collectively, the **Floating Rate Notes**).

15. The Colombian Floating Rate Notes were distributed only in Colombia by way of Dutch auctions led by the BVC. Ownership of the Floating Rate Notes is held in book-entry form through DECEVAL S.A., which is the sole registered holder of the Floating Rate Notes. Based on information provided by DECEVAL S.A., none of the holders of any of the Floating Rate Notes live in Canada. DECEVAL S.A.'s shareholder position listings do not identify the residency of the underlying beneficial owners of the Floating Rate Notes.

16. DECEVAL S.A. is the only official source of information the Filer can use to obtain information regarding the ownership of its Common Shares and Colombian Notes.

General

17. Based on the information above, there are 351,468 security holders of the Filer worldwide, 46

of whom are located in Canada, representing 0.013% of the total security holders of the Filer.

18. Based on the information above, residents of Canada do not:

    (a) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide; and

    (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.

19. The Filer is subject to and is in compliance with all requirements applicable to it imposed by the SEC, the 1933 Act, the1934 Act, the *Sarbanes-Oxley Act of 2002* (United States) and the rules of the NYSE (collectively, the **U.S. Rules**).

20. The Filer qualifies as an "SEC foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and as such, relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.

21. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada.

22. In the 12 months before applying for this order, the Filer has not taken any steps that indicate there is a market for its securities in Canada, including conducting a prospectus offering in Canada, establishing or maintaining a listing on an exchange in Canada or having its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported.

23. The Filer provided advance notice to Canadian resident securityholders in a news release that it has applied for an order to cease to be a reporting issuer in the Jurisdictions and, if the Order Sought is granted, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

24. The Filer will concurrently deliver to its Canadian securityholders all disclosure it would be required to deliver to U.S. resident securityholders under the U.S. Rules.

25. The Filer is not in default of securities legislation in any jurisdiction of Canada, except for the requirement in subsection 4(a) of National Instrument 52-108 *Auditor Oversight* (**NI 52-108**) that its auditor's report is prepared by a public accounting firm that, as of the date of the auditor's report, is a "participating audit firm", as defined therein. The financial statements of the Filer for: (i) the fiscal year ended December 31, 2016; and (ii) the fiscal year ended December 31, 2017 were accompanied by an auditor's report prepared by Ernst & Young Audit S.A.S., which is not a participating audit firm as defined in NI 52-108, as it has not entered into a participation agreement (as defined in NI 52-108) with the Canadian Public Accountability Board.

Decision

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

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

“Timothy Robson”
Manager, Legal, Corporate Finance
Alberta Securities Commission

2.2.7 Maria Psihopedas – s. 8

FILE NO.: 2018-18

IN THE MATTER OF
MARIA PSIHOPEDAS

Robert P. Hutchison, Commissioner and Chair of the Panel

October 5, 2018

ORDER
(Section 8 of the
Securities Act, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission (the **Commission**) received a request to vacate the hearing dates for this proceeding, previously set by order of the Commission dated September 14, 2018;

ON READING correspondence indicating the consent of Staff of the Commission and the Applicant;

IT IS ORDERED THAT:

1. the hearing dates scheduled for October 16 and 17, 2018 are hereby vacated; and

2. this Order is without prejudice to the right of any party to this Application to request hearing dates or attendances before the Commission.

“Robert P. Hutchison”

2.3 Orders with Related Settlement Agreements

2.3.1 Omega Securities Inc. – s. 127(1)

FILE NO.: 2017-66

IN THE MATTER OF
OMEGA SECURITIES INC.

Mark J. Sandler, Commissioner and Chair of the Panel
AnneMarie Ryan, Commissioner

October 4, 2018

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

WHEREAS on October 4, 2018, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider an application made jointly by Omega Securities Inc. (**OSI**) and staff of the Commission (**Staff**) for approval of a settlement agreement dated September 21, 2018 (the **Settlement Agreement**);

ON READING the Settlement Hearing Brief, including the Statement of Allegations dated November 16, 2017, the Settlement Agreement and the Consents of the parties, and on hearing the submissions of the respresentatives for OSI and Staff;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. pursuant to paragraph 1 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the following terms and conditions are imposed on OSI's registration:

   (a) OSI shall continue to ensure that:

      (i) the broker IDs of counterparties to a trade are recorded accurately;

      (ii) timestamps pertaining to the "time of order receipt" and the "time of the trade" are disseminated in accordance with Part 7 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), and if transmission times are disseminated, they are disseminated in addition to the aforementioned timestamps and identified as such; and

      (iii) the MRF Feed is providing the Investment Industry Regulatory Organization of Canada (**IIROC**) with accurate timestamps of order receipt and execution of trades;

   (b) OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the MRF Patch, on a quarterly basis for a 12-month period following December 11, 2017, and provide these reports to Staff and IIROC, if IIROC so requests;

   (c) OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the upgrade to the ITCH 5.0 protocol on a quarterly basis for the four quarters ending after June 8, 2018, and provide these reports to Staff and IIROC, if IIROC so requests; and

   (d) OSI shall maintain policies and procedures designed to ensure, on an ongoing and consistent basis, that mechanisms are in place that are designed to ensure that OSI's systems and their operations are compliant with NI 21-101;

3. pursuant to paragraph 9 of subsection 127(1) of the Act, OSI pay to the Commission an administrative penalty in the amount of $500,000, which shall be designated for allocation or for use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and

4. the hearing date for the Second Attendance of October 4, 2018 is vacated.

“Mark J. Sandler”

“AnneMarie Ryan”

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

AND

IN THE MATTER OF
OMEGA SECURITIES INC.

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
OMEGA SECURITIES INC.

PART I – INTRODUCTION

A. Regulatory Message

1. Accurate and timely collection and dissemination of information by marketplaces is critical to the integrity of Ontario's capital markets and investor confidence. The information disseminated by marketplaces forms the basis of trading decisions and inaccuracies may impact market and execution quality and market integrity. In addition, the dissemination of inaccurate market data could result in advantage to some investors and disproportionately disadvantage other investors. Accurate and timely information also assists regulators in discharging their enforcement and regulatory mandates.

2. In this matter, Staff of the Ontario Securities Commission ("**Staff**") identified deficiencies with the systems of Omega Securities Inc. ("**OSI**"). OSI is a registrant operating two Alternative Trading Systems ("**Omega ATS**" and "**Lynx ATS**") and was disseminating inaccurate information with respect to the identities of buy and sell brokers for certain transactions, the time of receipt of certain orders, and the time of execution of certain trades. In addition, the number of messages disseminated across OSI's data feeds did not always match.

3. The existence of these deficiencies had the potential to strike at the heart of the integrity and efficient operation of Ontario's capital markets. Staff considered that, because of the material nature of these deficiencies, and the need to ensure that any changes to address them were fully tested by OSI and its participants, it would have taken OSI a significant amount of time to ensure that its systems were in full compliance with Ontario securities laws.

4. With inaccurate information continuing to be publicly disseminated, Staff's view was that it could not allow such serious deficiencies to continue without immediate and public regulatory action.

B. Staff's Application for a Temporary Order

5. In certain respects, OSI cooperated with Staff's investigation by responding to requests for documents and attending interviews to provide information on a voluntary basis. Nonetheless, in Staff's view, in the nearly-one-year period leading up to Staff's application for a temporary order OSI failed to conduct itself in a manner expected of a market participant, including by:

(i) inadequately responding to the requests for information made to OSI related to concerns raised by Staff with OSI;

(ii) inadequately addressing the problems with its collection and dissemination of marketplace information;

(iii) leaving it to Staff to piece together the serious deficiencies with OSI's systems – a task that OSI as a market participant should have discovered and fixed on its own; and, moreover,

(iv) having had the serious deficiencies noted to it by Staff, OSI failed to correct the deficiencies in a timely manner.

6. On November 13, 2017, Staff commenced an application before the Commission seeking a temporary order suspending the registration of OSI and that trading in any securities by OSI cease until the conclusion of a hearing on the merits.

7. Staff alleged that Omega ATS and Lynx ATS may have failed to comply with National Instrument 21-101 in four respects:

(i) Inaccurate identification of brokers participating in mid-point peg transactions;

(ii) Time stamp deficiencies;

(iii) Content discrepancies across OSI's data feeds; and

(iv) Dissemination of data to certain subscribers prior to TMX Information Processor.

8. On November 14, 2017, Staff also published OSC Staff Notice 23-706, advising that "marketplaces and marketplace participants may consider declaring 'self-help'" under Part 6 of NI 23-101 (the "**Self-Help Notice**").

9. The hearing was held on November 17, 20, and 21, 2017. On November 23, 2017, the Commission declined to suspend OSI's registration but did issue a temporary order (the "**Temporary Order**") imposing the following terms and conditions on OSI's registration (pursuant to subsection 127(5) and paragraph 1 of subsection 127(1) of the Act):

(i) OSI shall forthwith provide notice on its website and to its subscribers in writing that the time of execution of trades disseminated pursuant to its ITCH protocol may differ, at the millisecond level, from the time internally recorded by OSI in its matching engine for the execution of these trades;

(ii) OSI shall upgrade from the ITCH 3.0 protocol to the ITCH 5.0 protocol as expeditiously as possible, in compliance with existing regulatory requirements;

(iii) OSI shall report, on a monthly basis, in writing, to Staff of the Commission and to IIROC, if IIROC so requests, on the ongoing steps taken by OSI to upgrade to the ITCH 5.0 protocol;

(iv) OSI shall implement a MRF Feed patch as expeditiously as possible, in compliance with existing regulatory requirements, including IIROC approvals or certification;

(v) OSI shall forthwith notify its subscribers that after seven days, all order acknowledgement messages sent pursuant to its FIX Feed will be sent at the millisecond level, except to such subscribers which notify OSI in writing within seven days that they choose not to receive such acknowledgements to the millisecond level;

(vi) OSI shall comply with the terms of the notification referred to in paragraph (v), above, and provide a written report to Staff of the Commission within 14 days and to IIROC, if requested by IIROC, outlining steps taken to so comply; and

(vii) OSI shall retain, within 14 days or such later time period as approved by Staff of the Commission, at its own expense, the services of an independent systems reviewer or reviewers that are approved by Staff of the Commission to provide reporting to OSI and Staff of the Commission and to IIROC, if IIROC so requests, regarding the effectiveness of the MRF Feed patch and the ITCH 5.0 protocol, on a quarterly basis for a 12 month period, after each respectively, is implemented (the "**Independent Systems Reviewer**").

10. Staff of the Commission and OSI agree that, up to the date of this Settlement Agreement, OSI has fully complied with the terms of the Temporary Order.

PART II – JOINT SETTLEMENT RECOMMENDATION

11. The parties shall jointly file a request that the Ontario Securities Commission (the "**Commission**") issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), it is in the public interest for the Commission to make certain orders against OSI in respect of the conduct described herein.

12. Staff recommend settlement of the proceeding commenced by the Notice of Hearing dated November 16, 2017, (the "**Proceeding**") against OSI according to the terms and conditions set out in Part VI of this Settlement Agreement (the "**Settlement Agreement**"). OSI consents to the making of an order in the form attached as Schedule "A" (the "**Order**"), based on the facts set out below.

13. For the purposes of this Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, OSI agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

A. Overview & Regulatory Framework

14. The establishment and operations of ATSs are governed by the regulatory framework set out in the Act as well as National Instrument 21-101 ("**NI 21-101**") and its related companion policies (collectively, the "**Marketplace Rules**").

15. The transparency requirements for marketplaces set out in Part 7 of NI 21-101 are a critical component of the regulatory framework and support fair and efficient markets and confidence in those markets. They are also critical to support the regulator's ability to monitor markets and monitor compliance with regulatory requirements.

16. These transparency requirements require that marketplaces (including those operated by OSI) disseminate accurate and timely information relating to orders and trades to an information processor.

17. As a result of an upgrade to OSI's systems in July 2013, OSI began to disseminate inaccurate information with respect to the identities of buy and sell brokers for certain transactions. Since 2012, OSI has also disseminated inaccurate information with respect to the time of receipt of certain orders, the time of execution of certain trades, and the number of messages disseminated across OSI's data feeds.

B. Background

18. As noted above, OSI is a registrant operating two Alternative Trading Systems in Ontario: Omega ATS and Lynx ATS.

19. Omega ATS began operations on or about December 6, 2007. Lynx ATS began operations on or about February 3, 2014.

20. OSI's regulation services provider is the Investment Industry Regulatory Organization of Canada ("**IIROC**").

C. OSI's Trading Platform

21. While the Marketplace Rules set out requirements for ATSs, including information transparency requirements, they do not dictate how an ATS implements these requirements. ATSs determine the appropriate measures they will implement in order to meet the requirements of the Marketplace Rules, including the marketplace software and computer hardware they choose to implement (commonly referred to as their "**Trading Platform**").

22. The Trading Platform implemented by OSI to operate Omega ATS and Lynx ATS functions as follows:

(i) An OSI subscriber sends an order instruction *(e.g.* a buy order);

(ii) This instruction passes through the primary gateway at OSI by placing the message in a queue to be submitted to the "Matching Engine", which is a software program designed to match orders between buyers and sellers;

(iii) The Matching Engine then submits this information to other OSI processes in preparation for dissemination;

(iv) OSI disseminates the information (*i.e.* messages) regarding trading activity (including orders and executions) that takes place on Omega ATS and Lynx ATS to multiple third parties using three data feeds:

(a) The "**ITCH Process**," which is used to disseminate data on the "**ITCH Feed**" to OSI's information processor ("**TMX IP**") and direct purchasers of OSI's data;

(b) The market regulation feed process ("**MRF Process**,") which is used to disseminate data on the "**MRF Feed**" to IIROC; and

(c) The participant-facing processes used to disseminate data on the "**FIX Feed**" in real time to the following three destinations, with a copy to OSI's own history database of all trade executions:

(A) FIX 4.2 execution messages sent back to the trade execution system of the party who placed the order;

(B) FIX 4.2 "drop copies", which certain OSI users request primarily to be able to maintain intra-day "state" on their own outstanding orders and trade executions; and

(C) the CDS file, the cumulative file of which is sent to CDS at end-of-day as the definitive record of all OSI trade executions for a trading day.

D. Inaccurate Identification of Brokers Participating in Mid-Point Peg Transactions

23. Omega ATS and Lynx ATS failed to comply with the Marketplace Rules and the Act by providing inaccurate identification of brokers participating in approximately 65,000 mid-point peg transactions.

24. To meet Canadian regulatory requirements, subsection 7.2(1) of NI 21-101 requires a marketplace to provide "accurate and timely information regarding trades … to an information processor", which includes properly identifying the buyer and seller broker IDs that were part of an execution.

25. In July 2013, OSI introduced a new order type that would allow investors to place mid-point peg orders on Omega ATS and Lynx ATS.

26. From July 2013 to June 2016, OSI's Trading Platform altered the data identifying the actual buyer and seller brokers for over 65,000 mid-point peg transactions on Omega ATS and Lynx ATS publicly disseminated by OSI via the ITCH Feed. In particular, OSI reversed the buyer broker ID and the seller broker ID for mid-point peg transactions when the buyer was "active" (i.e. meaning the buyer's order was matched with a previously entered or "passive" sell order).

27. This incorrect information was disseminated to TMX IP via OSI's ITCH Feed contrary to Part 7 of NI 21-101.

28. On May 26, 2016, a market participant complained to IIROC about a dealer identification error on a mid-point peg trade. IIROC notified OSI and Staff, who contacted OSI.

29. OSI corrected its systems in June 2016, with IIROC certification, and reported to IIROC and Market Regulation while doing so. Since that time, messages regarding mid-point peg transactions disseminated by OSI for Omega ATS and Lynx ATS using the ITCH feed have reflected the accurate and proper buyer and seller brokers IDs.

30. In discussions with Staff, OSI acknowledged that the company was aware of the reversal of broker IDs but believed that doing so was industry standard, to avoid excessive information leakage for large "hidden" orders. OSI admitted they had misinterpreted the way that the industry handled mid-point peg transactions.

E. Time Stamp Deficiencies and Other Discrepancies

31. OSI's Trading Platform resulted in four types of time stamp deficiencies and other discrepancies:

(a) Time stamp deficiencies for unmatched orders;

(b) Time stamp deficiencies for matched orders (i.e. executed trades);

(c) Time stamp discrepancies for identical events on different feeds; and

(d) Content discrepancies across OSI's data feeds.

(a) Time stamp deficiencies for unmatched orders

32. Subsection 7.1(1) of NI 21-101 requires marketplaces to provide "accurate and timely information regarding orders" to the information processor. Subsection 9.1(2) of the Companion Policy to NI 21-101 indicates that the information to be provided to the information processor "should contain all relevant information including details as to … time of the order ...".

33. When a buy or sell order is received by OSI's systems, a "time of order receipt" is assigned to that order. However, prior to June 8, 2018, that "time of order receipt" was not sent through OSI's ITCH Feed to TMX IP but was instead replaced with a time label that reflected the "time of transmission". Consequently, messages disseminated by OSI on the ITCH Feed included the "time of transmission" and not the "time of order receipt". Prior to December 11, 2017, this was also the case with respect to the MRF Process.

34. In compliance with the terms of the Temporary Order, on December 11, 2017, OSI implemented an MRF Feed patch, such that the "time of order receipt" is currently being disseminated accurately on the MRF Feed. The process was certified by IIROC.

35. Also in compliance with the terms of the Temporary Order, on June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that the "time of the order receipt" is currently being disseminated accurately on the ITCH Feed.

(b) Time stamp deficiencies for executed trades

36. Subsection 7.2(1) of NI 21-101 requires marketplaces to provide "accurate and timely information regarding trades" to the information processor. Subsection 9.1(2) of the Companion Policy to NI 21-101 indicates that the information to be provided to the information processor "should contain all relevant information including details as to … time of the … trade ...".

37. When a buy order is matched with a sell order on OSI's marketplaces, the resulting "trade execution message" is time-stamped by OSI's Matching Engine with the "time of the trade" as recorded in the Matching Engine. However, prior to June 8, 2018, that "time of the trade" was not sent through OSI's ITCH Feed to TMX IP but was instead replaced with a time label that reflected the "time of transmission". Consequently, messages disseminated by OSI on the ITCH Feed included the "time of transmission" and not the "time of the trade." Prior to December 11, 2017, this was also the case with respect to the MRF Process.

38. In compliance with the terms of the Temporary Order, on December 11, 2017, OSI implemented an MRF Feed patch, such that the "time of the trade" is currently being disseminated accurately on the MRF Feed. The process was certified by IIROC.

39. Also in compliance with the terms of the Temporary Order, on June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that the "time of the trade" is currently being disseminated accurately on the ITCH Feed.

(c) Time stamp discrepancies for identical events on different feeds.

40. The internal clocks for OSI's ITCH Feed and the MRF Feed were, at times, desynchronized, such that the "time of transmission" was not always the same for the two feeds. As a result, the "time labels" assigned to orders and trades not only did not accurately reflect the "time of order receipt" or "time of the trade," but were not the same across multiple feeds.

41. Staff's investigation found that in almost all cases, the time stamp discrepancies were within one to two milliseconds. In a number of instances, during periods of exceptional market conditions or when Omega was experiencing technical difficulties, the variance between the time stamps across the feeds exceeded 50 milliseconds.

42. As a result of the MRF Patch, which was implemented on December 11, 2017, and OSI's upgrade of the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, which was completed on June 8, 2018, any variance between time stamps on the ITCH and MRF Feeds is expected to have been eliminated.

(d) Content discrepancies across OSI's data feeds

43. OSI disseminates the ITCH Feed of Omega ATS from two different computer ports: "Port 4005" and "Port 4006".

44. From June 2013 through to June 2016, on certain trading days, the number of messages (i.e. orders and transactions) disseminated via Port 4005 differed from the number of messages disseminated via Port 4006. As a result, market participants accessing the ITCH Feed from the port that did not include certain messages did not receive full information about trading activity on Omega ATS.

45. Also on certain trading days the number of transactions disseminated on the MRF Feed was either higher or lower than the number of transactions disseminated on either Port 4005 or 4006. As a result, on some of those trading days, IIROC was not provided with copies of all messages transmitted to market participants.

46. The highest content discrepancies appear to have occurred on dates on which Omega experienced known market data or internal connectivity issues.

PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW

47. By engaging in the conduct described above, OSI admits and acknowledges that it has breached Ontario securities law. In particular:

(i) OSI disseminated inaccurate post-trade information relating to mid-point peg transactions executed on Omega ATS and Lynx ATS, in breach of subsection 7.2(1) of NI 21-101;

(ii) OSI disseminated inaccurate pre-trade information relating to orders for exchange-traded securities displayed by Omega ATS and Lynx ATS to the information processor, in breach of subsection 7.1(1) of NI 21-101; and

(iii) OSI disseminated inaccurate post-trade information relating to trades for exchange-traded securities executed on Omega ATS and Lynx ATS to the information processor, in breach of subsection 7.2(1) of NI 21-101.

48. OSI agrees that it is in the public interest for the Commission to make an order on the terms set out in Part VI below, to ensure the resolution of the identified deficiencies in the OSI Trading Platform in a manner that instills greater confidence in the accuracy of information recorded and disseminated by OSI and to reinforce the importance of transparency and accuracy of market data.

PART V – OSI'S POSITION

49. OSI requests that the Panel at the Settlement Hearing consider the following mitigating circumstances:

(i) OSI immediately took steps to begin to address the technical issues identified in Staff's application for a temporary order, and proposed fixes to each of them at the temporary order hearing, which formed the basis for the terms imposed in the Temporary Order.

(ii) Since Staff made OSI aware of potential content discrepancies in November 2017, OSI has been conducting daily comparisons of the content disseminated on the different market data ports, and has observed no discrepancies between the feeds on any trading day.

(iii) OSI has complied with all terms of the Temporary Order, and in particular:

a. On November 24, 2017, OSI provided notice on its website and to its subscribers in writing that the time of trades disseminated on its ITCH Feed could on occasion differ, at the millisecond level, from the time internally recorded by OSI in its Matching Engine for execution of these trades;

b. On November 27, 2017, OSI notified all of its subscribers that after seven days, all order acknowledgment messages sent by its gateways would be sent at the millisecond level. Since December 1, 2017, OSI's Trading Platform has recorded the time that all incoming messages are first received by OSI to the millisecond level. OSI provided a written report of this change to OSC Staff and to IIROC;

c. On December 11, 2017, OSI implemented an MRF Feed patch such that the correct matching engine time stamp is being disseminated on the MRF Feed;

d. On June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that the correct "time of the order" and "time of the trade" are being disseminated on the ITCH Feed; and

e. OSI has engaged E&Y to provide a quarterly review of all data feeds, and determined the scope and format of this testing, in cooperation with IIROC and OSC's Market Regulation branch.

(iv) OSI did not profit from or avoid any losses as a result of the impugned conduct;

(v) With regard to paragraph 33, in almost all cases, except when there was heavy message traffic in OSI's environment, the "time of transmission" was the same as or within one to two milliseconds of the "time of order receipt";

(vi) With regard to paragraph 37, in almost all cases, except when there was heavy message traffic in OSI's environment, the "time of transmission" was the same as or within one to two milliseconds of the "time of the trade"; and

(vii) The Temporary Order proceedings and the issuance of the Self-Help Notice have already had a detrimental impact on OSI. In particular:

a. During the 10 day period from Staff's issuance of the Self-Help Notice to the Commission's issuance of the Temporary Order, OSI's trading volumes dropped over 96%, and commission revenues fell accordingly. As of the date of this Settlement Agreement, OSI's market share has just recently returned to its approximate levels prior to the commencement of these enforcement proceedings;

b. OSI has suffered harm to its business and reputation as a result of the Temporary Order proceedings and of the Self-Help Notice;

c. OSI incurred significant legal costs in responding to Staff's application for a temporary order; and

d. OSI has incurred significant costs to comply with the Temporary Order, including the following:

i. OSI has incurred additional costs to complete the migration to the ITCH 5.0 protocol on an accelerated timeline; and

ii. The Temporary Order required OSI to retain an independent systems reviewer to provide written reporting on the effectiveness of the MRF Feed patch and the ITCH 5.0 protocol.

PART VI – TERMS OF SETTLEMENT

50. OSI agrees to the terms of settlement set forth below and agrees that an Order approving the Settlement Agreement and imposing the terms and conditions below on OSI's registration would be in the public interest.

51. OSI consents to the Order, pursuant to which it is ordered that:

(a) The Settlement Agreement is approved;

(b) Pursuant to paragraph 1 of subsection 127(1) of the Act, the following terms and conditions be imposed on OSI's registration:

a. OSI shall continue to ensure that:

i. The broker IDs of counterparties to a trade are recorded accurately;

ii. Timestamps pertaining to the "time of order receipt" and the "time of the trade" are disseminated in accordance with Part 7 of NI 21-101, and if transmission times are disseminated, they are disseminated in addition to the aforementioned timestamps and identified as such;

iii. The MRF Feed is providing IIROC with accurate timestamps of order receipt and execution of trades;

b. OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the MRF Patch, on a quarterly basis for a 12 month period following December 11, 2017, and provide these reports to Staff and IIROC, if IIROC so requests.

c. OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the upgrade to the ITCH 5.0 protocol on a quarterly basis for the four quarters ending after June 8, 2018, and provide these reports to Staff and IIROC, if IIROC so requests.

d. OSI shall maintain policies and procedures designed to ensure, on an ongoing and consistent basis, that mechanisms are in place that are designed to ensure that OSI's systems and their operations are compliant with NI 21-101; and

(c) Pursuant to paragraph 9 of section 127(1) of the Act, OSI shall pay to the Commission an administrative penalty in the amount of $500,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

52. OSI will make the payment specified in paragraph 51(c), above, by bank draft prior to the issuance of any Commission order approving this Settlement Agreement.

53. OSI undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the terms and conditions set out in subparagraphs 51(b)(a) and 51(b)(d), above. These terms and conditions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

54. OSI acknowledges that this Settlement Agreement and proposed Order may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to OSI. OSI should contact the securities regulator of any other jurisdiction in which it may intend to engage in any securities related activities, prior to undertaking such activities.

PART VII – FURTHER PROCEEDINGS

55. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against OSI under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless OSI fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law

against OSI that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

56. OSI acknowledges that, if the Commission approves this Settlement Agreement and the OSI fails to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

57. OSI waives any defences to a proceeding referenced paragraphs 55 and 56, above, that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

58. The parties will seek approval of this Settlement Agreement at a public hearing (the "**Settlement Hearing**") before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2017), 40 OSCB 8981.

59. OSI's senior management will attend the Settlement Hearing in person.

60. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

61. If the Commission approves this Settlement Agreement:

(a) OSI irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

62. Whether or not the Commission approves this Settlement Agreement, OSI will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

63. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

(a) This Settlement Agreement and all discussions and negotiations between Staff and OSI before the settlement hearing takes place will be without prejudice to Staff and OSI; and

(b) Staff and OSI will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

64. All parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement, subject to the parties' need to make submissions for purposes of the public hearing.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

65. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

66. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 19th day of September, 2018.

"Sean Debotte"
Omega Securities Inc.
Per: Sean Debotte
I am authorized to bind the corporation

"Raymond Tung"
Raymond Tung
Witness

Dated at Toronto this 21st day of September , 2018.

"Jeff Kehoe"
Jeff Kehoe
Director, Enforcement Branch of the Ontario Securities Commission

Schedule "A"

IN THE MATTER OF
OMEGA SECURITIES INC.

[Name(s) of Commissioners comprising the Panel]

Date

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

WHEREAS:

1. On [date], the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing (the "**Notice of Hearing**") in relation to the Statement of Allegations filed by Staff of the Commission ("**Staff**") on November 16, 2017, with respect to Omega Securities Inc. ("**OSI**");

2. The Notice of Hearing gave notice that on October 4, 2018, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between the Respondent and Staff dated [date] (the "**Settlement Agreement**");

3. OSI acknowledges that the Settlement Agreement and this Order may form the basis for orders of parallel effect in other jurisdictions in Canada;

4. The Commission has reviewed the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations and heard submissions from counsel for the OSI and Staff; and

6. The Commission is of the opinion that it is in the public interest to make this Order.

ON READING the Settlement Agreement, the Notice of Hearing, the Statement of Allegations of Staff dated November 16, 2017, and hearing submissions from Staff and from counsel for OSI;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved, pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

2. Pursuant to paragraph 1 of subsection 127(1) of the Act, the following terms and conditions are imposed on OSI's registration:

   (a) OSI shall continue to ensure that:

      (i) The broker IDs of counterparties to a trade are recorded accurately;

      (ii) Timestamps pertaining to the "time of order receipt" and the "time of the trade" are disseminated in accordance with Part 7 of NI 21-101, and if transmission times are disseminated, they are disseminated in addition to the aforementioned timestamps and identified as such;

      (iii) The MRF Feed is providing IIROC with accurate timestamps of order receipt and execution of trades;

   (b) OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the MRF Patch, on a quarterly basis for a 12 month period following December 11, 2017, and provide these reports to Staff and IIROC, if IIROC so requests.

   (c) OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the upgrade to the ITCH 5.0 protocol on a quarterly basis for the four quarters ending after June 8, 2018, and provide these reports to Staff and IIROC, if IIROC so requests.

   (d) OSI shall maintain policies and procedures designed to ensure, on an ongoing and consistent basis, that mechanisms are in place that are designed to ensure that OSI's systems and their operations are compliant with NI 21-101.

3. Pursuant to paragraph 9 of section 127(1) of the Act, OSI pay to the Commission an administrative penalty in the amount of $500,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED at Toronto, this 4th day of October, 2018.

_____

2.4 Rulings

2.4.1 Merrill Lynch Canada Inc. – s. 38(1) of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement in section 22 of the CFA to allow the Filer, an investment dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC), to use employees of a Designated Foreign Affiliate of the Filer for After-Hours Trading in commodity futures contracts and commodity futures options on the Bourse de Montréal Inc. – Relief granted, subject to terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22(1), 38(1).

October 5, 2018

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

AND

IN THE MATTER OF
MERRILL LYNCH CANADA INC.
(the Filer)

RULING
(Subsection 38(1) of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to subsection 38(1) of the CFA, that the Designated Foreign Affiliate Employees (as defined below) of the Filer are not subject to the dealer registration requirement in the CFA when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), subject to the terms and conditions set out below (the **Exemption Sought**).

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

(i) **"dealer registration requirement in the CFA"** means the provisions of section 22 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 22(1)(a) of the CFA;

(ii) **"Exchange-Traded Future"** means a commodity futures contract or a commodity futures option as those terms are defined in subsection 1(1) of the CFA; and

(iii) terms used in this Decision that are defined in the OSA, and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Filer having represented to the Commission and the Director as follows:

The Filer

1. The Filer is a corporation formed under the laws of Canada. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment dealer under the securities legislation of all the jurisdictions of Canada except Nunavut; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a dealer under the derivatives legislation of Québec.

3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the MX and a participating organization of the Toronto Stock Exchange.

4. The Filer is not in default of securities or commodity futures legislation in any jurisdiction of Canada.

5. Merrill Lynch International (**MLI** or the **Designated Foreign Affiliate**) is a private unlimited company incorporated in England and Wales. The head office of MLI is located in London, England.

6. The Filer and MLI are each a wholly-owned indirect subsidiary of Bank of America Corporation.

7. MLI is a United Kingdom-based broker dealer in securities and dealer in equity derivatives. MLI is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority.

8. MLI holds memberships and/or has third-party clearing relationships with commodity and financial futures exchanges and clearing associations, including the London Stock Exchange. It also carries positions reflecting trades executed on other exchanges through affiliates and/or third-party clearing brokers.

The MX Extended Trading Hours Amendments

9. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.

10. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's trading hours. As a result of these amendments, it is anticipated that, commencing October 9, 2018, trading of certain products on the MX will commence at 2:00 a.m. Eastern Time (**ET**) rather than the current 6:00 a.m. ET.

11. As set out in MX Circular 111-18, in order to accommodate this earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or clients of the MX participant's affiliated corporations or subsidiaries.

Application of the dealer registration requirement in the CFA to Designated Foreign Affiliate Employees

12. The Filer is an MX approved participant and MLI is an affiliated corporation. The Filer wishes to make use of certain designated employees of MLI (the **Designated Foreign Affiliate Employees**) to handle trading requests on the MX from the Filer's clients and clients of the Filer's affiliated corporations or subsidiaries during the MX's extended trading hours from 2:00 a.m. ET to 6:00 a.m. ET each day on which the MX is open for trading (the **Extended Hours Activities**).

13. The dealer registration requirement in the CFA requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the employees of MLI who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.

14. The Filer seeks an exemption from the dealer registration requirement in the CFA because, in the absence of such exemption, each employee of MLI who was to trade on behalf of the Filer would be required to become individually registered and licensed in Canada. The Filer believes this would be duplicative since the Designated Foreign Affiliate Employees are certified under applicable United Kingdom law, would be supervised by the Filer's designated supervisors and would otherwise be subject to the conditions set forth below. The Filer believes this would be unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees would be conducting on behalf of the Filer, namely only handling client orders, and only during the period from 2:00 a.m. ET to 6:00 a.m. ET.

15. The Filer has also applied to IIROC for an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2(a) and 18.2(c) and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3.

16. The Filer anticipates that the IIROC Relief, if granted, will be subject to certain conditions, including:

    (a) The Designated Foreign Affiliate Employees must be certified under the applicable laws of the United Kingdom in a category that permits trading the types of products which they will be trading on the MX.

    (b) The Designated Foreign Affiliate Employees will be permitted to accept and enter orders from clients of the Filer or clients of the Filer's affiliated corporations or subsidiaries during the period from 2:00 a.m. ET to 6:00 a.m. ET.

(c) The Filer retains all responsibilities for its client accounts.

(d) The actions of the Designated Foreign Affiliate Employees will be supervised by specific designated supervisors of the Filer (the **Designated Supervisors**), each of whom is qualified to supervise trading in futures contracts, futures contract options and options.

17. The Exemption Sought would apply to Designated Foreign Affiliate Employees who are designated and recorded on a list maintained by the Designated Supervisors, which list would be subject to review by IIROC upon request.

18. The Filer and MLI will enter into a services agreement pursuant to which

(a) MLI will, among other things, agree to designate members of its staff to serve as Designated Foreign Affiliate Employees who are properly registered, licensed, certified or authorized in their home jurisdiction and sufficiently skilled and familiar to undertake such trading and front office activity, and further agree that the activities of the Designated Foreign Affiliate Employees permitted under this exemptive relief shall be supervised by the Designated Supervisors of the Filer; and

(b) the Filer will assume all responsibility for the actions of the Designated Foreign Affiliate Employees and of MLI that relate to the Filer's clients regarding this trading on MX, and the Filer will acknowledge that it will be liable under IIROC rules for such actions.

20. All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees.

21. Other than individual registration, all other existing Canadian regulatory requirements would continue to apply to this arrangement, including without limitation:

(a) the Filer's client accounts would continue to be carried on the books of the Filer;

(b) all communications with the Filer's clients will continue to be in the name of the Filer; and

(c) the Filer's client account monies, security and property will continue to be held by the Filer or its approved custodian.

22. The Filer will establish and maintain written policies and procedures that address the performance and supervision requirements relating to MX extended trading hours.

23. The Filer will disclose this extended trading hours arrangement to clients for its MX trading services.

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

IT IS RULED pursuant to subsection 38(1) of the CFA that the Exemption Sought is granted, so long as:

(a) the Designated Foreign Affiliate and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the Designated Foreign Affiliate is located in a category that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;

(b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or clients of the Filer's affiliated corporations or subsidiaries on behalf of the Filer during the period from 2:00 a.m. ET to 6:00 a.m. ET;

(c) the Filer retains all responsibilities for its client accounts;

(d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;

(e) the Filer and the Designated Foreign Affiliate enter into a services agreement substantially as described in paragraph 18, and such agreement remains in effect; and

(f) the Filer has applied for and obtained from IIROC an exemption from the registered representative requirements that are found in the IIROC Dealer Member Rules, and any other requirements of IIROC that IIROC reasonably determines is applicable to the Firm and the Designated Foreign Affiliate Employees in

connection with conducting the Extended Hours Activities (collectively, the **IIROC Relief**) and remains in compliance with the terms and conditions of the IIROC Relief.

"Tim Moseley"
Vice-Chair
Ontario Securities Commission

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Jason Michael Currey et al. – ss. 127(1), 127(10)

IN THE MATTER OF
JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.

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

Citation: Currey (Re), 2018 ONSEC 47
Date: 2018-10-03
File No. 2018-48

Hearing:	In Writing	
Decision:	October 3, 2018	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Submissions:	Christina Galbraith	For Staff of the Commission
	No submissions made by or on behalf of Jason Michael Currey, The Healthy Retirement Group Inc., Sunset Creek Resources Inc. and 1826487 Alberta Ltd.	

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

[1] On February 27, 2018, a hearing panel of the Alberta Securities Commission (the **ASC**) found that Jason Michael Currey (**Currey**), The Healthy Retirement Group (**HRG**), Sunset Creek Resources Inc. (**Sunset**) and 1826487 Alberta Ltd. (**182 Alberta**) (collectively, the **Respondents**) dealt in securities without registration and perpetrated a fraud on investors, contrary to sections 75(1)(a) and 93(b) of the Alberta *Securities Act* (the **Alberta Act**).[1] Two of the Respondents, Currey and HRG, were also found to have acted as an adviser without being registered, contrary to section 75(1)(b) of the Alberta Act.

[1] RSA 2000, c S-4.

[2] The ASC Order (the **ASC Order**)[2] imposed sanctions, conditions, restrictions and requirements on the Respondents, which are set out in Part II of these Reasons.

[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. ASC PROCEEDING AND FINDINGS

A. Findings – Breach of sections 75(1)(a), 75(1)(b) and section 93(b) of the Alberta Act

[5] On October 6, 2017, the Respondents entered into a Statement of Admissions and Joint Submission on Sanction (**Statement of Admissions**), in which they admitted to breaches of the Alberta Act.[4]

[6] Currey, a resident of Calgary, Alberta, admitted that he held himself out as an investment dealer and adviser, while not registered under the Alberta Act. He also admitted that he committed fraud by directing investor funds to purposes other than those disclosed to investors, by using investor funds to repay principal amounts owing to prior investors and by misappropriating funds from investors for his personal use. Currey was the founder, guiding mind, and sole director, shareholder and employee of each of the three corporate Respondents.[5]

[7] HRG, an Alberta Corporation, purported to be a vehicle for insurance sales and was also Currey's primary marketing vehicle. HRG admitted to engaging in trading and advising in securities while not registered under the Alberta Act and to committing fraud.[6]

[8] Sunset, an Alberta Corporation, was Currey's investment vehicle. Debentures and other securities in Sunset were sold to investors and the proceeds were then purportedly used to fund investments in resource development companies.[7]

[9] Like Sunset, 182 Alberta was an Alberta Corporation that was used by Currey as an investment vehicle. The proceeds from the sale of 182 Alberta securities was purportedly used to fund investments in real estate and other securities.[8]

[10] Each of the Respondents admitted to dealing in securities without registration, contrary to section 75(1)a of the Alberta Act. Between November 2013 and October 2014 (the **Material Time**) Currey and HRG used Sunset and 182 Alberta to raise approximately $3.2 million from nine investors through the sale of promissory notes and debentures.[9]

[11] Each Respondent also admitted to perpetrating a fraud on investors, contrary to section 93(b) of the Alberta Act. Investors were told that funds invested in Sunset and 182 Alberta would be directed to certain non-high risk investments.[10] However, beginning in June 2014 funds began to be directed to other purposes, including repaying principal to prior investors and misappropriation by Currey for his personal use.[11] In total, approximately $290,000 was used to repay principal to earlier investors and $695,000 was misappropriated by Currey.[12]

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2 Exhibit 1, Tab 2, ASC Order dated February 27, 2018 (**ASC Order**).

3 RSO 1990 c S.5.

4 Exhibit 1, Tab 1, Statement of Admissions and Joint Submissions on Sanction dated October 6, 2017 (**Statement of Admissions**).

5 Statement of Admissions at paras 3-6 and 16.

6 Statement of Admissions at para 4.

7 Statement of Admissions at para 5.

8 Statement of Admissions at para 6.

9 Statement of Admissions at paras 7-8.

10 Statement of Admissions at paras 15-16.

11 Statement of Admissions at para 17.

12 Statement of Admissions at paras 16 and 18.

[12] Additionally, Currey and HRG admitted to advising without registration, contrary to section 75(1)(b) of the Alberta Act. Currey and HRG acted in an advisory capacity to the investors from whom they raised capital.[13]

B. The ASC Order

[13] The ASC ordered:[14]

a. Market-Access Bans

i. under s. 198(1)(d) of the Alberta Act, Currey must immediately resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;

ii. for a period of 20 years from the date of the ASC Order or until the administrative penalty set out below is paid in full, whichever is the later:

(a) under s. 198(1)(b) of the Alberta Act, the Respondents must cease trading in or purchasing any securities or derivatives, except that the ASC Order does not preclude Currey from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of himself, his spouse or his dependent children;

(b) under s. 198(1)(c) of the Alberta Act, all of the exemptions contained in Alberta securities laws do not apply to the Respondents;

(c) under s. 198(1)(e) of the Alberta Act, Currey is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, except that the ASC Order does not preclude Currey from becoming or acting as a director or officer (or both) of an issuer that is wholly owned by himself, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public;

(d) under s. 198(1)(e.1) of the Alberta Act, Currey and HRG are prohibited from advising in securities or derivatives;

(e) under s. 198(1)(e.2) of the Alberta Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and

(f) under s. 198(1)(e.3) of the Alberta Act, Currey is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

b. Disgorgement

i. under s. 198(1)(i) of the Alberta Act, Currey must pay to the ASC $120,200 obtained as a result of his non-compliance with Alberta securities laws;

c. Administrative Penalty

i. under s. 199 of the Alberta Act, Currey must pay to the ASC an administrative penalty of $200,000; and

d. Cost Recovery

i. under s. 202 of the Alberta Act, Currey must pay to the ASC $25,000 of the costs of the ASC's investigation and hearing.

[13] Statement of Admissions at para 12.

[14] ASC Order at para 94.

III. SERVICE AND PARTICIPATION

[14] Currey was served personally and on behalf of HRG, Sunset, and 182 Alberta with the Notice of Hearing, Statement of Allegations and Staff's Written Hearing Materials via email on August 15, 2018. The Respondents were also served with the same documents by courier on August 16, 2018.[15]

[15] Pursuant to Rule 11(3) of the Ontario Securities Commission *Rules of Procedure and Forms* (**OSC Rules of Procedure**)[16] the deadline for Currey and the corporate respondents to serve and file written submissions was Wednesday, September 12, 2018. No materials were filed on behalf of the Respondents.

[16] I am satisfied that the Respondents were provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers and Procedures Act* and the OSC Rules of Procedure the Commission may proceed in the absence of a party where that party has been given notice of the hearing.[17]

IV. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[17] Subsection 127(10) of the Act facilitates the inter-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.[18]

[18] 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,[19] the Commission must determine whether an order under subsection 127(1) of the Act should be made.

[19] 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.[20]

[20] 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.[21]

V. ANALYSIS AND DECISION

[21] The threshold has been met under paragraph 4 of subsection 127(10) of the Act, as the Respondents are subject to the ASC 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 subsection 127(1) if it is my opinion that it is in the public interest to do so.

[22] The Commission may consider a number of factors in determining the nature and scope of sanctions, including the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any mitigating factors.[22]

[23] The unregistered dealing, advising and fraud admitted to by Currey and the corporate Respondents would have been serious breaches of the Act in Ontario. The ASC Panel stated:

> We have no hesitation concluding that the Respondents' misconduct was very serious. We agree with Staff's submission that it "falls at the most serious end of the spectrum", as it involved fraud and "a substantial degree of deceit and dishonesty" – deliberate misconduct – over a sustained period with respect to a "significant amount of money".[23]

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15 Affidavit of Service of Lee Crann, sworn August 20, 2018 at paras 2 and 5.

16 Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 11(3)(g) (**OSC Rules of Procedure**).

17 *Statutory Powers and Procedures Act*, RSO 1990 c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3).

18 *Black (Re)*, 2014 ONSEC 16, (2014), 37 OSCB 5847 at para 7 (***Black***).

19 *Securities Act*, s. 127(1)4.

20 *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43.

21 *Biller (Re)* (2005), 28 OSCB 10131 at paras 32-35.

22 *Beltco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136.

23 ASC Order at para 56.

[24] The harm suffered by investors was also significant. Not only did investors suffer significant financial harm, the Respondents also deprived investors of their legal entitlement under the Alberta Act to have a qualified dealer and adviser who was registered with the ASC.[24]

[25] Staff of the ASC calculated that Currey was personally enriched from the personal use of approximately $400,000 of investor funds.[25]

[26] The misconduct continued throughout the Material Time, a period of almost two years. Therefore, it involved persistent wrongdoing.

[27] Several mitigating factors were cited by the ASC in their decision and the Panel found that Currey was "genuinely remorseful … and recognizes the seriousness of his misconduct and the impact it has had on the investors."[26]

[28] In the Statement of Admissions relied upon in the original proceeding, the Respondents acknowledged that the Statement of Admissions could be used for securities regulatory proceedings in other jurisdictions.[27]

[29] The sanctions imposed by the Commission in this case must deter Currey and other like-minded individuals from engaging in similar misconduct in Ontario.

[30] 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 misconduct in Ontario.

[31] For the reasons provided above, I make the following order:

a. Against Currey that:

Until the until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the Alberta Securities Commission's Order dated February 27, 2018 (the ASC Order) has been paid in full:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by Currey shall cease, except that this order does not preclude Currey from trading in securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Currey shall cease, except that this order does not preclude Currey from purchasing securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Currey shall resign any positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Currey is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager, except that this order does not preclude Currey from becoming or acting as a director or officer of an issuer that is wholly owned by Currey, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public; and

[24] ASC Order at para 57.

[25] ASC Order at para 56.

[26] ASC Order at para 75.

[27] Statement of Admissions at para 31.

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager, or promoter.

b. against HRG, Sunset and 182 Alberta that:

until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the ASC Order has been paid in full:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by HRG, Sunset and 182 Alberta shall cease;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by HRG, Sunset and 182 Alberta shall cease;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to HRG, Sunset or 182 Alberta; and

iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, HRG is prohibited from becoming or acting as a registrant or investment fund manager.

Dated at Toronto this 3rd day of October, 2018.

“D. Grant Vingoe”

3.1.2 Omega Securities Inc. – ss. 127, 127.1

IN THE MATTER OF
OMEGA SECURITIES INC.

REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the
***Securities Act*, RSO 1990, c S.5)**

Citation: *Omega Securities Inc. (Re)*, 2018 ONSEC 48
Date: 2018-10-04
File No.: 2017-66

Hearing:	October 4, 2018	
Decision:	October 4, 2018	
Panel:	Mark Sandler	Commissioner and Chair of the Panel
	AnneMarie Ryan	Commissioner
Appearances:	Keir Wilmut	For Staff of the Commission
	Gregory Ljubic	
	Eliot Kolers	For Omega Securities Inc.
	Sinziana Hennig	

REASONS FOR APPROVAL OF SETTLEMENT

I. BACKGROUND

[1] Omega Securities Inc. (**OSI**) is a registrant operating two Alternative Trading Systems (**ATSs**) in Ontario: **Omega ATS** and **Lynx ATS**. Omega ATS commenced operations in December 2007. Lynx ATS commenced operations in February 2014.

[2] OSI is regulated by the Ontario Securities Commission (the Commission) and the Investment Industry Regulatory Organization of Canada (**IIROC**). The establishment and operations of ATSs are governed by the regulatory framework set out in the *Securities Act*[1] (the **Act**), as well as National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and its related Companion Policy (collectively, the **Marketplace Rules**).

[3] Part 7 of NI 21-101 sets out transparency provisions for certain marketplaces, including those operated by OSI. These transparency provisions require such marketplaces to disseminate accurate and timely information relating to orders and trades to an information processor. Information processors consolidate order and trade information and disseminate that information to market participants and data vendors. These transparency requirements are of critical importance to the regulatory framework. They support fair and efficient markets, confidence in those markets and the regulator's ability to monitor marketplaces and their regulatory compliance.

[4] Staff of the Commission (**Staff**) identified deficiencies with OSI's systems. In particular, OSI was disseminating inaccurate information respecting the identity of buy and sell brokers for certain transactions, the time of receipt of certain orders, and the time that certain trades were executed. As well, there were some discrepancies between the number of messages disseminated across OSI's data feeds.

[5] Staff was of the view that it could not allow these serious deficiencies to continue without timely regulatory action. Accordingly, on November 13, 2017, Staff commenced an application before the Commission seeking a temporary order suspending OSI's registration and ceasing the trading in any securities by OSI pending completion of a hearing on the merits. Staff alleged four areas of non-compliance with NI 21-101:

a. Inaccurate identification of brokers participating in mid-point peg transactions;

b. Time stamp deficiencies;

c. Content discrepancies across OSI's data feeds; and

[1] *Securities Act*, RSO 1990, c S.5.

d. Dissemination of data to certain subscribers before making it available to OSI's information processor (the **TMX IP**).

[6] The following day, on November 14, 2017, Staff published OSC Staff Notice 23-706 *Omega Securities Inc.* (the **Self-Help Notice**), advising marketplaces and marketplace participants that they might consider declaring self-help pursuant to Part 6 of National Instrument 23-101 *Trading Rules*, thereby exempting them from the Order Protection Rule set out in that Part.[2]

[7] On November 17, 2017, the Commission began hearing Staff's application for a temporary order. On November 23, 2017, the Commission declined to suspend OSI's registration, but issued a temporary order (the **Temporary Order**) imposing certain terms and conditions on OSI's registration, pursuant to s. 127(5) and paragraph 1 of s. 127(1) of the Act.[3] The terms and conditions included the following:

a. OSI shall forthwith provide notice on its website and to its subscribers in writing that the time of execution of trades disseminated pursuant to its ITCH protocol may differ, at the millisecond level, from the time internally recorded by OSI in its matching engine for the execution of these trades;

b. OSI shall upgrade from the ITCH 3.0 protocol to the ITCH 5.0 protocol as expeditiously as possible, in compliance with existing regulatory requirements;

c. OSI shall report, on a monthly basis, in writing, to Staff of the Commission and to IIROC, if IIROC so requests, on the ongoing steps taken by OSI to upgrade to the ITCH 5.0 protocol;

d. OSI shall implement a MRF Feed patch as expeditiously as possible, in compliance with existing regulatory requirements, including IIROC approvals or certification;

e. OSI shall forthwith notify its subscribers that after seven days, all order acknowledgement messages sent pursuant to its FIX Feed will be sent at the millisecond level, except to such subscribers which notify OSI in writing within seven days that they choose not to receive such acknowledgements to the millisecond level;

f. OSI shall comply with the terms of the notification referred to in paragraph (e), above, and provide a written report to Staff of the Commission within 14 days and to IIROC, if requested by IIROC, outlining steps taken to so comply; and

g. OSI shall retain, within 14 days or such later time period as approved by Staff of the Commission, at its own expense, the services of an independent systems reviewer or reviewers that are approved by Staff of the Commission to provide reporting to OSI and Staff of the Commission and to IIROC, if IIROC so requests, regarding the effectiveness of the MRF Feed patch and the ITCH 5.0 protocol, on a quarterly basis for a 12 month period, after each respectively, is implemented.

[8] The Commission extended the Temporary Order, on consent, on multiple occasions to facilitate ongoing efforts by the parties to settle this matter. Those efforts led to a settlement agreement, the terms of which are set out below. The terms include payment of an administrative penalty of $500,000, together with terms and conditions imposed on OSI's registration, and designed to ensure compliance with the Marketplace Rules. These terms and conditions largely track, with appropriate modifications, the terms and conditions contained in the Temporary Order. The Temporary Order expired on October 4, 2018.

[9] On that same day, October 4, 2018, the Commission approved the settlement on the terms proposed by the parties. An Order was issued in substantially the form appended to the settlement agreement. Written reasons were to follow. These are our written reasons.

II. THE CONDUCT

[10] The Marketplace Rules set out requirements for ATSs. Subsection 7.1(1) of NI 21-101 requires marketplaces to provide "accurate and timely information regarding orders" to the information processor. Subsection 9.1(2) of the Companion Policy to NI 21-101 states that the information provided "should contain all relevant information, including details as to ... [the] time of the order or trade."

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[2] The Order Protection Rule requires marketplaces to establish, maintain and ensure compliance with written policies and procedures reasonably designed to prevent inferior-priced orders from "trading through," or being executed before immediately accessible, visible, better-priced limit orders.

[3] The hearing panel's Reasons on Application for a Temporary Order were published on December 14, 2017; see *Omega Securities Inc. (Re)*, 2017 ONSEC 42.

[11] Subsection 7.2(1) of NI 21-101 requires a marketplace to provide "accurate and timely information regarding trades" to the information processor, which includes properly specifying the IDs of the buyer and seller broker involved in an execution.

[12] The Marketplace Rules do not dictate how to implement these requirements. ATSs determine the appropriate measures to meet regulatory requirements, which include selecting the appropriate computer software and hardware (commonly referred to as the **Trading Platform**).

[13] The OSI Trading Platform disseminates information regarding trading activity on Omega ATS and Lynx ATS using three data feeds:

a. The **ITCH Feed**, which disseminates information to the TMX IP;

b. The **MRF Feed**, which disseminates information to IIROC; and

c. The **FIX Feed**, which disseminates information to other destinations.

[14] OSI failed to comply with the Marketplace Rules due to the following:

a. Inaccurate identification of brokers participating in mid-point peg transactions;

b. Time stamp deficiencies for unmatched orders;

c. Time stamp deficiencies for matched orders (i.e. executed trades);

d. Time stamp discrepancies for identical events on different feeds; and

e. Content discrepancies across OSI's data feeds.

A. Inaccurate Identification of Brokers Participating in Mid-Point Peg Transactions

[15] In July 2013, OSI introduced a new order type that would allow investors to place mid-point peg orders on Omega ATS and Lynx ATS.

[16] From July 2013 to June 2016, OSI's Trading Platform reversed the buyer broker ID and the seller broker ID for over 65,000 mid-point peg transactions on Omega ATS and Lynx ATS. The incorrect data was publicly disseminated on the ITCH Feed.

[17] OSI corrected its systems in June 2016 and reported to IIROC and the Commission's Market Regulation Branch while doing so. The corrected process was certified by IIROC. Since that time, messages regarding mid-point peg transactions disseminated by OSI for Omega ATS and Lynx ATS using the ITCH Feed have reflected the proper buyer and seller broker IDs.

B. Time Stamp Deficiencies for Unmatched Orders

[18] When a buy or sell order is received by OSI's systems, a "time of order receipt" is assigned to that order.

[19] Prior to June 8, 2018, the "time of order receipt" information sent by the ITCH Feed to the TMX IP was replaced with a time label that instead reflected the "time of transmission." Prior to December 11, 2017, this was also the case with respect to the MRF Feed.

[20] In compliance with the terms of the Temporary Order, on December 11, 2017, OSI implemented an MRF Feed patch, such that "time of order receipt" information is currently being disseminated accurately on the MRF Feed. The process was certified by IIROC.

[21] Also in compliance with the terms of the Temporary Order, on June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that "time of order receipt" information is currently being disseminated accurately on the ITCH Feed.

C. Time Stamp Deficiencies for Matched Orders (i.e. Executed Trades)

[22] When a buy order is matched with a sell order on OSI's marketplaces, the resulting trade execution message is time-stamped with the "time of the trade."

[23] Prior to June 8, 2018, the "time of the trade" information sent by the ITCH Feed to the TMX IP was replaced with a time label that instead reflected the "time of transmission." Prior to December 11, 2017, this was also the case with respect to the MRF Feed.

[24] As a result of the December 11, 2017 patch and June 8, 2018 upgrade, "time of the trade" information is currently being disseminated accurately on the MRF and ITCH Feeds.

D. Time Stamp Discrepancies for Identical Events on Different Feeds

[25] The internal clocks for OSI's ITCH Feed and the MRF Feed were, at times, desynchronized, such that the "time of transmission" was not always the same for the two feeds. As a result, the time labels assigned to orders and trades not only failed to accurately reflect the "time of order receipt" or "time of the trade," but were not the same across all feeds.

[26] Staff's investigation found that in almost all cases, the time stamp discrepancies were within one to two milliseconds, although in a number of instances, during periods of exceptional market conditions or when OSI was experiencing technical difficulties, the discrepancies exceeded 50 milliseconds.

[27] As a result of the December 11, 2017 patch and June 8, 2018 upgrade, any variance between time stamps on the ITCH and MRF Feeds appears to have been eliminated.

E. Content Discrepancies Across OSI's Data Feeds

[28] OSI disseminates the ITCH Feed of Omega ATS from two different computer ports: **Port 4005** and **Port 4006**.

[29] On some trading days between June 2013 and June 2016, the number of messages (i.e. orders and transactions) disseminated via Port 4005 differed from the number of messages disseminated via Port 4006. As a result, some market participants accessing the ITCH Feed were deprived of full information about trading activity on Omega ATS.

[30] Also, on certain trading days, the number of transactions disseminated on the MRF Feed (which went to IIROC) did not equal the number of transactions disseminated on either Ports 4005 or 4006 of the ITCH Feed. As a result, on some of those trading days, IIROC was not provided with copies of all messages transmitted to market participants.

III. THE TERMS OF THE SETTLEMENT AGREEMENT

[31] The parties agreed (as do we) that by engaging in the conduct described immediately above, OSI breached Ontario securities law in three ways:

a. OSI disseminated inaccurate post-trade information relating to mid-point peg transactions executed on Omega ATS and Lynx ATS, in breach of subsection 7.2(1) of NI 21-101;

b. OSI disseminated inaccurate pre-trade information relating to orders for exchange-traded securities displayed by Omega ATS and Lynx ATS to the TMX IP, in breach of subsection 7.1(1) of NI 21-101; and

c. OSI disseminated inaccurate post-trade information relating to trades for exchange-traded securities executed on Omega ATS and Lynx ATS to the TMX IP, in breach of subsection 7.2(1) of NI 21-101.

[32] The settlement agreement proposed that the Commission make the following order:

a. The settlement agreement be approved;

b. Pursuant to paragraph 1 of subsection 127(1) of the Act, the following terms and conditions be imposed on OSI's registration:

i. OSI shall continue to ensure that:

(a) The broker IDs of counterparties to a trade are recorded accurately;

(b) Timestamps pertaining to the "time of order receipt" and the "time of the trade" are disseminated in accordance with Part 7 of NI 21-101, and if transmission times are disseminated, they are disseminated in addition to the aforementioned timestamps and identified as such;

(c) The MRF Feed is providing IIROC with accurate timestamps of order receipt and execution of trades;

ii. OSI shall continue to retain the independent systems reviewer (the **Independent Systems Reviewer**) to perform quarterly reviews and provide written reports regarding the effectiveness of the MRF Patch, on a quarterly basis for a 12-month period following December 11, 2017, and provide these reports to Staff and IIROC, if IIROC so requests.

iii. OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the upgrade to the ITCH 5.0 protocol on a quarterly basis for the four quarters ending after June 8, 2018, and provide these reports to Staff and IIROC, if IIROC so requests.

iv. OSI shall maintain policies and procedures designed to ensure, on an ongoing and consistent basis, that mechanisms are in place to ensure that OSI's systems and their operations are compliant with NI 21-101; and

c. Pursuant to paragraph 9 of section 127(1) of the Act, OSI shall pay to the Commission an administrative penalty in the amount of $500,000, which shall be designated for allocation or for use by the Commission in accordance with subclauses 3.4(2)(b)(i) or (ii) of the Act.

[33] We have been advised that the $500,000 administrative penalty has been paid.

IV. ANALYSIS

[34] The Commission is to deny approval of a settlement agreement only in exceptional circumstances. As stated in *Cheng (Re)*,

> [t]his deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. Of course, the Commission is fully entitled to reject a settlement agreement which falls outside the range of reasonable outcomes available in the circumstances and thus, is contrary to the public interest. The Commission is to consider the terms of the settlement agreement in their totality, rather than considering each term in isolation.[4]

[35] In our view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances and is in the public interest.

[36] Accurate and timely collection and dissemination of information by marketplaces is of critical importance to the integrity of Ontario's capital markets and to the confidence of both participants and investors in those markets. The dissemination of inaccurate market information could result in an unfair advantage to some investors and unfair disadvantage to others. Accurate information also assists regulators in performing their enforcement and regulatory mandates. Inaccurate reporting of data by a marketplace impedes regulators in carrying out effective oversight of public markets. It follows that a marketplace's non-compliance with any regulatory transparency requirements must be treated as a serious matter.

[37] In our view, the $500,000 administrative penalty, viewed together with the other sanctions, sends a strong and appropriate deterrent message. Deterrence, in this context, includes both specific and general deterrence.

[38] The settlement agreement also takes into consideration factors relied upon by OSI to contextualize or mitigate its conduct. These factors include the following:

a. The absence of any prior record of non-compliance with securities law;

b. OSI's acknowledgment of non-compliance, obviating the need for a contested hearing;

c. OSI took steps to begin to address the issues identified in Staff's application for a temporary order before the application was heard. Its proposed "fixes" to each of the deficiencies identified figured prominently in the terms and conditions the Commission imposed at the temporary order hearing;

[4] *Cheng (Re)*, 2018 ONSEC 34 at para 8.

d. Staff and OSI agree that, up to the date of the settlement agreement, OSI fully complied with the terms of the Temporary Order. This involved the following:

   i. On November 24, 2017, OSI provided notice on its website and to its subscribers in writing that the time of trades disseminated on its ITCH Feed could on occasion differ, at the millisecond level, from the time internally recorded by OSI;

   ii. On November 27, 2017, OSI notified all of its subscribers that after seven days, all order acknowledgment messages sent by its gateways would be sent at the millisecond level. Since December 1, 2017, OSI's Trading Platform has recorded the time that all incoming messages are first received by OSI to the millisecond level. OSI provided a written report of this change to Staff and to IIROC;

   iii. On December 11, 2017, OSI implemented an MRF Feed patch such that the correct matching engine time stamp is being disseminated on the MRF Feed;

   iv. On June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that the correct "time of the order" and "time of the trade" are being disseminated on the ITCH Feed; and

   v. OSI has engaged the Independent Systems Reviewer to provide a quarterly review of all data feeds, and determined the scope and format of this testing, in cooperation with IIROC and the Commission's Market Regulation Branch; and

e. During the 10-day period from Staff's issuance of the Self-Help Notice to the Commission's issuance of the Temporary Order, OSI's trading volumes dropped by more than 96%, and commission revenues fell accordingly. As of the date of the settlement agreement, OSI's market share had just recently returned to its approximate level prior to the commencement of this enforcement proceeding.

[39] OSI has already incurred significant costs to comply with the Temporary Order. These financial costs, while necessitated by OSI's conduct, reflect that OSI has paid a financial price substantially larger than that represented by the $500,000 administrative penalty.

V. CONCLUSION

[40] For these reasons, we approved the terms of the settlement agreement set out in paragraph 32 above.

[41] We are grateful to all counsel for their assistance in this matter.

Dated at Toronto on this 4th day of October, 2018.

"Mark J. Sandler"

"AnneMarie Ryan"

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
Sierra Madre Developments Inc.	August 12, 2014	August 25, 2014	August 25, 2014	October 2, 2018

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Callitas Health Inc.	September 5, 2018	October 5, 2018
ZoomMed Inc.	October 5, 2018	
Top Strike Resources Corp.	October 5, 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)3, 7
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 October 5, 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:
BlackRock – IG Active Allocation Pool I
BlackRock – IG Active Allocation Pool II
BlackRock – IG Active Allocation Pool III
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated September 28, 2018
NP 11-202 Preliminary Receipt dated October 4, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Investors Group Financial Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. Investment Management, Ltd.
Project #2827994

Issuer Name:
RBC Private Canadian Growth and Income Equity Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 2, 2018
Received on October 2, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc. (other than Series A)
Royal Mutual Funds Inc./RBC Direct Investing Inc.
The Royal Trust Company
RBC Dominion Securities Inc.
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc. (other than Series A)
Project #2774740

Issuer Name:
Caldwell U.S. Dividend Advantage Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 28, 2018
NP 11-202 Preliminary Receipt dated October 4, 2018
Offering Price and Description:
Series A and Series F units
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
N/A
Project #2828348

Issuer Name:
Dynamic Active Core Bond Private Pool
Dynamic Active Credit Strategies Private Pool
Dynamic Alternative Managed Risk Private Pool Class
Dynamic Asset Allocation Private Pool
Dynamic Canadian Equity Private Pool Class
Dynamic Conservative Yield Private Pool
Dynamic Conservative Yield Private Pool Class
Dynamic Global Equity Private Pool Class
Dynamic Global Yield Private Pool
Dynamic Global Yield Private Pool Class
Dynamic International Dividend Private Pool
Dynamic North American Dividend Private Pool
Dynamic Premium Bond Private Pool
Dynamic Premium Bond Private Pool Class
Dynamic Tactical Bond Private Pool
Dynamic U.S. Equity Private Pool Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to Annual Information Form dated October 3, 2018
Received on October 3, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2757005

Issuer Name:
First Asset Cambridge Core U.S. Equity ETF
First Asset Cambridge Global Dividend ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 3, 2018
Received on October 3, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2743212

Issuer Name:
Hamilton Capital Canadian Bank Dynamic-Weight ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 4, 2018
Received on October 5, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Hamilton Capital Partners Inc.
Project #2793218

Issuer Name:
Horizons S&P/TSX 60™ Index ETF
Horizons S&P 500® Index ETF
Horizons S&P/TSX Capped Financials Index ETF
Horizons US 7-10 Year Treasury Bond ETF
Horizons NASDAQ-100® Index ETF
Horizons EURO STOXX 50® Index ETF
Horizons S&P 500 CAD Hedged Index ETF
Horizons Intl Developed Markets Equity Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 2, 2018
Received on October 4, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2799066

Issuer Name:
Mackenzie Canadian All Cap Dividend Class
Mackenzie Canadian All Cap Value Class
Mackenzie Canadian Bond Fund
Mackenzie Canadian Growth Balanced Class
Mackenzie Canadian Growth Balanced Fund
Mackenzie Canadian Growth Class
Mackenzie Canadian Growth Fund
Mackenzie Canadian Large Cap Dividend Class
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Resource Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Class
Mackenzie Corporate Bond Fund
Mackenzie Global Dividend Fund
Mackenzie Global Growth Class
Mackenzie Global Small Cap Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Income Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy International Fund
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Private Canadian Focused Equity Pool
Mackenzie Private Canadian Focused Equity Pool Class
Mackenzie Private Global Conservative Income Balanced Pool
Mackenzie Private Global Equity Pool
Mackenzie Private Global Equity Pool Class
Mackenzie Private Global Fixed Income Pool
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Mackenzie Private Income Balanced Pool Class
Mackenzie Private US Equity Pool
Mackenzie Private US Equity Pool Class
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie US Mid Cap Growth Class
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Income Portfolio Class
Symmetry Conservative Portfolio
Symmetry Conservative Portfolio Class
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated September 28, 2018
NP 11-202 Preliminary Receipt dated October 3, 2018
Offering Price and Description:
Series LB, LF, LF5, LW, LW5 and LX securities
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2827888

Issuer Name:
Short Term Bond Fund (Portico)
Real Return Bond Fund (Portico)
U.S. Value Fund
Mackenzie US Mid Cap Growth Class
Canadian Equity Class
North American Specialty Class
U.S. and International Equity Class
U.S. and International Specialty Class
Canadian Dividend Class (Laketon)
Global All Cap Equity Class (Setanta)
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 3, 2018
Offering Price and Description:
D5 Series, H5 Series, L5 Series, N5 Series, QF5 Series, HW5 Series, QFW5 Series, D8 Series, H8 Series, L8 Series, N8 Series and HW8 Series
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Quadrus Investment Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2767715

Issuer Name:
Alignvest Top 20 Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 4, 2018
NP 11-202 Receipt dated October 5, 2018
Offering Price and Description:
Class A and Class F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Alignvest Capital Management Inc.
Project #2819669

Issuer Name:
Big Pharma Split Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated October 4, 2018
NP 11-202 Receipt dated October 5, 2018
Offering Price and Description:
$200,000,000
Preferred Shares
Class A Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Harvest Portfolios Group Inc.
Project #2825050

Issuer Name:
BMO Advantaged Equal Weight Banks TACTIC Fund
BMO Advantaged Equal Weight Oil & Gas TACTIC Fund
BMO Advantaged Laddered Preferred Share TACTIC Fund
BMO Advantaged S&P/TSX Capped Composite TACTIC Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 1, 2018
NP 11-202 Receipt dated October 2, 2018
Offering Price and Description:
Series A Shares, Series D Shares, Series F Shares and Series I
Shares
Underwriter(s) or Distributor(s):
CIBC Mellon Trust Company
Promoter(s):
N/A
Project #2794907

Issuer Name:
Dynamic Alpha Performance II Fund
Dynamic Premium Yield PLUS Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 1, 2018
NP 11-202 Receipt dated October 2, 2018
Offering Price and Description:
Series A, F, FH, FT, H, I, O and T Units
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2808545

Issuer Name:
Mackenzie All China Equity Fund
Mackenzie Balanced ETF Portfolio
Mackenzie Canadian All Cap Dividend Class
Mackenzie Canadian All Cap Dividend Fund
Mackenzie Canadian All Cap Value Class
Mackenzie Canadian All Cap Value Fund
Mackenzie Canadian Balanced Fund
Mackenzie Canadian Bond Fund
Mackenzie Canadian Growth Balanced Class
Mackenzie Canadian Growth Balanced Fund
Mackenzie Canadian Growth Class
Mackenzie Canadian Growth Fund
Mackenzie Canadian Large Cap Dividend Class
Mackenzie Canadian Large Cap Dividend Fund
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Resource Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Class
Mackenzie Canadian Small Cap Fund
Mackenzie Conservative ETF Portfolio
Mackenzie Conservative Income ETF Portfolio
Mackenzie Corporate Bond Fund
Mackenzie Cundill Canadian Balanced Fund
Mackenzie Cundill Canadian Security Class
Mackenzie Cundill Canadian Security Fund
Mackenzie Cundill Recovery Class
Mackenzie Cundill Recovery Fund
Mackenzie Cundill US Class
Mackenzie Cundill Value Class
Mackenzie Cundill Value Fund
Mackenzie Diversified Alternatives Fund
Mackenzie Emerging Markets Class
Mackenzie Emerging Markets Fund
Mackenzie Floating Rate Income Fund
Mackenzie Global Credit Opportunities Fund
Mackenzie Global Dividend Fund
Mackenzie Global Environmental Equity Fund
Mackenzie Global Equity Fund
Mackenzie Global Growth Class
Mackenzie Global Leadership Impact Fund
Mackenzie Global Resource Class
Mackenzie Global Small Cap Class
Mackenzie Global Small Cap Fund
Mackenzie Global Strategic Income Fund
Mackenzie Global Sustainability and Impact Balanced Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Global Tactical Investment Grade Bond Fund
Mackenzie Gold Bullion Class
Mackenzie Growth ETF Portfolio
Mackenzie Growth Fund
Mackenzie High Diversification Canadian Equity Class
Mackenzie High Diversification Emerging Markets Equity Fund
Mackenzie High Diversification European Equity Fund
Mackenzie High Diversification Global Equity Fund
Mackenzie High Diversification International Equity Fund
Mackenzie High Diversification US Equity Fund
Mackenzie Income Fund
Mackenzie Investment Grade Floating Rate Fund
Mackenzie Ivy Canadian Balanced Class
Mackenzie Ivy Canadian Balanced Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy European Class
Mackenzie Ivy Foreign Equity Class
Mackenzie Ivy Foreign Equity Currency Neutral Class
Mackenzie Ivy Foreign Equity Fund
Mackenzie Ivy Global Balanced Class
Mackenzie Ivy Global Balanced Fund
Mackenzie Ivy International Class
Mackenzie Ivy International Fund
Mackenzie Moderate Growth ETF Portfolio
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie North American Corporate Bond Fund
Mackenzie Precious Metals Class
Mackenzie Private Canadian Focused Equity Pool
Mackenzie Private Canadian Focused Equity Pool Class
Mackenzie Private Global Conservative Income Balanced Pool
Mackenzie Private Global Equity Pool
Mackenzie Private Global Equity Pool Class
Mackenzie Private Global Fixed Income Pool
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Mackenzie Private Income Balanced Pool Class
Mackenzie Private US Equity Pool
Mackenzie Private US Equity Pool Class
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie Unconstrained Fixed Income Fund
Mackenzie US All Cap Growth Fund
Mackenzie US Dividend Fund
Mackenzie US Dividend Registered Fund
Mackenzie US Growth Class
Mackenzie US Mid Cap Growth Class
Mackenzie US Mid Cap Growth Currency Neutral Class
Mackenzie US Strategic Income Fund
Mackenzie USD Global Strategic Income Fund
Mackenzie USD Global Tactical Bond Fund
Mackenzie USD Ultra Short Duration Income Fund
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Income Portfolio Class
Symmetry Conservative Portfolio
Symmetry Conservative Portfolio Class
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 4, 2018
Offering Price and Description:
Series A, B, C, D, DA, F, F5, F6, F8, FB, FB5, G, GP, I, O, O6, PW, PWB, PWT5, PWT6, PWX5, PWF, PWF5, PWF8, PWR, PWT5, PWT8, PWFB, PWFB5, PWX, PWX8, S6, S8, SC, T5, T6, T8 and Investor Series securities @ net asset value
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc.

Promoter(s):
MACKENZIE FINANCIAL CORPORATION
Project #2804068

Issuer Name:
Mackenzie Canadian All Cap Dividend Class
Mackenzie Canadian All Cap Value Class
Mackenzie Income Fund
Mackenzie Strategic Income Fund
Principal Regulator – Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 5, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2680408

Issuer Name:
Manulife Global Franchise Class (formerly Manulife Global Equity Unconstrained Class)
Manulife Global Franchise Fund (formerly Manulife Global Equity Unconstrained Fund)
Manulife International Focused Fund (to be renamed Manulife EAFE Equity Fund)
Manulife International Value Equity Fund
Manulife Strategic Dividend Bundle
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 2, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Manulife Securities Incorporated
Manulife Securities Investment Services Inc.
Promoter(s):
N/A
Project #2783412

Issuer Name:
Phillips, Hager & North LifeTime 2055 Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 4, 2018
NP 11-202 Receipt dated October 5, 2018
Offering Price and Description:
Series D, Series F and Series O units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
N/A
Project #2820667

NON-INVESTMENT FUNDS

Issuer Name:
Acasti Pharma Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated October 3, 2018
NP 11-202 Preliminary Receipt dated October 3, 2018
Offering Price and Description:
$* – * Class A Shares
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
–
Project #2828288

Issuer Name:
Acasti Pharma Inc.
Principal Regulator – Quebec
Type and Date:
Amendment dated October 4, 2018 to Preliminary Short Form Prospectus dated October 3, 2018
NP 11-202 Preliminary Receipt dated October 5, 2018
Offering Price and Description:
$24,000,000.00 (18,750,000 Class A Shares)
Price: $1.28 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
–
Project #2828288

Issuer Name:
Invictus MD Strategies Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 2, 2018
NP 11-202 Preliminary Receipt dated October 3, 2018
Offering Price and Description:
$20,000,000 – 10,000,000 Units
Price: $2.00 per Unit
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
–
Project #2825827

Issuer Name:
Namaste Technologies Inc. (formerly Next Gen Metals Inc.)
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 2, 2018
NP 11-202 Preliminary Receipt dated October 2, 2018
Offering Price and Description:
$45,000,000 -15,000,000 UNITS
Price: $3.00 per Unit
Underwriter(s) or Distributor(s):
EIGHT CAPITAL
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
Sean Dollinger
Project #2827965

Issuer Name:
Pinehurst Capital I Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus ( ) dated October 3, 2018
NP 11-202 Preliminary Receipt dated October 9, 2018
Offering Price and Description:
$200,000.00 (2,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
M Partners Inc.
Promoter(s):
Ilana Prussky
Project #2828351

Issuer Name:
The Green Organic Dutchman Holdings Ltd.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2018
NP 11-202 Preliminary Receipt dated October 5, 2018
Offering Price and Description:
$75,007,500.00 – 10,950,000 Units
Price: $6.85 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
PI Financial Corp.
Laurentian Bank Securities Inc.
Promoter(s):
–
Project #2828694

Issuer Name:
The Supreme Cannabis Company, Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 3, 2018
NP 11-202 Preliminary Receipt dated October 3, 2018
Offering Price and Description:
$90,000,000.00 – $90,000,000 aggregate principal amount of 6.0% Senior Unsecured Convertible Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
CORMARK SECURITIES INC.
EIGHT CAPITAL
BEACON SECURITIES LIMITED
P.I. FINANCIAL CORP
Promoter(s):
–
Project #2826317

Issuer Name:
UrbanGold Minerals Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 5, 2018
NP 11-202 Preliminary Receipt dated October 9, 2018
Offering Price and Description:
Minimum of $850,000.00 (8,500,000 Units)
Maximum of $1,500,000.00 (15,000,000 Units)
Price: $0.10 per Unit

Minimum of $1,000,000.00 (7,692,308 Flow-Through Common Shares)
Maximum of $1,500,000.00 (11,58,462 Flow-Through Common Shares)
Price: #0.13 per Flow-Through Common Share
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
Jens Eskelund-Hansen
Project #2828893

Issuer Name:
VersaPay Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 2, 2018
NP 11-202 Preliminary Receipt dated October 2, 2018
Offering Price and Description:
$8,001,000 – 4,572,000 Common Shares
Price: $1.75 per Offered Share
Underwriter(s) or Distributor(s):
RAYMOND JAMES LTD.
HAYWOOD SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
–
Project #2825696

Issuer Name:
Central Timmins Exploration Corp.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 4, 2018
NP 11-202 Receipt dated October 5, 2018
Offering Price and Description:
$1,500,000.00 – 15,000,000 Common Shares
$0.10 per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Charles Gryba
Neville Dastoor
Mark Wellings
Jens Mayer
Project #2798340

Issuer Name:
Genworth MI Canada Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated October 2, 2018
NP 11-202 Receipt dated October 3, 2018
Offering Price and Description:
$3,000,000,000.00 – Debt Securities, Preferred Shares, Common Shares, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2822378

Issuer Name:
iAnthus Capital Holdings, Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 3, 2018
NP 11-202 Receipt dated October 4, 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

Issuer Name:
Maricann Group Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 2, 2018
Offering Price and Description:
23,376,100 Common Shares and 23,376,100 Warrants issuable upon deemed exercise of 23,376,100 Special Warrants
Price Per Special Warrant:: $1.60
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
GMP Securities L.P.
Promoter(s):
–
Project #2809296

Issuer Name:
Prairie Provident Resources Inc.
Principal Regulator – Alberta
Type and Date:
Final Short Form Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 2, 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:
Rubicon Organics Inc.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated October 2, 2018
NP 11-202 Receipt dated October 3, 2018
Offering Price and Description:
3,658,820 Common Shares and 1,829,410 Warrants Issuable on Exercise of 3,658,820 Special Warrants
Total: C$11,816,168.00
Price per Special Warrant: C$3.25
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Mackie Research Capital Corporation
Haywood Securities Inc.
Promoter(s):
–
Project #2808529

Issuer Name:
Sunniva Inc.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated October 4, 2018
NP 11-202 Receipt dated October 4, 2018
Offering Price and Description:
$20,026,000.00 – 3,800,000Units
$5.27 per Unit
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2823332

Issuer Name:
Valens Groworks Corp. (formerly Genovation Capital Corp.)
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated October 3, 2018
NP 11-202 Receipt dated October 3, 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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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: NS Partners (Canada) Ltd. To: Connor, Clark & Lunn (Canada) Ltd.	Investment Fund Manager and Portfolio Manager	September 1, 2018
New Registration	Wealthsimple Advisor Services Inc.	Mutual Fund Dealer	October 4, 2018
Voluntary Surrender	State Farm Investor Services (Canada) Co.	Mutual Fund Dealer	October 1, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited – Housekeeping Amendments to Trading Rules and Policies – Notice of Housekeeping Amendments

NASDAQ CXC LIMITED

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO TRADING RULES AND POLICIES

Introduction

Nasdaq CXC Limited (Nasdaq Canada) has adopted, and the Ontario Securities Commission (OSC) has approved, housekeeping amendments (Amendments) to the Nasdaq Canada Trading Rules and Policies in accordance with Schedule 5 to its recognition order, as amended (Protocol). The Amendments are Housekeeping Rules under the Protocol and as such have not been published for comment. The OSC has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Description of Change

Nasdaq Canada is proposing to expand the Trading Sessions for the CXC Trading Book and the CX2 Trading Book from 8:30 a.m. through 5:00 p.m. to 8:00 a.m. through 5:00 p.m.

Expected Date of Implementation

The Amendments will be implemented on November 1st 2018.

Any questions regarding these changes should be addressed to
Matt Thompson, Nasdaq CXC Limited: matthew.thompson@nasdaq.com, T: 416-647-6242

APPENDIX A

TEXT OF AMENDMENTS TO THE TRADING RULES AND POLICIES

5.2 Trading Sessions

1. The Exchange shall be open for Trading Sessions on each Business Day.

2. Unless otherwise changed, the hours of the Trading Session for CXC and CX2 Trading Books are 8: 00 a.m. through 5:00 p.m. (Eastern Time). The hours of the Trading Session for CXD are 9:30 a.m. through 4:00 p.m.

3. Changes to Trading Sessions are published by Notice on the Exchange website.

13.3 Clearing Agencies

13.3.1 CDCC – Proposed Amendments to the Rules and Operations Manual of CDCC to Accommodate the Extension of the Trading Hours at Bourse de Montreal Inc. – Notice of Commission Approval

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

NOTICE OF COMMISSION APPROVAL

PROPOSED AMENDMENTS TO THE RULES AND OPERATIONS MANUAL OF CDCC TO ACCOMMODATE THE EXTENSION OF THE TRADING HOURS AT BOURSE DE MONTREAL INC.

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and the Canadian Derivatives Clearing Corporation (CDCC), the Commission approved on October 2, 2018 the Amendments to the Rules and Operations Manual of CDCC to Accommodate the Extension of the Trading Hours at Bourse De Montreal Inc.

A copy of the CDCC notice was published for comment on November 23, 2018 on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

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