The Ontario Securities Commission

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

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of September 30, 2018 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
11-781	Notice of Statement of Priorities for Financial Year to End March 31, 2019	**Published July 5, 2018**
11-782	Getting Started: Human-Centred Solutions to Engage Ontario Millenials in Investing	**Published July 12, 2018**
45-106	Prospectus Exemptions – Amendments	**Commission approval published July 19, 2018**
45-308	Guidance for Preparing and Filing Reports of Exemption Distribution under NI 45-106 Prospectus Exemptions – Revised	**Published July 19, 2018**
51-355	Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2018 and March 31, 2017	**Published July 19, 2018**
45-323	Update on Use of the Rights Offering Exemption in NI 45-106 Prospectus Exemptions	**Published July 26, 2018**
45-308	Guidance for Preparing and Filing Reports of Exemption Distribution under Ni 45-106 Prospectus Exemptions – Revised – Notice of Correction	**Published July 26, 2018**
52-330	Update on CSA Consultation Paper 52-404 Approach to Director and Audit Committee Member Independence	**Published July 26, 2018**
11-783	Encouraging Retirement Planning through Behavioural Insights	**Published August 2, 2018**
11-739	Policy Reformulation Table of Concordance and List of New Instruments	**Published August 9, 2018**
33-749	Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisers and Investment Fund Managers	**Published August 23, 2018**

46-309	Bail-in-Debt	**Published August 23, 2018**
81-331	Investment Funds Investing in Bail-in-Debt	**Published August 23, 2018**
52-112	Non-GAAP and other Financial Measures Disclosure	**Published for comment September 6, 2018**
81-105	Mutual Fund Sales Practices	**Published for comment September 13, 2018**
58-310	Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions	**Published September 27, 2018**

For further information, contact:

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Project Specialist
Ontario Securities Commission
416-593-8148

October 18, 2018

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Larry Lee – ss. 127(1), 127(10)

FILE NO.: 2018-58

IN THE MATTER OF
LARRY LEE

NOTICE OF HEARING
Subsections 127(1) and 127(10) of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In Writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on October 9, 2018.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the Commission's Rules of Procedure.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

You have **21 days** from the date Staff serves these documents on you to file a request for an oral hearing, if you do not want to follow the expedited procedure for a written hearing.

Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

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 10th 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
LARRY LEE

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

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):

(a) against Larry Lee (**Lee**) that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Lee cease permanently, except that he may trade securities or derivatives through his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer who has been provided with copies of the Order of the British Columbia Securities Commission (**BCSC**) dated July 31, 2018 (the **BCSC Order**) and the order of the Commission in this proceeding, if granted;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lee cease permanently, except that he may purchase securities for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer who has been provided with copies of the BCSC Order and the order of this Commission in this proceeding, if granted;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lee resign any positions that he holds as a director or officer of any issuer or registrant, including an investment fund manager;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lee be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager; and

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

(b) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

3. On July 31, 2018, Lee entered into a Settlement Agreement (the **Settlement Agreement**) with the BCSC.

4. Pursuant to the Settlement Agreement, Lee admitted to breaching British Columbia securities legislation, and agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of British Columbia.

5. Lee is subject to an order of the BCSC, which imposes sanctions, conditions, restrictions or requirements upon him.

(i) The BCSC Proceedings

Statement of Agreed Facts

6. In the Settlement Agreement, Lee agreed with the following facts:

Background

(a) Lee is a resident of British Columbia. From 2010 through 2013, he was engaged in the business of developing real estate websites.

Misconduct

(b) On May 11, 2012, Lee raised $200,000 from two joint investors (the **Investors**) under a promissory note (the **Investment**). The terms of the promissory note provided a 24% annual return for two years and an option to own a 15% stake of Lee's business.

(c) Lee represented to the Investors that he would use their funds to develop his business and told the Investors that:

1. the Investment was low risk with guaranteed repayment of the principal and 24% annual return over two years;

2. he was confident he could sell his business for at least $10 million by December 31, 2014;

3. he owned his house and, if necessary, would sell it in order to repay the investors; and

4. if he passed away during the term of the promissory note, his estate would repay the investors.

(d) Lee omitted to tell the Investors that:

1. his business had no revenue and minimal assets;

2. he had no basis to guarantee a 24% rate of return;

3. he was approximately $800,000 in debt; and

4. he only owned a 20% interest in the house, which was significantly encumbered.

(e) On May 11, 2012, Lee deposited the Investment into his personal bank account and immediately used the funds to pay friends, family, credit card debt, and bank loans.

(f) Lee's business never generated any revenue and he abandoned it at the end of 2013.

Admitted Breach of British Columbia Securities Law

(g) By engaging in the conduct set out above, Lee perpetrated a fraud on the Investors contrary to section 57(b) of the British Columbia *Securities Act*, RSBC 1996 c 418 (the **BC Act**).

Mitigating Factors

(h) Lee voluntarily repaid $10,000 to the Investors prior to BCSC Staff's involvement. Lee also cooperated with the BCSC's Executive Director.

(ii) BCSC Settlement and Undertakings

Disgorgement

(i) Lee agreed to disgorge $190,000 to the BCSC pursuant to paragraph 161(1)(g) of the BC Act, which represents the net funds obtained from his misconduct.

Undertakings

(j) Lee undertook to:

1. pay $50,000 to the BCSC in respect of settlement;

2. on demand by the BCSC, consent to judgment for the amounts described in subparagraphs 6(i) and 6(j)(1); and

3. as security for any and all amounts outstanding to the BCSC, grant a mortgage in favour of the BCSC in a form satisfactory to the BCSC, of his interest in real property in British Columbia.

(iii) The BCSC Order

7. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon Lee:

(a) under section 161(1)(d)(i) of the BC Act, Lee resign any position he holds as a director or officer of an issuer or registrant;

(b) Lee is permanently prohibited:

1. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;

2. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

3. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;

4. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

5. under section 161(1)(d)(iv) BC Act, from acting in a management or consultative capacity in connection with activities in the securities market;

6. under section 161(1)(d)(v) BC Act, from engaging in investor relations activities; and

(c) Lee pay to the BCSC $190,000 pursuant to section 161(1)(g) of the BC Act.

Consent to Regulatory Orders

8. Lee consented to regulatory Orders made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph 4 of the Settlement Agreement.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

9. Pursuant to the Settlement Agreement, Lee agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of British Columbia.

10. Lee is subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon him.

11. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that a person or company is to be made subject to sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.

12. Staff allege that it is in the public interest to make an order against Lee.

13. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 9th day of October, 2018.

1.3.2 BDO Canada LLP – ss. 127(1), 127.1

FILE NO.: 2018-59

IN THE MATTER OF
BDO CANADA LLP

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: October 29, 2018 at 10:00 a.m.

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

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on October 12, 2018.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the Commission's *Practice Guideline*.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

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Dated at Toronto this 12th 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
BDO CANADA LLP

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

A. ORDER SOUGHT

Staff ("**Enforcement Staff**") of the Enforcement Branch of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order, ordering:

1. that BDO Canada LLP ("**BDO**") be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

2. that BDO pay an administrative penalty of not more than $1 million for each failure by BDO to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

3. that BDO disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

4. that BDO pay the costs of the Commission investigation and hearing, pursuant to section 127.1 of the Act; and

5. such other order as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

I. Overview

1. As gatekeepers, auditors contribute to public confidence in the integrity of financial reporting, a cornerstone of our capital markets. In conducting audits of financial statements and reporting thereon, it is critical that auditors comply with generally accepted auditing standards. When an auditor issues an unmodified audit opinion on an entity's financial statements, the auditor provides assurance that the financial statements are presented fairly, in all material respects, in accordance with generally accepted accounting principles. As such, auditors play an important role in investor protection and the framework for proper disclosure is undermined when they fail to adequately carry out their role.

2. Between 1998 and 2017, BDO was the auditor of Crystal Wealth Management Systems Limited ("**Crystal Wealth**") and the investment funds managed by it at the time (the "**Crystal Wealth Funds**"). In April 2017, on application by the Commission, Crystal Wealth, the Crystal Wealth Funds and their directing mind, Clayton Smith ("**Smith**"), were put into receivership by the Ontario Superior Court of Justice. The Commission subsequently approved a settlement agreement between Smith and Enforcement Staff in which Smith admitted to fraud on two Crystal Wealth Funds – Crystal Wealth Media Strategy (the "**Media Fund**") and Crystal Wealth Mortgage Strategy (the "**Mortgage Fund"** and, together with the Media Fund, the "**Funds**" and each, a "**Fund**"). Certain of the fraudulent investments were recorded in the Funds' financial statements audited by BDO.

3. BDO audited the Funds' financial statements as at and for the years ended December 31, 2014 and December 31, 2015. In those financial statements, the Media Fund and Mortgage Fund were valued at approximately $50 million and $40 million, respectively. In each auditor's report accompanying those financial statements, BDO represented to the Fund's unitholders that it had performed its audit (each, an "**Audit**") in accordance with Canadian generally accepted auditing standards ("**GAAS**").

4. That representation was false. BDO did not conduct its Audits in accordance with GAAS. It failed to do so in three principal ways.

5. First, BDO did not obtain sufficient appropriate audit evidence of the existence and valuation of the Funds' assets. To begin, BDO did not perform all the retrospective reviews for accounting estimates required by GAAS. Without those reviews, BDO could not design audit procedures responsive to the risk that the financial statements were materially misstated. Next, in completing the audit procedures it did design, BDO unduly relied on the Funds' service providers – who were not independent of Smith – and on Smith himself. Finally, even though BDO identified a material misstatement in the Media Fund's 2015 financial statements, it provided an unmodified audit opinion on them.

6. BDO's second principal violation of GAAS was its failure to undertake its work with sufficient professional skepticism. Throughout the Audits, BDO disregarded contradictory audit evidence and other circumstances that could be indicative of fraud. BDO failed to recognize the resultant, increased risk of material misstatement and did not address the heightened risk with enhanced audit procedures. The enhanced procedures would have resulted in BDO obtaining additional evidence before determining whether it could issue unmodified audit opinions on the financial statements.

7. Last, before issuing its audit opinions, BDO did not complete the engagement quality control reviews ("**EQCRs**") of the Audits that it had determined were required.

8. By falsely stating in each auditor's report that it had conducted the Audit in accordance with GAAS, BDO breached subsection 122(1)(b) of the Act. In addition, each of BDO's failures to comply with GAAS violated subsection 78(3) of the Act.

II. Background

9. The Funds were privately-offered mutual fund trusts managed by Crystal Wealth, a Burlington, Ontario-based corporation. Crystal Wealth also acted as the Funds' trustee, portfolio manager and promoter.

10. Smith was Crystal Wealth's founder, principal shareholder, directing mind and sole director and officer. He acted as Crystal Wealth's President, Chief Executive Officer, Chief Financial Officer and Chief Compliance Officer and was BDO's principal point of contact during the Audits.

11. BDO is a limited liability partnership, the head office of which is in Toronto, Ontario. It has more than 125 offices across Canada and is part of the international BDO network of independent member firms.

12. BDO was first appointed auditor of Crystal Wealth and the Crystal Wealth Funds in 1998. It audited the Funds' 2014 and 2015 financial statements.

13. BDO was also engaged to audit the Funds' 2016 financial statements. At the time of those audits, BDO was aware of Enforcement Staff's investigation in this matter. In the audits, BDO introduced new procedures, such as seeking additional evidence from sources independent of the Funds and Smith. BDO was not able to complete the procedures or issue auditor's reports on the Funds' financial statements by March 31, 2017, when they were due to be delivered to unitholders.

14. Thereafter, on April 6, 2017, on application by Enforcement Staff, the Commission ordered that all trading in securities of the Crystal Wealth Funds cease. On April 26, 2017, on application by the Commission, the Ontario Superior Court of Justice appointed Grant Thornton Limited receiver and manager of the assets of the Crystal Wealth Funds, Crystal Wealth and Smith, personally.

15. On June 13, 2018, the Commission approved a settlement agreement between Enforcement Staff and Smith. In the settlement agreement, Smith admitted to fraud relating to investments recorded in the Media Fund's 2014 and 2015 financial statements and the Mortgage Fund's 2015 financial statements, all of which had been audited by BDO.

III. BDO's Obligations as Auditor

16. As auditor of the Funds' 2014 and 2015 financial statements, BDO was subject to provisions of Ontario securities law such as subsections 122(1)(b) and 78(3) of the Act.

17. The Funds' financial statements were required to be delivered to unitholders under National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**"). Because the financial statements were audited, subsection 2.7(3) of NI 81-106 mandated that they be accompanied by an auditor's report prepared in accordance with GAAS. The Funds' audited financial statements were posted on Crystal Wealth's website.

18. BDO's auditor's reports on the Funds' 2014 and 2015 financial statements were dated March 31, 2015 and March 31, 2016, respectively, and were addressed to the Funds' unitholders. In each auditor's report, BDO represented that it had conducted its Audit in accordance with GAAS. That was not true. In making these false representations, BDO breached GAAS and subsection 2.7(3) of NI 81-106. BDO also violated subsection 122(1)(b) of the Act. Subsection 122(1)(b) prohibited BDO from making materially misleading statements in reports or other documents required to be furnished or filed under Ontario securities law.

19. Under subsections 78(1) and (2) of the Act, the Funds' 2014 and 2015 financial statements, together with BDO's auditor's reports, were required to be filed with the Commission. Subsection 78(3) of the Act required BDO to make the examinations necessary to prepare its auditor's reports in accordance with GAAS. BDO failed to do so.

20. The principal auditing standards BDO failed to comply with are set forth in Part IV below. Part V details BDO's non-compliance with GAAS.

IV. Generally Accepted Auditing Standards

21. As the basis for the auditor's opinion, GAAS require the auditor to obtain reasonable assurance about whether the financial statements are free from material misstatement. Reasonable assurance is a high level of assurance.

22. To obtain reasonable assurance, GAAS set out various standards to be met, requirements to be fulfilled and steps to be taken. They include obtaining sufficient appropriate audit evidence, exercising professional skepticism and completing EQCRs in accordance with GAAS.

(A) Sufficient Appropriate Audit Evidence Required

23. To obtain reasonable assurance, the auditor must obtain sufficient appropriate audit evidence to reduce, to an acceptably low level, the risk of incorrectly opining on misstated financial statements.

(1) The Need for Retrospective Reviews

24. To assess the risk of material misstatement, the auditor must perform a retrospective review of the outcomes of accounting estimates included in the prior financial statements. Retrospective reviews assist in assessing whether the current estimates are misstated and in identifying any indications of management bias that might represent a risk of material misstatement due to fraud.

(2) The Need for Independent Evidence

25. The higher the assessed risk of material misstatement, the more persuasive the required audit evidence. Generally, evidence from independent sources outside the audited entity is more reliable than evidence from the entity.

(3) The Need for Assurance about Service Organization Controls

26. A service organization is a service provider whose services are part of the audited entity's financial reporting information systems. When an audited entity uses a service organization, transactions that affect its financial statements become subject to the service organization's controls. If the auditor obtains evidence from the service organization, the auditor cannot simply assume that the service organization's related controls operate effectively. It must obtain evidence about their effectiveness by testing the controls directly or obtaining an appropriate report on them.

(4) The Need to Address Inconsistencies and Obtain Sufficient Appropriate Audit Evidence

27. Determining what procedures are required to complete an audit is a dynamic process that must be responsive to any changes in the auditor's assessment of the risk of material misstatement. For example, if evidence from two sources is inconsistent, the auditor must determine what changes to its planned procedures are necessary to resolve the matter. If the auditor cannot obtain sufficient appropriate evidence of a material item, the auditor must not provide an unmodified opinion on the financial statements.

(5) The Need to Respond to Misstatements

28. If the auditor identifies a misstatement, it must determine whether the misstatement is indicative of fraud. If it is, the auditor must evaluate the implications for the audit, including the reliability of management representations, recognizing that an instance of fraud is unlikely to be an isolated occurrence. If the auditor concludes that the financial statements are not free from material misstatement, the auditor must not provide an unmodified opinion on them.

(6) The Need to Document the Audit

29. Audit documentation is the record of the audit procedures performed, relevant audit evidence obtained and conclusions reached. A principal purpose of audit documentation is to evidence that the audit was planned and performed in accordance with GAAS. The audit documentation must provide evidence of the auditor's basis for conclusions about critical matters such as whether the auditor has obtained reasonable assurance that the financial statements are free from material misstatement. The audit documentation for an engagement must be assembled in the audit file for that engagement.

(B) Professional Skepticism Required

30. The auditor must plan and perform its audit with professional skepticism, recognizing that circumstances may cause the financial statements to be materially misstated. Professional skepticism requires a questioning mind and a critical assessment of the audit evidence. It includes alertness to contradictory audit evidence, information that brings the reliability of documents into question and conditions that may indicate fraud, such as missing evidence.

(C) Engagement Quality Control Reviews Required

31. If the auditor determines that an EQCR is required, the EQCR must be performed before the auditor's report is completed. An EQCR is an objective evaluation of the engagement team's significant judgments and conclusions. The EQCR reviewer cannot be part of the engagement team.

V. BDO's Failures to Comply with Generally Accepted Auditing Standards

32. BDO's Audits failed to comply with GAAS due to a lack of sufficient appropriate audit evidence, professional skepticism and EQCRs.

(A) Lack of Sufficient Appropriate Audit Evidence

33. BDO did not obtain sufficient appropriate audit evidence of the existence and valuation of the significant assets recorded in the Media Fund's and the Mortgage Fund's 2014 and 2015 financial statements.

(1) Media Fund

(a) Background to the Fund[1]

34. In the 2014 and 2015 financial statements, the Media Fund was valued at approximately $50 million. The Fund primarily invested in asset-backed debt obligations ("**Loans**") of motion picture and series television productions. The Loans were to finance the production projects. In 2014 and 2015, approximately 25 Loans represented 85% of the Fund's assets.

35. Media House Capital (Canada) Corp. ("**MHC**") was retained by the Fund to conduct due diligence on potential Loan investments and present them to the Fund for purchase. If the Fund acquired a Loan, MHC was to manage and service it, including collecting principal and interest payments for the Fund. MHC received an upfront fee of up to 10% of the value of the Loans it sold to the Fund. The Fund purchased Loans from MHC on an ongoing basis.

(b) BDO's Failure to Adequately Address Existence of Loans

36. BDO did not obtain sufficient appropriate evidence of the existence of the Loans. Its planned procedures were to confirm all the Loans with MHC, whether they had been acquired in the current or previous years. In addition, BDO planned to review the "loan agreements" for Loans ("**New Loans**") purchased in the current year.

37. It was not appropriate for BDO to rely on a confirmation from MHC. First, given MHC's business relationships with the Fund and Smith, it was not an independent, objective source of information about the Loans. Further, BDO did not adequately assess whether MHC was a service organization and did not take any of the other steps required by GAAS when service organizations are involved. MHC was to record information about the Loans for the Fund, but there was nothing inherently reliable about MHC's records or related confirmations. Nonetheless, BDO did not obtain assurance about the controls relevant to the audit evidence provided by MHC.

38. In addition, there were three significant deficiencies in the "loan agreements" BDO obtained for the New Loans. First, they were not agreements between the borrower – the production company – and the lender – the Fund. Instead, BDO obtained two types of documents ("**Loan Documents**"): (a) purchase notices, each of which was a notice from the Fund to MHC that it wished to purchase a Loan; and (b) supplements, each of which evidenced MHC's sale of a Loan to the Fund. The Loan Documents did not provide any evidence of the borrowers' obligations to the Fund.

39. Second, BDO did not obtain a complete set of Loan Documents for every New Loan. Purchase notices were unaccompanied by supplements and many of the supplements were only partially executed.

40. Third, even though information in many Loan Documents was inconsistent with other audit evidence, BDO did not enhance its procedures to properly resolve the discrepancies. For instance, various Loan Documents set forth principal

[1] The description of the Fund and its operations is based on BDO's audit documentation.

amounts that differed from those in MHC's confirmations. Yet in its Audits, BDO identified and performed procedures on only one inconsistency. In that case, BDO relied solely on information from Smith, rather than independent evidence.

41. The audit files also included a variety of Loan Documents and promissory notes for Loans purchased in previous years. There were also numerous issues with this documentation. First, it was incomplete. For instance, purchase notices were not accompanied by corresponding supplements. Second, much of the documentation was not fully executed. Third, the information about a Loan often differed within the documentation and as between the documentation and MHC's confirmations, including in areas such as principal amount. These deficiencies in the Loan documentation should have prompted BDO to perform further procedures. BDO failed to do so.

(c) BDO's Failure to Adequately Address Valuation of Loans

42. BDO also failed to appropriately verify Smith's valuation of the Loans.

43. The value of the Loans turned on the probability of collecting on them. That probability depended on the sales of the productions to be financed by the Loans. As a result, forecasts of those sales ("**Sales Forecasts**") were critical to determining the value of the Loans. In the 2014 and 2015 Audits, BDO relied on Sales Forecasts that it stated had been confirmed by, or obtained from, MHC.

44. BDO's procedures for auditing Smith's Loan valuations and its responses to the results of those procedures did not comply with GAAS.

2014 Audit

45. In the 2014 Audit, BDO failed to conduct the required retrospective review of Smith's 2013 Loan valuation and inappropriately relied on an analysis from BDO's valuations group.

46. First, because BDO did not complete a retrospective review of Smith's 2013 Loan valuation, it could not determine whether there was an increased risk of material misstatement due to fraud. BDO's audit documentation included a checklist (the "**Fraud Checklist**") to assist its engagement team in complying with the GAAS requirements on fraud. The Fraud Checklist required retrospective reviews of significant accounting estimates and a determination of whether differences between the estimates and the actual results indicated management bias. BDO completed the Fraud Checklist by stating that no retrospective reviews were necessary because there were no significant accounting estimates. Yet in other audit documentation, BDO recognized that the value of the Loans was a significant accounting estimate.

47. Second, in evaluating Smith's 2014 Loan valuation, BDO improperly relied on an analysis from its valuations group. The valuations group's analysis was based on Sales Forecasts, the appropriateness and reliability of which were to be assessed with a confirmation from MHC. The audit file, however, contained no such confirmation of the Sales Forecasts. Moreover, as described above, MHC was not an independent, objective source of information about the Loans and BDO obtained no assurance about its controls.

2015 Audit

48. In the 2015 Audit, BDO failed to comply with GAAS in its retrospective review of Smith's 2014 Loan valuation and in its audit of Smith's 2015 Loan valuation.

(i) Deficient Retrospective Review of Smith's 2014 Loan Valuation

49. BDO's retrospective review in the 2015 Audit was problematic for two principal reasons: its procedures were flawed and its response to the results of those procedures was inadequate.

50. In its retrospective review, BDO compared Smith's 2014 forecast of expected receipts on the Loans with the amounts collected on the Loans in 2015 and early 2016. In determining the amounts collected in 2015, BDO solely relied on the Fund's accounting records. BDO did not corroborate the Fund's records with independent evidence, such as bank records.

51. The results of BDO's analysis revealed that the 2014 forecast of receipts, when compared to amounts collected by early 2016, fell short by almost 80% or $25 million. The shortfall was approximately half the value of the Fund.

52. Notwithstanding its magnitude, BDO concluded that the shortfall appeared "to be largely due to timing" and noted that Smith was revising his current estimates. BDO did not consider whether the shortfall represented a risk of material misstatement due to fraud in the 2015 financial statements it was auditing.

(ii) Deficient Audit of Smith's 2015 Loan Valuation

53. BDO's procedures relating to Smith's 2015 Loan valuation were deficient in terms of both the steps that BDO took and BDO's response to the results. To evaluate Smith's 2015 Loan valuation, BDO developed its own Loan valuation.

54. Both Smith's and BDO's valuations depended on Sales Forecasts from MHC. BDO's procedures to determine the appropriateness of the Sales Forecasts were inadequate. They consisted of conducting the flawed retrospective review described above and obtaining oral representations from MHC, the organization that had provided the Sales Forecasts.

55. In BDO's Loan valuation, BDO came to a single estimate of the value of the Loans (the "**BDO Value**") of $47 million. To calculate the BDO Value, BDO added what it determined was the "most likely" value of each Loan to $1.5 million in respect of a guarantee from MHC.

56. There were several issues with BDO's calculation of the BDO Value. First, BDO did not follow the methodology it stated it used to determine the "most likely" value of each Loan. Instead, in determining the "most likely" value of each Loan, BDO often arrived at values for the Loans that were greater than what had been recorded as owing on the Loans. The result was an inappropriate increase in the BDO Value of $1.4 million.

57. BDO also should not have included the amount of the guarantee in the BDO Value. The guarantee consisted of a letter dated March 31, 2016, in which MHC stated that it would pay a "recoupable" $1.5 million towards the Fund, for any losses above and beyond the Fund's accrued loan-loss provisions. Aside from its "recoupable" nature, the guarantee was not in effect at the date of the financial statements. The result was a further, inappropriate increase in the BDO Value of $1.5 million.

58. Finally, although BDO determined that an analysis from its valuations group was required to value the Loans, BDO finalized the BDO Value without that analysis. According to the audit documentation, the valuations group's analysis would be, and was, provided in report form. But there were no reports, or any other evidence of the valuations group's steps, in the audit file.

59. The BDO Value was approximately $3 million less than Smith's Loan value. The difference between the BDO Value and Smith's Loan value would have been twice the size – approximately $6 million – had BDO not inappropriately increased the BDO Value.

60. GAAS required BDO to ask Smith to correct his Loan value. Two days before the date of its auditor's report, BDO sent Smith an interim, working copy of its Loan valuation. In the covering email, BDO wrote: "The numbers may not make sense at the moment but I'm hoping we can clarify a few things/I can let you know our thought process and we can meet somewhere in the middle." The $3 million was ultimately disclosed in a note to the financial statements as a "potential change" in Smith's Loan value.

61. Meanwhile, Smith's Loan value appeared in the body of the financial statements. This was a misstatement. In responding to the misstatement, BDO did not take the steps required by GAAS, such as determining whether the misstatement was indicative of fraud.

62. The misstatement – be it BDO's calculated amount of $3 million or the more appropriate $6 million – was material. Despite the inclusion of a material misstatement in the financial statements, BDO gave an unmodified opinion on them in its auditor's report.

(2) Mortgage Fund

(a) Background to the Fund[2]

63. In the 2014 and 2015 financial statements, the recorded value of the Mortgage Fund was $40 million and $44 million, respectively. The Fund primarily invested in residential mortgages in Canada. In 2014 and 2015, the Fund held approximately 335 residential mortgages constituting 83% and 63% of its assets, respectively. The Fund also held commercial mortgages and commercial loans. In connection with its investments, the Fund engaged several service providers.

[2] The description of the Fund and its operations is based on BDO's audit documentation.

64. Spectrum-Canada Capital (2002) Corporation and Spectrum-Canada Mortgage Services Inc. (collectively, "**Spectrum**") was the principal seller of residential mortgages to the Fund. Like MHC, Spectrum was to evaluate investments in accordance with due diligence guidelines and present them to the Fund for potential purchase. Once the Fund purchased a mortgage from Spectrum, Spectrum managed and serviced it. Among other things, Spectrum held a bank account for mortgage payments and provided reports on which the Fund's records were based. Spectrum's fees were based on the Fund's outstanding advances on the mortgages. The Fund purchased mortgages from Spectrum on an ongoing basis.

65. Other of the Fund's residential mortgages were administered by Squire Management Inc. ("**Squire**"). Like Spectrum, Squire held a bank account into which mortgage payments were deposited and sent Smith weekly reports summarizing all mortgages and payments.

66. Liberty Mortgage Services Ltd. ("**Liberty**") dealt with the Fund's commercial mortgages. Like Spectrum, Liberty sold the Fund mortgages it held that met the Fund's criteria. The Fund recorded the mortgages in its books based on Liberty's weekly reports.

(b) BDO's Failure to Adequately Address Existence of Mortgages

67. BDO did not obtain sufficient appropriate evidence of the existence of the mortgages. In performing its procedures, BDO inappropriately relied on audit evidence from Spectrum, Squire and Liberty (collectively, the "**Service Providers**") and failed to properly test the audit evidence it obtained.

Insufficient Independent Evidence

68. BDO inappropriately relied on the Service Providers in confirming and testing the mortgages.

69. First, Spectrum and Liberty were not independent, objective sources of information about the mortgages, given their relationships with the Fund and Smith.

70. Second, BDO did not evaluate whether the Service Providers were service organizations or take the other steps required by GAAS when dealing with service organizations. For example, BDO did not consider how the Service Providers' involvement in the Fund's transactions and accounting affected the Fund's controls. As a result, BDO was not in a position to identify, assess and respond to the risk of material misstatement.

71. Finally, although the Service Providers were to note information about the Fund's mortgage loans in the records they maintained for the Fund, nothing about their records or related confirmations was inherently reliable. Nonetheless, BDO performed no procedures to obtain assurance about the effectiveness of their related controls.

Deficient Testing

72. BDO's approach to testing the new mortgages was deficient at both the sampling and testing stages.

73. To start, in sampling the new residential mortgages to be tested in its 2014 Audit, BDO assessed overall risk as "low/normal" because Spectrum administered the mortgages. In making this assessment, BDO did not identify any of the issues with Spectrum's independence described above or explain why Spectrum's involvement reduced the risk. The lower risk assessment resulted in a smaller sample size and thus less reliable test results.

74. To test the selected mortgages, in each Audit, BDO stated that it had compared information in a listing of new mortgages provided by Smith against information in mortgage files. However, BDO's documentation of its review of the mortgage files was deficient. The audit files did not provide sufficient evidence that BDO performed procedures to confirm key mortgage details such as property location, term and interest rate.

75. Last, in the 2014 audit file, Smith's listing of initial loan amounts differed from the information in Spectrum's confirmation. BDO neither identified the discrepancies nor performed procedures to reconcile them.

(c) BDO's Failure to Adequately Address Valuation of Mortgages and Commercial Loans

76. BDO's audits of Smith's valuations of the Fund's mortgages and commercial loans were also inadequate.

Deficient Audit of Smith's Mortgage Valuation

77. BDO's mortgage valuation work was deficient with respect to retrospective reviews and sufficient appropriate audit evidence.

78. In its 2014 Audit, BDO did not perform a retrospective review on the accrued loss provision on the mortgages – an essential component in their value. Without this review, BDO could not assess whether there was a heightened risk of material misstatement due to fraud. On the Fraud Checklist that required this analysis, BDO indicated that no retrospective review was required because there were no significant accounting estimates. Yet in other audit documentation, BDO recognized that the accrued loss provision on the mortgages was a significant accounting estimate.

79. In addition, BDO did not obtain the evidence required to verify Smith's estimated accrued loss provision in either Audit. To start, BDO relied on evidence from the Service Providers, despite the issues discussed in paragraphs 68 through 71 above. Further, to determine which commercial mortgages were in arrears, BDO relied solely on Smith. BDO did not corroborate the completeness of Smith's listing of mortgages in arrears with any independent evidence.

Deficient Audit of Smith's Commercial Loan Valuation

80. BDO's audit work on Smith's 2015 commercial loan valuation was also deficient.

81. To audit Smith's 2015 valuation, BDO developed its own valuation. BDO's valuation did not consider the probability of collecting on the commercial loans held by the Mortgage Fund. For example, one of the commercial loans was a Loan on a media production that the Mortgage Fund had acquired from MHC. BDO did not consider Sales Forecasts in valuing that Loan, even though BDO had determined in its Media Fund Audits that Sales Forecasts were critical to the Loan valuation.

82. In its working papers, BDO indicated that there was a memorandum explaining its methodology for valuing the commercial loans. But there was no such memorandum or other explanation of BDO's approach to valuing the commercial loans in the audit file.

83. Because of all the deficiencies described above, BDO's Audits of the Mortgage Fund's 2014 and 2015 financial statements did not comply with GAAS.

(B) Lack of Professional Skepticism

84. BDO did not conduct its Audits with sufficient professional skepticism. As described above, BDO had notice of many unusual facts which should have caused it to treat Smith's representations with greater caution, obtain additional evidence from independent sources and perform additional procedures on that evidence. BDO did not do any of this.

(C) Lack of Engagement Quality Control Reviews

85. BDO also did not complete EQCRs on any of the Audits, even though it had determined that they were required on all of them. Although BDO indicated in its audit documentation for each of the Audits that one of its partners had acted as EQCR reviewer, that partner could not conduct an EQCR under GAAS because he was a member of the engagement team. Other documentation in each audit file confirmed that no EQCR had been completed.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

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

1. each of BDO's representations in its auditor's reports that the relevant Audit had been conducted in accordance with GAAS constitutes a materially misleading statement contrary to subsection 122(1)(b) of the Act;

2. each of BDO's failures to comply with GAAS in auditing the Funds' 2014 and 2015 financial statements constitutes a breach of subsection 78(3) of the Act; and

3. further and in any event, the conduct described above is contrary to the public interest.

Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff deem fit and the Commission may permit.

DATED this 12th day of October, 2018.

1.4 Notices from the Office of the Secretary

1.4.1 Larry Lee

FOR IMMEDIATE RELEASE
October 10, 2018

LARRY LEE,
File No. 2018-58

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act*.

A copy of the Notice of Hearing dated October 10, 2018 and the Statement of Allegations dated October 9, 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 eToro (Europe) Limited

FOR IMMEDIATE RELEASE
October 11, 2018

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

TORONTO – Following a hearing held in the above named matter, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and eToro (Europe) Limited.

A copy of the Order dated October 11, 2018 and Settlement Agreement dated September 26, 2018 and Oral Reasons for Approval of Settlement dated October 11, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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1.4.3 BDO Canada LLP

FOR IMMEDIATE RELEASE
October 12, 2018

BDO CANADA LLP,
File No. 2018-59

TORONTO – The Office of the Secretary issued a Notice of Hearing on October 12, 2018 setting the matter down to be heard on October 29, 2018 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated October 12, 2018 and Statement of Allegations dated October 12, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1-877-785-1555 (Toll Free)

1.4.4 Caldwell Investment Management Ltd.

FOR IMMEDIATE RELEASE
October 15, 2018

CALDWELL INVESTMENT MANAGEMENT LTD.,
File No. 2018-36

TORONTO – The Commission issued its Reasons and Decision on a Disclosure Motion and an Order in the above noted matter.

A copy of the Reasons and Decision and the Order dated October 12, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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SECRETARY TO THE COMMISSION

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1-877-785-1555 (Toll Free)

1.4.5 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
October 16, 2018

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN,
File No. 2017-79

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

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

OFFICE OF THE SECRETARY
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SECRETARY TO THE COMMISSION

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1-877-785-1555 (Toll Free)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Parkland Fuel Corporation and Canaccord Genuity Corp.

Headnote

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 71 and 147
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1 and Item 20 of Form 44-101F1
National Instrument 44-102 Shelf Distributions, s. 6.7, Part 9, s 11.1, s. 5.5 items 2 and 3, s. 2.2 of Part 2 of Appendix A
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

Citation: *Re Parkland Fuel Corporation*, 2018 ABASC 104

July 3, 2018

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

AND

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

AND

IN THE MATTER OF
PARKLAND FUEL CORPORATION
(the Issuer)

AND

CANACCORD GENUITY CORP.
(the Agent and, together with the Issuer, the Filers)

DECISION

Background

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

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Agent or any other registered investment dealer acting on behalf of the Agent as a selling agent (each a **Selling Agent**) in connection with any at-the-market distribution (**ATM Distribution**) of common shares (**Common Shares**) of the Issuer in Canada pursuant to the Prospectus (as defined below) and an equity distribution agreement (the **Equity Distribution Agreement**) to be entered into between the Filers;

(b) that the requirement to include a forward-looking underwriter certificate in the form specified by section 2.2 of Appendix A to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) does not apply to the Prospectus Supplement (as defined below);

(c) that the requirement to include a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus* (**44-101F1**) does not apply to the Base Shelf Prospectus (as defined below); and

(d) that the requirement to include the statements specified by Items 2 and 3 of section 5.5 of NI 44-102 does not apply to the Base Shelf Prospectus.

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

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**) (for a dual application):

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

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

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

Interpretation

Terms defined in National Instrument 14-101 Definitions, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, MI 11-102, NP 11-203 or NI 44-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

The Issuer

1. The Issuer is a corporation incorporated under the *Business Corporations Act* (Alberta). The head office of the Issuer is in Calgary, Alberta.

2. The Issuer is a reporting issuer in each province of Canada and is not in default of securities legislation in any jurisdiction of Canada. The Issuer is not currently a reporting issuer in each territory of Canada but expects to become a reporting issuer in each territory of Canada upon the filing of the base shelf prospectus (**Base Shelf Prospectus**).

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

The Agent

4. The Agent is a corporation continued under the laws of Ontario with its head office in Vancouver, British Columbia.

5. The Agent is registered as an investment dealer under the securities legislation in each province and territory of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX.

6. The Agent is not in default of securities legislation in any jurisdiction of Canada.

Proposed ATM Distribution

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

8. Prior to making an ATM Distribution, the Issuer will have done both of the following:

   (a) filed in each province and territory of Canada, a Base Shelf Prospectus providing for the distribution from time to time of Common Shares, preferred shares, debt securities, subscription receipts, warrants and units; and

   (b) filed in each province and territory of Canada a prospectus supplement describing the terms of the ATM Distribution, including the terms of the Equity Distribution Agreement and otherwise supplementing the disclosure in the Base Shelf Prospectus (the **Prospectus Supplement**, and together with the Base Shelf Prospectus as supplemented or amended and including any documents incorporated by reference therein (which shall include any Designated News Release as defined below), the **Prospectus**).

9. The Issuer will include in the Base Shelf Prospectus a forward-looking certificate of the Issuer in the form prescribed by section 1.1 of Appendix A to NI 44-102.

10. If the Equity Distribution Agreement is entered into, the Issuer will immediately do both of the following:

   (a) issue and file a news release announcing the Equity Distribution Agreement and indicating that the Base Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and specifying where and how purchasers of Common Shares under an ATM Distribution may obtain copies of each; and

   (b) file the Equity Distribution Agreement on SEDAR.

11. The Issuer will not, during the period that the final receipt for the Base Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Common Shares that exceeds 10% of the aggregate market value of Common Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made.

12. The Issuer will conduct ATM Distributions only through the Agent (as agent), directly or via a Selling Agent, and only through the TSX or another marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* upon which the Common Shares are listed, quoted or otherwise traded (each a **Marketplace**).

13. The Agent will act as the sole agent of the Issuer in connection with an ATM Distribution directly or through one or more Selling Agents on the TSX or any other Marketplace, and will be paid an agency fee or commission by the Issuer in connection with such sales. If sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent. The Agent will sign an underwriter certificate, in the form set out in paragraph 30 below, in the Prospectus Supplement.

14. A purchaser's rights and remedies under applicable securities legislation against the Agent, as agent of an ATM Distribution through a Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.

15. The aggregate number of Common Shares sold on one or more Marketplaces pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Common Shares on all Marketplaces on that day.

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

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

18. If, after the Issuer delivers a sell notice to the Agent directing the Agent to sell Common Shares on the Issuer's behalf pursuant to the Equity Distribution Agreement (a **Sell Notice**), the sale of Common Shares specified in the Sell Notice, taking into consideration prior sales under all previous ATM Distributions, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either (i) it has filed a Designated News Release or material change report, as applicable, or amended the Prospectus, or (ii) circumstances have changed such that the sale would no longer constitute a material fact or material change.

19. In determining whether the sale of the number of Common Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation:

    (a) the parameters of the Sell Notice, including the number of Common Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution;

    (b) the percentage of the outstanding Common Shares that the number of Common Shares proposed to be sold pursuant to the Sell Notice represents;

    (c) sales under earlier Sell Notices;

    (d) trading volume and volatility of the Common Shares;

    (e) recent developments in the business, operations or capital of the Issuer; and

    (f) prevailing market conditions generally.

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

Disclosure of Common Shares Sold in ATM Distribution

21. The Issuer will disclose the number and average price of Common Shares sold pursuant to ATM Distributions, as well as gross proceeds, commissions and net proceeds, in its annual and interim financial statements and management's discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

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

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

24. The Prospectus will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions. As stated in paragraph 10 above, the Issuer will issue a news release that specifies where and how copies of the Base Shelf Prospectus and the Prospectus Supplement may be obtained.

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

Withdrawal Right and Right of Action for Non-Delivery

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

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

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

Modified Certificates and Statements

29. To reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following issuer certificate:

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

30. The Prospectus Supplement will include the following underwriter certificate:

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

31. A different statement of purchasers' rights than that required by the Legislation is necessary so that the Base Shelf Prospectus will accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Base Shelf Prospectus will state the following, with the date reference completed:

> Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Common Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Common Shares and will not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus, because the prospectus, prospectus supplements relating to the Common Shares purchased by the purchaser and any amendment relating to Common Shares purchased by such purchaser will not be delivered as permitted under a decision dated ●, 2018 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Securities legislation in certain of the provinces and territories of Canada further provides purchasers with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Common Shares under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery and the decision referred to above.

A purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory and the decision referred to above for the particulars of these rights or consult with a legal adviser.

32. The statements required by Items 2 and 3 of section 5.5 of NI 44-102 will be included in the Base Shelf Prospectus, but will be qualified by the additional words ",except in cases where an exemption from such delivery requirement has been obtained".

Decision

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

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

(a) during a 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Common Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:

  (i) an average of at least 100 times per trading day, and

  (ii) with an average trading value of at least $1,000,000 per trading day;

(b) the Issuer complies with the disclosure requirements set out in paragraphs 21, 29, 30, 31 and 32 above; and

(c) the Issuer and Agent respectively comply with the representations made in paragraphs 10, 11, 12, 13, 15, 16, 17 ,18, 19 and 20.

This decision will terminate 25 months from the date of the receipt for the Base Shelf Prospectus.

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

For the Alberta Securities Commission:

“Stan Magidson”
Chair and CEO

”Kari Horn”
Vice-Chair

2.1.2 Frontenac Mortgage Investment Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual fund for extension of lapse date of prospectus for 60 days – Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus.

Applicable Legislative Provisions

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

September 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
FRONTENAC MORTGAGE INVESTMENT CORPORATION
(the "Filer" or the "Fund")

DECISION

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator ("**Legislation**") that the time limits pertaining to filing the renewal prospectus of the Filer dated September 29, 2017 (the "**Current Prospectus**") be extended to those time limits that would apply if the lapse date was November 29, 2018 (the "**Requested Relief**").

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland & Labrador (together with Ontario, the "**Jurisdictions**").

Interpretation

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

Representations

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

1. Pursuant to the Legislation, the lapse date of the Current Prospectus is September 29, 2018 (the "Current Lapse Date"). Accordingly, under the Legislation, in order to continue distributions of securities of the Fund after the Current Lapse Date, the Filer is required to (i) file a pro forma prospectus on or before August 29, 2018 (at least 30 days prior to the Current Lapse Date, (ii) file a final prospectus on or before October 9, 2018 (no later than 10 days after the Current Lapse Date), and (iii) obtain a receipt for such final prospectus on or before October 19, 2018 (within 20 days after the Current Lapse Date). The Filer filed a pro forma prospectus on August 28, 2018.

2. The Filer is in discussions with OSC Staff relating to the terms and conditions of the Filer's transition from oversight by the Investment Funds and Structured Products branch of the OSC as an investment fund issuer to oversight by the Corporate Finance branch of the OSC as a corporate issuer (the "Transition"). The Transition is expected to be completed by September 2019.

3. The Filer is seeking the Requested Relief in order to allow it sufficient time to conclude its discussions with OSC Staff regarding the terms and conditions of the Transition and to reflect same in the Filer's 2018 renewal prospectus.

4. There have been no material changes in the affairs of the Fund since the date of the Current Prospectus. Accordingly, the Current Prospectus represents the current information of the Fund.

5. Given the disclosure obligation of the Fund, should any material changes occur, the Current Prospectus of the Fund will be amended as required under the Legislation.

6. The Requested Relief will not affect the accuracy of the information contained in the Current Prospectus and therefore will not be prejudicial to the public interest.

Decision

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

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

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

2.1.3 First Block Capital Inc. and FBC Distributed Ledger Technology Adopters ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief to permit exchange-traded mutual fund prospectus to omit an underwriter's certificate – relief from take-over bid requirements for normal course purchases of securities on a marketplace – relief granted to facilitate the offering of exchange-traded mutual funds.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 59(1), 147.

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

September 21, 2018

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

AND

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

AND

IN THE MATTER OF
FIRST BLOCK CAPITAL INC.
(THE FILER)

AND

IN THE MATTER OF
FBC DISTRIBUTED LEDGER TECHNOLOGY ADOPTERS ETF
(the Proposed ETF)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer on behalf of the Proposed ETF and any additional exchange-traded mutual funds (the Future ETFs, and together with the Proposed ETF, the ETFs and individually, an ETF) established in the future for which the Filer acts as the manager, for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

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

(b) exempts a person or company purchasing Listed Securities (as defined below) in the normal course through the facilities of a Marketplace (as defined below) from the Take-over Bid Requirements (as defined below)

(collectively, the Exemption Sought).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Newfoundland and

Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon; and

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

Interpretation

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

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

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

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

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

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

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

NI 81-102 means National Instrument 81-102 *Investment Funds*.

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

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

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

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

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

Take-over Bid Requirements means the requirements of National Instrument 62-104 Take-Over Bids and Issuer Bids relating to take-over bids.

Representations

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

The Filer

1. the Filer is a corporation organized under the laws of Canada with its head office located at 3318 – 1055 Dunsmuir Street, Vancouver, British Columbia, V7X 1KB;

2. the Filer is registered as an investment fund manager and exempt market dealer in British Columbia, Ontario, Quebec and Newfoundland and Labrador and as a portfolio manager in British Columbia;

3. the Filer will be the investment fund manager, trustee and portfolio manager of the Proposed ETF; the Filer will be the investment fund manager of the Future ETFs and may be the trustee and/or portfolio manager of the Future ETFs;

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

The ETFs

5. the Proposed ETF will be a mutual fund structured as a trust that is governed by the laws of the Province of British Columbia; each of the Future ETFs will be either a trust governed by the laws of a province or territory of Canada or corporation or class thereof governed by the laws of a province or territory of Canada or by the laws of Canada; each ETF will be a reporting issuer in the Canadian jurisdiction(s) in which its securities are distributed;

6. subject to any exemptions that have been, or may be, granted by the applicable securities regulatory authorities, each ETF will be an open-ended mutual fund subject to NI 81-102 and Securityholders of each ETF will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102;

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

   (a) a series of securities distributed pursuant to a long form prospectus prepared pursuant to National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and Form 41-101F2 *Information Required in an Investment Fund Prospectus* that is listed on a Marketplace (Listed Securities); and

   (b) a series of securities offered only on a private placement basis pursuant to available prospectus exemptions, including the accredited investor exemption, under securities laws (Unlisted Securities).

8. the Listed Securities will be listed on a Marketplace;

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

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

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

12. each ETF will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for Listed Securities for the purpose of maintaining liquidity for the Listed Securities;

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

14. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their Listed Securities may generally do so by selling their Listed Securities on a Marketplace, through a registered dealer, subject only to customary brokerage commissions; a Securityholder that holds a Prescribed Number of Listed

Securities or multiple thereof may exchange such Listed Securities for Baskets of Securities, cash and/or securities and cash; Securityholders may also redeem Listed Securities for cash at a redemption price equal to 95% of the closing price of the Listed Securities on a Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per Listed Security;

Underwriter's Certificate Requirement

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

16. the Filer will generally conduct its own marketing, advertising and promotion of the ETFs;

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

Dealer Delivery

18. securities regulatory authorities have advised that they take the view that the first re-sale of a Creation Unit on a Marketplace will generally constitute a distribution of Creation Units under applicable securities legislation and that the Authorized Dealers, Designated Brokers and Affiliate Dealers are subject to the Prospectus Delivery Requirement in connection with such re-sales; re-sales of Listed Securities in the secondary market that are not Creation Units would not ordinarily constitute a distribution of such Listed Securities;

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

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

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

22. the Filer will prepare and file with the applicable jurisdictions an ETF Facts for each class or series of Listed Securities and will make available to the applicable Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers the requisite number of copies of the ETF Facts for the purpose of facilitating their compliance with the Prospectus Delivery Decision within the timeframe necessary to allow Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers to effect delivery of the ETF Facts as contemplated in the Prospectus Delivery Decision;

Take-over Bid Requirements

23. as equity securities that will trade on a Marketplace, it is possible for a person or company to acquire such number of Listed Securities so as to trigger the application of the Take-over Bid Requirements; however:

    (a) even if a person or company were to acquire such number of Listed Securities of an ETF so as to trigger the application of the Take-over Bid Requirements, it would not be possible for such person or company to exercise control or direction over the ETF because under the constating documents of

each ETF, Securityholders will not have the ability to (i) call a meeting of the Securityholders, (ii) make a proposal for consideration at a meeting of Securityholders, or (iii) require a change to the ETF's trustee, investment fund manager or portfolio manager;

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

(c) the way in which the Listed Securities will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium for outstanding Listed Securities because pricing for each Listed Security will generally reflect the net asset value of the Listed Securities; and

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

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought from the Underwriter's Certificate Requirement is granted provided that:

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

(b) each ETF's prospectus, as the same may be amended from time to time, will disclose both the relief granted pursuant to the Exemption Sought and the Prospectus Delivery Decision under Item 34.1 of Form 41-101F2 *Information Required in an Investment Fund Prospectus*, as applicable;

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

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

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

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

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

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

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

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

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

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

2.1.4 Purpose Investments Inc. and Purpose Gold Bullion Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to mutual fund with mutual fund units and exchange traded units to permit purchases of gold bullion and the acceptance of gold bullion as subscription proceeds for exchange traded units of the fund, custodian provisions to allow Royal Canadian Mint to act as custodian for gold bullion, and permit the fund to pay monthly redemption in gold bullion more than 2 business days – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.3(1)(e) and (f), 6.1(1), 6.2, 9.4(2), 10.4(1), 19.1.

October 12, 2018

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

AND

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

AND

IN THE MATTER OF
PURPOSE INVESTMENTS INC.
(the Filer)

AND

IN THE MATTER OF
PURPOSE GOLD BULLION FUND
(the Fund)

DECISION

I. Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that exempts the Fund from:

(a) paragraphs 2.3(1) (e) and (f) of NI 81-102 to permit the Fund to invest up to 100% of its net assets, taken at market value at the time of purchase, in physical gold bullion in 1,000 gram bar sizes (or 100 or 400 troy ounce international bar sizes) (**Bullion**) and permitted gold certificates;

(b) subsection 9.4(2) of NI 81-102, to permit the Fund to accept a combination of cash and Bullion as subscription proceeds for Units;

(c) subsection 10.4(1) of NI 81-102 to permit the Fund to pay redemption proceeds in connection with the redemption of Units pursuant to a Monthly Redemption (as defined below) later than two business days after the applicable Monthly Redemption Date (as defined below); and

(d) subsection 6.1(1) and 6.2 of NI 81-102 to permit the Royal Canadian Mint (the **Mint**) to act as custodian to hold the Fund's Bullion,

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) 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 all of the provinces and territories of Canada other than Ontario (together with Ontario, the Jurisdictions).

II. Interpretation

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

(a) **Basket** means Bullion in such amount as determined by the Filer in its discretion from time to time.

(b) **Bullion** means physical gold bullion.

(c) **Dealer** means a dealer (that may or may not be a Designated Broker) that enters into a continuous distribution agreement with the Filer or an affiliate of the Filer on behalf of the Fund, pursuant to which the Dealer may subscribe for and purchase Units from the Fund.

(d) **Designated Broker** means a dealer that enters into an agreement with the Filer or an affiliate of the Filer on behalf of the Fund to perform certain duties in relation to the Fund.

(e) **ETF Units** means, collectively, the ETF units, ETF non-currency hedged units and U.S. dollar denominated ETF non-currency hedged units and **ETF Unit** means any one of them.

(f) **Exchange** means the Toronto Stock Exchange (**TSX**) or another stock exchange recognized by the Ontario Securities Commission.

(g) **Prescribed Number of Units** means the number of ETF Units determined from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.

III. Representations

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

The Filer

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario.

2. The registered office of the Filer is located at 130 Adelaide Street West, 17th Floor, Toronto, Ontario.

3. The Filer is registered as an investment fund manager, portfolio manager and an exempt market dealer under the *Securities Act* (Ontario) (the **OSA**).

4. The Filer is the trustee and manager of the Fund.

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

The Fund

6. The Fund will be a reporting issuer under the laws of all of the Jurisdictions.

7. The Fund filed a preliminary simplified prospectus (the **Preliminary SP**) and preliminary annual information form (the **Preliminary AIF**) dated July 25, 2018 with the securities regulatory authorities in each of the Jurisdictions to qualify the issuance of its ETF Units and Class F mutual fund units (collectively, the **Units**) in each of the Jurisdictions on a continuous basis.

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

Investment Objectives, Investment Strategies and Investment Restrictions

9. The investment objective of the Fund is to buy and hold substantially all of its assets in Bullion and, incidental thereto, minor amounts of gold certificates, if any. The Fund is not actively managed and does not anticipate making regular distributions.

10. The Fund invests in and holds substantially all of its assets in long-term holdings of Bullion in order to provide investors with a secure, convenient, low-cost alternative for investors interested in holding an investment in Bullion. The Fund invests in and holds unencumbered Bullion on a long-term basis in 1,000 grams bar sizes (but may also hold 100 or 400 troy ounce international bar sizes), and does not speculate with regard to short-term changes in gold prices.

Appointment of the Mint as Custodian of the Fund's Bullion

11. CIBC Mellon Trust Company (**CIBC Mellon**) acts as custodian of the Fund's assets other than Bullion pursuant to the terms of a custodian agreement between the Filer, as trustee and manager of the Fund, and CIBC Mellon dated August 8, 2013, as amended which complies with all of the requirements in Part 6 of NI 81-102. CIBC Mellon will only be responsible for the assets of the Fund that are held directly by it, its affiliates or appointed sub-custodians.

12. CIBC Mellon has advised that it is unable to store the Fund's Bullion as it does not own a vault facility which could accommodate the Fund's Bullion.

13. The Fund wishes to appoint the Royal Canadian Mint (the **Mint**) as the custodian of the Fund's Bullion.

14. Under subsection 6.2 of NI 81-102 the Fund is unable to appoint the Mint as the custodian of the Fund's Bullion since the Mint is not qualified to act as a "custodian".

15. The safekeeping of gold bullion is a specialized business in respect of which the Mint has particular specialized knowledge, expertise and experience.

16. The head office of the Mint is located in Ottawa, Ontario.

17. The Mint is not in default of securities legislation is any of the Jurisdictions.

18. The Mint is established pursuant to the *Royal Canadian Mint Act* (Canada) (the "**Act**") and is a Canadian Crown corporation. Pursuant to section 5 of the Act the Mint is an agent of Her Majesty the Queen and, as such, its obligations generally constitute unconditional obligations of the Government of Canada. The Mint is responsible for the minting and distribution of Canada's circulation coins and foreign circulation coins and numismatic products. As part of its operations, the Mint oerates a gold refinery business and maintains secure storage facilities located in Canada that it owns and operates, and provides storage space to third parties.

19. The Mint had shareholders' equity of (i) C$128,226,000 as at December 31, 2017, the date of its most recent audited annual financial statements that have been made public, and (ii) C$ 140,974,000 as at June 30, 2018, the date of its most recent interim unaudited financial statements that have been made public, each significantly in excess of the requirement in section 6.2 of NI 81-102.

20. The Filer will negotiate the specific terms and conditions of a precious metals storage and custody agreement (the **Storage Agreement**) relating to Bullion with the Mint, which provides for the storage of Bullion generally and will not place any limitations on the Fund's ability to buy or sell Bullion. The Storage Agreement, including the arrangements between the Mint and the Fund in connection with Bullion, will comply with the requirements of Part 6 of NI 81-102.

21. Under the Storage Agreement, upon the initial notice being delivered, the Mint, as custodian of the Fund's Bullion, will receive Bullion based on a list provided by the Filer in such written notice that specifies the amount, weight, type, assay characteristics and value, and serial number of the London Good Delivery bars. After verification, the Mint will issue a "receipt of deposit" that confirms the bar count and total weight in troy ounces of the Bullion. Pursuant to the Storage Agreement, the Mint will reserve the right to refuse delivery in the event of storage capacity limitations at its own vault facilities. In the event of a discrepancy arising during the verification process, the Mint will promptly notify the Filer. The Mint will keep the Fund's Bullion fully allocated and specifically identify the Fund's Bullion as the Fund's property and will keep it physically segregated at all times. The Mint will provide a monthly inventory statement, which the Filer will reconcile with the Fund's records of its Bullion holdings. The Filer will have the right to physically count and have the Fund's auditors subject the Fund's Bullion to audit procedures at the vault facilities at the Mint upon request on any business day during the Mint's regular business hours, provided that such physical count or audit procedures do not interrupt the routine operation of the facility and the requisite security procedures have been observed.

22. Upon the Mint's receipt and taking into possession and control of any of the Fund's Bullion, whether through physical delivery or a transfer of Bullion from a different customer's account at the Mint, the Mint's liability will commence with respect to such Bullion. The Mint will bear all risk of physical loss of, or damage to, the Bullion owned by the Fund in the Mint's custody (regardless of the location at which the Mint decides to store the Bullion), except in the case of circumstances or causes beyond the Mint's reasonable control, including, without limitation, acts or omissions or the failure to cooperate of the Filer and/or of third parties, fire or other casualty, act of God, strike, lockout or other labour dispute, riot, war or other violence, or any law, order or requirement of any governmental agency or authority, and has contractually agreed to replace or pay for lost, damaged or destroyed Bullion in the Fund's account while in the Mint's care, custody and control. Under the Storage Agreement, the Mint's liability will terminate with respect to any Bullion upon termination of the Storage Agreement, whether or not the Fund's Bullion remains in the Mint's possession and control, upon transfer of such Bullion to a different customer's account at the Mint or at the time such Bullion is remitted to the armoured transportation service carrier pursuant to delivery instructions provided by the Filer on behalf of a redeeming unitholder.

23. In the event of physical loss, damage or destruction of the Fund's Bullion in the Mint's custody, care and control, the Filer must give written notice to the Mint within one business day after the discovery of any such loss, damage or destruction, but, in the case of loss or destruction of the Fund's Bullion, in any event no more than 30 days after the delivery by the Mint to the Fund of an inventory statement in which the discrepancy first appears. The Mint will, at its discretion, either (i) replace, or restore to its original state in the event of partial damage, as the case may be, the Fund's Bullion that was lost, destroyed or damaged as soon as practicable after the Mint becomes aware of said loss or destruction, based on the advised weight and assay characteristics provided in the initial notice or (ii) compensate the Fund, through the Filer, for the monetary value of the Fund's Bullion that was lost or destroyed, within five business days from the date the Mint becomes aware of said loss or destruction, based on the advised weight and assay characteristics provided in the initial notice and the market value of such Bullion that was lost or destroyed, using the first available market price of the Bullion from the date the Mint becomes aware of said loss or destruction. If such notice is not given in accordance with the terms of the Storage Agreement, all claims against the Mint will be deemed to have been waived. In addition, no action, suit or other proceeding to recover any loss, damage or destruction may be brought against the Mint unless notice of such loss, damage or destruction has been given in accordance with the terms of the Storage Agreement and unless such action, suit or proceeding shall have been commenced within 12 months from the time such notice is sent to the Mint. The Mint will not be responsible for any special, incidental, consequential, indirect or punitive losses or damages (including lost profits or lost savings), whether or not the Mint had knowledge that such losses or damages might be incurred.

24. Pursuant to the Storage Agreement, the Mint will be required to exercise the same degree of care, diligence and skill in safeguarding the Fund's property that a reasonably prudent person acting as custodian of the Bullion would exercise in the circumstance. The Mint will not be entitled to an indemnity from the Fund in the event the Mint breaches its standard of care.

25. The Mint reserves the right to reject Bullion delivered to it if Bullion contains a hazardous substance or if such Bullion is or becomes unsuitable or undesirable for metallurgical, environmental or other reasons.

26. The Filer will be permitted to terminate the custodial relationship with the Mint by giving written notice to the Mint of its intent to terminate the Storage Agreement if: (i) the Mint has committed a material breach of its obligations under the Storage Agreement that is not cured within ten business days following the Filer giving written notice to the Mint of such material breach; (ii) the Mint is dissolved or adjudged bankrupt, or a trustee, receiver or conservator of the Mint or of its property is appointed, or an application for any of the foregoing is filed; or (iii) the Mint is in breach of any representation or warranty contained in the Storage Agreement. The obligations of the Mint include, but are not limited to, maintaining an inventory of the Fund's Bullion stored with the Mint, providing a monthly inventory to the Fund, maintaining the Fund's Bullion physically segregated and specifically identified as the Fund's property, and taking good care, custody and control of the Fund's Bullion. The Filer believes that all of these obligations are material and anticipates that it would terminate the Storage Agreement if the Mint breaches any such obligation and does not cure such breach within ten business days of the Filer giving written notice to the Mint of such breach. Prior to terminating the custodial relationship with the Mint, the Filer will appoint a replacement custodian for Bullion that complies with the requirements under NI 81-102.

27. The Mint carries such insurance as it deems appropriate for its businesses and its position as custodian of the Fund's Bullion and will provide the Fund with at least 60 days' notice of any cancellation or termination of such coverage. The Fund's ability to recover from the Mint is not contingent upon the Mint's ability to claim on its own insurance. Based on information provided by the Mint, the Filer believes that the insurance carried by the Mint, together with its status as an agent of Her Majesty pursuant to section 5 of the Act with its obligations generally constituting unconditional obligations of the Government of Canada, provides the Trust with such protection in the event of loss or theft of the Fund's Bullion stored at the Mint that is consistent with the protection afforded under insurance carried by other custodians that store gold commercially.

28. The Filer will ensure that Bullion, whether held by the Mint, will be subject to a physical count by a representative of the Filer periodically on a spot-inspection basis as well as subject to audit procedures by the Fund's external auditors on at least an annual basis.

29. The Filer will ensure that no director or officer of the Filer, or representative of the Filer will be authorized to enter into the Bullion storage vaults without being accompanied by at least one representative of the Mint.

30. The Filer will ensure that no part of the Fund's stored Bullion may be delivered out of safekeeping by the Mint without receipt of an instruction from the Filer in the form specified by the Mint indicating the purpose of the delivery and giving direction with respect to the specific amount.

31. The Filer and the Fund believe that the custodial arrangements with the Mint in connection with the Fund's Bullion are consistent with industry practice.

32. The Filer will not be responsible for any losses or damages to the Fund arising out of any action or inaction by the Fund's custodians or any sub-custodian(s) holding the assets of the Fund, including its sub-custodians holding the assets of the Fund other than Bullion, and the Mint holding Bullion owned by the Fund.

33. The Filer will have the authority to change the custodial arrangements described above including, but not limited to, the appointment of a replacement custodian or sub-custodian and/or additional custodians or sub-custodians subject to the requirements under NI 81-102.

34. Paragraphs 2.3(1) (e) and (f) of NI 81-02 provide that a mutual fund must not, except to the extent permitted by paragraphs 2.3(1) (d) and (e), purchase a physical commodity. Paragraph 2.3(1)(e) provides that a mutual fund must not 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. Accordingly, but for the Requested Relief, the Fund would be prohibited from investing in Bullion in accordance with its investment objectives.

35. The Fund's investment objective provides that the Fund will seek to buy and hold substantially all of its assets in Bullion and, incidental thereto, minor amounts of gold certificates, if any. Accordingly the investment in Bullion is an essential and fundamental aspect of the Fund.

36. The Preliminary SP and Preliminary AIF contain and the final simplified prospectus and final annual information form of the Fund will contain, full, true and plain disclosure regarding the Fund's investment in Bullion including disclosure regarding the Fund's concentrated holdings of Bullion. Accordingly, we respectfully submit that potential investors will have sufficient information in order to make an informed investment decision regarding the Fund and its Units. Moreover, we submit that it is likely the case that investors purchasing Units are doing so strictly because of the Fund's concentrated holdings of Bullion.

37. Subsection 9.4(2) of NI 81-102 provides that a mutual fund may accept as subscription proceeds for its securities either cash or securities.

38. Similar to other exchange-traded funds, the Fund will enter into a designated broker agreement with a Designated Broker the terms of which provide that, for each Prescribed Number of Units issued, a Designated Broker or Dealer must deliver payment consisting of, in the Filer's discretion: (i) one Basket and cash in an amount sufficient so that the value of the Bullion and the cash received is equal to the Net Asset Value of the Units next determined following the receipt of the subscription order; or (ii) cash in an amount equal to the Net Asset Value of the Units next determined following the receipt of the subscription order in an amount sufficient so that the value of the Bullion and/or cash received is equal to the Net Asset Value of the Units next determined following the receipt of the subscription order. Accordingly, but for the Requested Relief, the Fund would be prohibited from accepting Bullion or a combination of Bullion and cash as payment for its Units as Bullion is not a "security" as defined in the OSA.

39. Unitholders of the Fund may redeem their units on any business day for cash equal to the NAV per unit on the effective date of redemption (a **Normal Course Redemption**). Redemption proceeds for units redeemed pursuant to a Normal Course Redemption will be paid to unitholders within 2 business days of the effective date of the redemption.

40. Unitholders of the Fund may also redeem their Units on the last business day of each month (each, a **Monthly Redemption Date**) for physical gold bullion equal to the NAV per Unit on the applicable Monthly Redemption Date provided that the redemption request is for physical gold bullion in an amount equal to at least the equivalent in value to a 1,000 grams international bar or an integrate multiple thereof, plus applicable expenses (a **Monthly Redemption**). Any fractional amount of redemption proceeds in excess of a 1,000 grams international bar or an integral multiple thereof will be paid in cash.

41. Paragraph 10.4(1)(a) of NI 81-102 provides that a mutual fund must pay the redemption proceeds for securities that are subject to a redemption order within 2 business days after the date of calculation of the NAV per security used in establishing the redemption price.

42. Given the additional logistics required in connection with the delivery of physical gold bullion from the Mint to the redeeming unitholder (i.e. the arrangement for armored transportation of the physical gold bullion), the Fund will require additional time than is permitted by paragraph 10.4(1)(a) of NI 81-102 in order to pay the redemption proceeds to the redeeming unitholder in connection with a Monthly Redemption. But for the Requested Relief the Fund would be unable to provide unitholders with the option to redeem their Units for physical gold bullion as the Fund would be unable to pay the redemption proceeds in connection with a Monthly Redemption within 2 business days as required by paragraph 10.4(1)(a) of NI 81-102.

43. CIBC Mellon has advised that it is unable to store the Fund's Bullion as it does not own a vault facility which could accommodate the Fund's Bullion.

44. The safekeeping of gold bullion is a specialized business in respect of which the Mint has particular specialized knowledge, expertise and experience.

45. The Mint's shareholders' equity is in excess of the highest minimum capitalization amount of shareholders' equity required under NI 81-102 for entities qualified to act as a custodian for assets held in Canada.

IV. Decision

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

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

(a) the simplified prospectus of the Fund contains disclosure regarding the unique risks associated with an investment in the Fund, including the risk that direct purchases of Bullion by the Fund may generate higher transaction and custody costs than other types of investments, which may impact the performance of the Fund;

(b) redemption proceeds for Units redeemed pursuant to a Monthly Redemption will be paid to the unitholder within 10 business days following the applicable Monthly Redemption Date;

(c) in respect of the relief granted from subsection 9.4(2), the acceptance of any Bullion as payment for the issue price of Units is made in accordance with paragraph 9.4(2)(b);

(d) the simplified prospectus of the Fund discloses, in the investment strategy section that the Fund has obtained relief to invest in Bullion; and

(e) the Mint has in excess of the highest minimum capitalization amount of shareholders' equity required under NI 81-102 for entities qualified to act as a custodian for assets held in Canada.

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

2.2 Orders

2.2.1 LCH.Clearnet Limited – s. 144

Headnote

Variation of Commission Order made under section 21.2 of the Securities Act (Ontario) (Act) for recognition of LCH.Clearnet Limited to be recognized as a clearing agency.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
LCH.CLEARNET LIMITED

VARIATION ORDER
(Section 144 of the Act)

WHEREAS on September 10, 2013, the Ontario Securities Commission (**Commission**) issued an order pursuant to section 21.2 of the Act recognizing LCH.Clearnet Limited as a clearing agency (**Recognition Order**);

AND WHEREAS on December 9, 2016 LCH.Clearnet Limited changed its name to LCH Limited (**LCH**);

AND WHEREAS LCH has filed an application with the Commission pursuant to section 144 of the Act to vary the Recognition Order by replacing the name "LCH.Clearnet Limited" with "LCH Limited" (**Application**);

AND WHEREAS LCH has represented to the Commission that:

1. No other changes have been made, nor have any implications resulted from the name change in respect of LCH's business structure, governance, operations nor clearing services available to Ontario-based clearing members.

AND WHEREAS based on the Application and the representations LCH has made to the Commission, the Commission has determined that it is not contrary to the public interest to vary the Recognition Order;

IT IS ORDERED by the Commission that, pursuant to section 144 of the Act, that the Recognition Order be varied by replacing any reference to "LCH.Clearnet Limited" with "LCH Limited".

DATED this 28th day of September, 2018.

"Deborah Leckman"
Ontario Securities Commission

"Robert P. Hutchison"
Ontario Securities Commission

2.2.2 1832 Asset Management L.P. et al.

Headnote

Approval granted for change of manager and change of custodian of investment fund – change of manager is not detrimental to securityholders or the public interest – change of manager to be approved by the fund's securityholders at a special meeting of securityholders – National Instrument 81-102 Investment Funds.

Statutes Cited

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

October 5, 2018

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

IN THE MATTER OF
1832 ASSET MANAGEMENT L.P.
(1832)

AND

B.E.S.T. INVESTMENT COUNSEL LIMITED
(BEST, and together with 1832, the Filers)

AND

DYNAMIC VENTURE OPPORTUNITIES FUND LTD.
(the Fund)

ORDER

Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filers for an order under the securities legislation of Ontario (the **Legislation**) for approval of (a) the proposed change of manager of the Fund from 1832 to BEST pursuant to section 5.5(1)(a) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), and (b) the proposed change of custodian of the Fund from State Street Trust Company Canada (**State Street**) to CIBC Mellon Trust Company (**CIBC Mellon**) pursuant to section 5.5(1)(c) of NI 81-102 (collectively, the **Approvals Sought**).

Interpretation

Terms defined in National Instrument 14-101 Definitions have the same meanings if used in this order, unless otherwise defined.

Representations

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

The Fund

1. The Fund is a corporation established under the *Canada Business Corporations Act* (the **CBCA**) and is registered as a labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act, 1992* (Ontario), as amended, and as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) and the regulations thereunder.

2. The Fund is a reporting issuer in Ontario only, and not in any other jurisdiction in Canada.

3. Securities of the Fund were distributed in Ontario under a prospectus dated January 25, 2016, which was prepared in accordance with the requirements of National Instrument 41-101 *General Prospectus Requirements*.

4. The Fund is not in default of the securities legislation in any jurisdiction of Canada.

1832

5. 1832 is a limited partnership existing under the laws of the Province of Ontario.

6. The head office of 1832 is located in Toronto, Ontario.

7. 1832 is the current investment fund manager, portfolio manager, service provider and principal distributor of the Fund.

8. 1832 is registered as: (i) a portfolio manager in all of the provinces of Canada, and in Yukon and the Northwest Territories; (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.

9. 1832 is not in default of the securities legislation in any jurisdiction of Canada.

BEST

10. BEST is a corporation incorporated under the *Business Corporations Act* (Ontario).

11. The head office of BEST is located in Toronto, Ontario.

12. BEST is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario.

13. BEST is not in default of the securities legislation in any jurisdiction of Canada.

14. BEST currently manages the B.E.S.T. Total Return Fund Inc., a labour-sponsored investment fund corporation formed in 2003 (the **BEST Fund**), which is distributed in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Prince Edward Island by way of a prospectus dated August 8, 2018. BEST manages no other investment funds.

The Transaction

15. On July 31, 2018, the Fund issued a press release announcing that the board of directors of the Fund (the **Board**) approved the entering into by the Filers of an acquisition agreement (the **Acquisition Agreement**) providing for the acquisition by BEST of the management, services and principal distribution contracts of the Fund from 1832 by way of assignment (the **Transaction**).

16. The Transaction will result in a change of investment fund manager and portfolio manager of the Fund from 1832 to BEST (the **Change of Manager**).

17. Under the Acquisition Agreement and in connection with the Change of Manager, the Filers have also agreed to change the custodian of the Fund from the current custodian, State Street, to CIBC Mellon, the current custodian of the BEST Fund, subject to the agreement of such parties (the **Change of Custodian**).

18. The Acquisition Agreement also contemplates that, following the completion of the Change of Manager, the name of the Fund will be changed from Dynamic Venture Opportunities Fund Ltd. to B.E.S.T. Venture Opportunities Fund Inc. (the **Change of Name**).

19. The Board established an independent committee (the **Special Committee**) comprised of certain of the independent members of the Board to consider appropriate options for the future operation of the Fund, including the Transaction. After reviewing the Transaction and the Acquisition Agreement, and conducting detailed due diligence on BEST and its management team, the Special Committee issued a report to the Board stating that the Special Committee viewed the Transaction as being in the best interests of the Fund and its shareholders, and accordingly recommended the Transaction to the Board for the Board's approval.

20. The Board has approved the Transaction as being in the best interests of the Fund and its shareholders.

21. The current independent review committee of the Fund (the **IRC**) has reviewed the Transaction and has provided a recommendation to 1832 that, in the IRC's opinion, after reasonable inquiry, the Transaction, if implemented, would achieve a fair and reasonable result for the Fund.

22. The completion of the Transaction, including the Change of Manager, Change of Custodian and Change of Name (the **Closing**), is subject to the satisfaction of certain closing conditions, including:

    a. customary conditions of closing;

    b. the approval of shareholders of the Fund in respect of (i) the Change of Manager, pursuant to section 5.1(1)(b) of NI 81-102 (the **Change of Manager Shareholder Approval**), and (ii) the Change of Name, pursuant to section 173(1)(a) of the CBCA; and

    c. the Approvals Sought.

23. A special meeting, including any adjournment or postponement thereof, of shareholders of the Fund (the **Meeting**) has been called and will be held on October 10, 2018 for shareholders to vote on resolutions approving the Change of Manager, Change of Name, and related matters.

24. The meeting materials, including the notice of the Meeting (the **Notice of Meeting**) and management information circular (the **Circular**) and forms of proxy, were mailed to shareholders of the Fund in accordance with applicable securities laws on or about September 17, 2018. Copies of the Notice of Meeting and the Circular were filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) in accordance with applicable securities legislation.

25. The Circular contains a summary of the information that the Filers, the Special Committee and the Board consider necessary to allow shareholders of the Fund to make an informed decision about the Change of Manager and Change of Name before voting on the Change of Manager and Change of Name resolutions at the Meeting. The Change of Name resolutions, if approved, will authorize the filing of Articles of Amendment to amend the Articles of Incorporation of the Fund to reflect the Change of Name. Such filing will be the only change required to the constating documents of the Fund as a result of the Transaction.

26. The press release, a copy of the Acquisition Agreement and a material change report have

been filed on SEDAR. BEST, on behalf of the Fund, will file a further press release upon completion of the Transaction.

27. The Closing is expected to occur no later than the third business day following satisfaction of all conditions of the Closing. Subject to satisfaction of the above, the Closing is expected to occur on or about October 12, 2018 and no later than October 20, 2018.

28. None of the costs of the Transaction, including the Change of Manager and Change of Custodian, will be borne by the Fund. The costs of the Transaction will instead be borne by 1832 and/or BEST. These costs include legal and accounting fees, back office fund conversion costs, proxy solicitation, printing and mailing cost, and regulatory fees.

29. The Transaction, including the Change of Manager and Change of Custodian, is not expected to adversely affect the respective financial positions of the Filers or their respective abilities to fulfill their regulatory obligations.

30. The Transaction, including the Change of Manager and Change of Custodian, is not expected to have any material impact on the business, operations or affairs of the Fund or the shareholders of the Fund.

Change of Manager

31. The Filers have proposed the Transaction because 1832 wishes to exit the business of managing labour-sponsored investment funds (**LSIFs**), including the Fund. BEST is, and following the Closing will remain, in the business of managing LSIFs, and has therefore chosen to focus more on the management of LSIFs.

32. Upon the Closing, the current members of the IRC will cease to act as members pursuant to section 3.10(1)(b) of National Instrument 81-107 *Independent Review Committee of Investment Funds* (**NI 81-107**), and BEST, as manager of the Fund at that time, will appoint new members to serve on the IRC. BEST intends to appoint the members of the independent review committee that BEST has established for the BEST Fund, to form the new IRC. Accordingly, upon the Closing, the new IRC is expected to comprise Geoffrey Ralph Bedford, Aleksandar Daskalovic and Brent William Bere.

33. On or prior to the Closing, it is expected that Justin Ashley will resign as director of the Fund. Further changes to the current makeup of the Board may take place at the next annual general meeting of the Fund. It is expected that the Board will be reconstituted with the same independent directors who serve as directors for the BEST Fund, being John-David Alkema, George Russell Paterson, David Andrew Turnbull and G. Keith Graham.

34. Following the Change of Manager, BEST intends to appoint the following officers for the Fund: John Richardson as Chief Executive Officer, Thomas Lunan as Chief Financial Officer and Mark Donatelli as Corporate Secretary.

35. Following the Change of Manager, BEST will provide investment advisor services to the Fund through a team of portfolio managers comprising John Richardson, Thomas Lunan and Mark Donatelli.

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

37. BEST intends to manage and administer the Fund in substantially the same manner as 1832. There is no current intention to change the investment objectives, investment strategies, or increase the fees and expenses of the Fund.

38. Other than as required to effect the Transaction, BEST does not currently contemplate any changes to the material contracts of the Fund.

39. Under section 5.5(1)(a) of NI 81-102, the approval of the applicable securities authority is required before the manager of an investment fund is changed, unless the new manager is an affiliate of the current manager.

40. 1832 and BEST are not affiliates. Therefore, the approval of the Commission is required before the Change of Manager can occur.

Change of Custodian

41. State Street is the current custodian of the Fund. State Street's most recent custodian report for the Fund was filed on September 25, 2018.

42. CIBC Mellon is the custodian of the BEST Fund. CIBC Mellon's most recent custodian report for the BEST Fund was filed on September 27, 2018. This report was provided to BEST.

43. CIBC Mellon is not affiliated with either of the Filers.

44. CIBC Mellon meets the requirements of Part 6 of NI 81-102.

45. The Change of Custodian and the custodial agreements and arrangements will be implemented in compliance with Part 6 of NI 81-102.

46. The Fund's new custodian agreement with CIBC Mellon will be filed on SEDAR within 10 days following its execution. The new custodian agreement will not be executed before the Change of Custodian is approved by the Commission.

47. The Filers believe that the Change of Custodian will be beneficial to the Fund because it is expected to achieve operational efficiencies given that CIBC Mellon is the custodian of the BEST Fund.

48. The Filers believe that the Change of Custodian will have no adverse impact on continued compliance with Part 6 of NI 81-102

49. Details of the Change of Custodian will be set out in the Fund's next annual information form.

50. 1832 does not regard the Change of Custodian as either a "material change", as defined in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, or as a "conflict of interest matter", as defined in section 1.2 of NI 81-107.

51. Under section 5.5(1)(c) of NI 81-102, the approval of the applicable securities regulatory authority is required before a change of the custodian of an investment fund is implemented, if there has been or will be, in connection with the proposed change, a change of the investment fund manager to an unaffiliated manager.

52. The Change of Custodian will be made in connection with the proposed Change of Manager. Therefore, the approval of the Commission is required before the Change of Custodian can occur.

General

53. The Approvals Sought will not be detrimental to the protection of investors in the Fund or prejudicial to the public interest.

Order

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

The order of the Commission under the Legislation is that the Approvals Sought are granted, provided that the Change of Manager Shareholder Approval is granted at the Meeting.

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

2.2.3 Caldwell Investment Management Ltd.

FILE NO.: 2018-36

IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.

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

October 12, 2018

ORDER

WHEREAS on September 29, 2018, the Ontario Securities Commission (**Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario in relation to a disclosure motion filed by Caldwell Investment Management Ltd. (**Caldwell**);

ON READING the motion materials filed by Caldwell and Staff of the Commission (**Staff**) and on hearing the submissions of Caldwell and the representatives for Staff, and upon reviewing the confidential binder of documents provided to the Panel by Staff (**Disclosure Binder**);

IT IS ORDERED THAT Staff shall disclose to Caldwell certain information contained in Tab 24 of the Disclosure Binder, as described in the Reasons and Decision in this matter of the same date at paragraph 39 and the balance of the motion is dismissed.

"D. Grant Vingoe"

2.2.4 Money Gate Mortgage Investment Corporation et al.

FILE NO.: 2017-79

IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN

Timothy Moseley, Vice-Chair and Chair of the Panel

October 16, 2018

ORDER

WHEREAS on October 16, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission and for Money Gate Mortgage Investment Corporation, Money Gate Corp., Morteza Katebian and Payam Katebian;

IT IS ORDERED THAT a motion regarding potential amendments to the Statement of Allegations will be heard October 31, 2018 at 9:30 a.m., if necessary, or on such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

“Timothy Moseley”

2.3 Orders with Related Settlement Agreements

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

FILE NO.: 2018-44

IN THE MATTER OF
ETORO (EUROPE) LIMITED

D. Grant Vingoe, Vice-Chair and Chair of the Panel
William J. Furlong, Commissioner
M. Cecilia Williams, Commissioner

October 11, 2018

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

WHEREAS on October 10, 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 eToro (Europe) Limited (**eToro**) and staff of the Commission (**Staff**) for approval of a settlement agreement dated September 26, 2018 (the **Settlement Agreement**);

ON READING the Joint Request for a Settlement Hearing, including the Statement of Allegations dated October 3, 2018, the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of the representatives for eToro and Staff;

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. eToro is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

3. eToro shall:

    a. pay an administrative penalty in the amount of CDN $550,000 to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount 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;

    b. disgorge USD $1,791,163, pursuant to paragraph 10 of subsection 127(1) of the Act, which amount 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; and

    c. pay costs of the Commission's investigation in the amount of CDN $25,000, pursuant to section 127.1 of the Act.

"D. Grant Vingoe"

"William J. Furlong"

"M. Cecilia Williams"

FILE NO.: _____

IN THE MATTER OF
ETORO (EUROPE) LIMITED

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
ETORO (EUROPE) LIMITED

SETTLEMENT AGREEMENT

PART I – INTRODUCTION AND REGULATORY MESSAGE

1. The Ontario Securities Commission (the "**Commission**") will 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*, RSO 1990, c S5, as amended (the "**Act**"), it is in the public interest for the Commission to make certain orders in respect of eToro (Europe) Limited ("**eToro**") described herein.

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 Ontario securities law. The registration and distribution requirements of the Act foster integrity, fairness and enhance protection for Ontario investors.

3. Between 2008 and 2017, eToro contravened sections 25 and 53 of the Act by opening and operating trading accounts for Ontario residents in which CFDs based on exposure to underlying assets which include 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 of the Commission ("**Staff**") had already raised concerns with eToro about access by Ontario residents to its trading platform.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement of the proceeding commenced by the Notice of Hearing (the "**Proceeding**") against eToro according to the terms and conditions set out in Part V of this Settlement Agreement (the "**Settlement Agreement**"). eToro agrees to the making of an order in the form attached as Schedule "A" (the "**Order**"), based on the facts set out below.

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

PART III – AGREED FACTS

A. eToro

6. eToro is a brokerage firm resident in Cyprus which operates an online trading platform (the "**eToro Platform**").

7. eToro is regulated by the Cyprus Securities and Exchange Commission. As a registered Cypriot Investment Firm, eToro is regulated by the Cyprus Securities and Exchange Commission. As a registered Cypriot Investment Firm, eToro operates under and is subject to the Markets in Financial Instruments Directive.

8. 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.

B. Ontario clients

9. From eToro's inception in 2008 until approximately October 2, 2017 (the "**Material Time**"), eToro opened and operated nearly 2,500 accounts for clients resident in Ontario (the "**Ontario Accounts**").

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

11. 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.

12. 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.

13. As stated in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario*:

> Staff's view is that CFDs, when offered to investors in Ontario, engage the purposes of the Act and constitute "investment contracts" and "securities" for the purpose of Ontario securities law. In our view, CFDs are also "derivatives" for the purpose of Ontario securities law. …
>
> Since we consider CFDs to be securities under the Act, we are of the view that CFD providers that wish to offer CFDs to investors in Ontario, absent statutory exemptions or exemptive relief, are required to comply with the registration and prospectus requirements of Ontario securities law. …
>
> In view of our conclusion that the issuance of a CFD to an investor in Ontario involves a distribution of a security to that investor for the purposes of Ontario securities law, we take the view that the issuer of such product must absent exemptive relief, comply with the prospectus requirement of Ontario securities law.

C. eToro communications with Staff

14. 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.

15. 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.

16. 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".

17. 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.

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

19. Indeed, in 2017, eToro opened 2,172 new Ontario Accounts and earned USD $1,400,369 in revenues from those accounts. These revenues accounted for a small percentage of eToro's total revenues in 2017.

D. Respondent's Position and Mitigating Factors

20. eToro has advised Staff of the following facts:

(a) eToro provided a grace period to account holders to close their accounts and has now closed all of the Ontario Accounts and has been attempting to return any funds remaining in the Ontario Accounts to the account holders. Currently, 417 of the closed Ontario Accounts have funds remaining in them (the "**Funded Ontario Accounts**"). The aggregate amount of funds in these accounts is USD $56,389.08. eToro has attempted, unsuccessfully, to contact account holders of the Funded Ontario Accounts in order to obtain instructions regarding returning the funds to them.

(b) Since 2010, except during short periods of time, eToro's terms and conditions contained on its website have stated that it does not accept users from Canada.

(c) As of the date of this Settlement Agreement, eToro has developed the following enhanced procedures and controls designed to prevent Ontario residents from opening accounts with eToro and accessing the eToro Platform:

(i) automatically blocking access to eToro's website by users with a Canadian IP address;

(ii) revising eToro's online account application process to automatically reject applicants who indicate they reside in Canada;

(iii) informing eToro's "KYC Verification Department", which reviews proof of residence required to be uploaded by prospective eToro clients for anti-money laundering purposes as required by the laws of Cyprus, that Canadian residents are not permitted to open accounts; and

(iv) adopting a written policy that eToro does not accept clients from Canada.

21. eToro shall put additional measures in place with respect to Ontario residents in connection with this Settlement Agreement no later than October 31, 2018. Specifically, eToro shall automatically reject applicants with Canadian phone numbers or who use ".ca" email domains. It shall also inform eToro's KYC Verification Department that where a deposit has been made using a Canadian-based credit card or wire transfer from a Canadian financial institution, further inquiries shall be made to ensure that the account holder is resident outside of Canada. (together, the procedures in paragraph 20(c) and this paragraph 21 are the "**Enhanced Procedures and Controls**")

22. eToro voluntarily attended an interview with Staff and has since cooperated with Staff.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

23. eToro admits and acknowledges that it has breached Ontario securities law and acted 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.

PART V – TERMS OF SETTLEMENT

24. eToro agrees to the terms of settlement listed below and consents to the Order in substantially the form attached hereto as Schedule "A", which provides that:

(a) the Settlement Agreement is approved;

(b) eToro is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(c) eToro shall:

(i) pay an administrative penalty in the amount of CDN $550,000 by wire transfer to the Commission before the commencement of the Settlement Hearing (defined below), pursuant to paragraph 9 of subsection 127(1) of the Act, which amount 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;

(ii) disgorge USD $1,791,163 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 10 of subsection 127(1) of the Act, which amount 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; and

(iii) pay costs of the Commission's investigation in the amount of CDN $25,000, by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

25. eToro has given an undertaking (the "**Undertaking**") to the Commission in the form attached as Schedule "B" to this Settlement Agreement, pursuant to which eToro undertakes to:

    (i) with respect to each of the Funded Ontario Accounts with funds remaining in them:

        (1) send an email to the account holder(s) each quarter, until the funds are returned or June 30, 2021, whichever occurs first, requesting that they contact eToro to provide instructions regarding the return of funds in their Funded Ontario Account;

        (2) attempt to contact the account holder(s) by telephone if eToro does not receive a response to the quarterly email referred to in subparagraph 23(i)(1) above within 30 days;

        (3) on instruction from the account holder(s), return the funds in the Funded Ontario Account without charging fees; and

        (4) if by July 1, 2021 eToro has not obtained instructions regarding the return of funds, eToro shall donate the funds to the charity "The Junior Achievement Of Canada Foundation" or similar Canadian registered charity as may exist as at that date and provide confirmation to Staff within 30 days of the donation that it was made; and

    (ii) deliver to Staff of the Commission, on each of June 30, 2019, June 30, 2020 and June 30, 2021, an affidavit sworn or affirmed by a senior officer of eToro:

        (1) confirming that (a) eToro did not have any accounts open for clients resident in Ontario during the prior twelve month period, and (b) the Enhanced Procedures and Controls remain in place at eToro (unless by that time eToro is authorized to trade in securities or derivatives in Ontario or is properly relying on available exemptions from the requirement to register, in which case the two confirmations described in this subparagraph will not be required); and

        (2) listing the Funded Ontario Accounts with funds remaining in them, and confirming that eToro has taken the steps to attempt to obtain instructions from each account holder in accordance with the steps set out in subparagraphs 25(i)(1) and (2) above.

26. eToro agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.

PART VI – FURTHER PROCEEDINGS

27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against eToro or any of its officers, directors or employees in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraph 28 below.

28. If the Commission approves this Settlement Agreement and eToro fails to comply with any of the terms of the Settlement Agreement or the Undertaking, Staff may bring proceedings under Ontario securities law against eToro or any of its officers, directors or employees. These proceedings may be based on, but need not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement or the Undertaking.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing (the "**Settlement Hearing**") before the Commission, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

30. Staff and eToro agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing on eToro's conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

31. If the Commission approves this Settlement Agreement:

    (a) eToro 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.

32. If the Commission does not approve this Settlement Agreement at the Settlement Hearing, Staff shall return to eToro all funds paid by eToro to the Commission prior to the Settlement Hearing within seven (7) days of the Settlement Hearing.

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

34. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between Staff and eToro before the Settlement Hearing takes place will be without prejudice to Staff and eToro; and

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

35. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and eToro otherwise agree in writing or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated at Toronto this 26th day of September, 2018.

ETORO (EUROPE) LIMITED
By: *"Avi Sela"*
We have authority to bind the corporation
Name: "Avi Sela"

COMMISSION STAFF
By: *"Jeff Kehoe"*
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE "A" – DRAFT ORDER

FILE NO.: _____

IN THE MATTER OF
ETORO (EUROPE) LIMITED

ORDER
(Subsections 127(1) and 127.1)

WHEREAS on September ___, 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 the Application made jointly by respect of the eToro (Europe) Limited. ("**eToro**") and Staff of the Commission for approval of a settlement agreement dated September ___, 2018 (the "**Settlement Agreement**");

ON READING the Joint Application Record for a Settlement Hearing, including the Statement of Allegations dated September ___, 2018, the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of counsel for both parties;

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. eToro is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

3. eToro shall:

   i. pay an administrative penalty in the amount of CDN $550,000 by wire transfer to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount 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;

   ii. disgorge USD $1,791,163, pursuant to paragraph 10 of subsection 127(1) of the Act, which amount 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; and

   iii. pay costs of the Commission's investigation in the amount of CDN $25,000, pursuant to section 127.1 of the Act.

SCHEDULE "B" – UNDERTAKING

IN THE MATTER OF
ETORO (EUROPE) LIMITED

UNDERTAKING

1. This Undertaking is given in connection with the settlement agreement dated September 17, 2018 between eToro (Europe) Limited and Staff of the Commission (the "**Settlement Agreement**"). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. eToro undertakes to:

   (i) with respect to each of the Funded Ontario Accounts with funds remaining in them:

      (1) send an email to the account holder(s) each quarter, until the funds are returned or June 30, 2021, whichever occurs first, requesting that they contact eToro to provide instructions regarding the return of funds in their Funded Ontario Account;

      (2) attempt to contact the account holder(s) by telephone if eToro does not receive a response to the email referred to in subparagraph 2(i)(1) above within 30 days;

      (3) on instruction from the account holder(s), return the funds in the Funded Ontario Account without charging fees; and

      (4) if by July 1, 2021 eToro has not obtained instructions regarding the return of funds, eToro shall donate the funds to the charity "The Junior Achievement Of Canada Foundation" or similar Canadian registered charity as may exist as at that date and provide confirmation to Staff within 30 days of the donation that it was made; and

   (ii) deliver to Staff of the Commission, on each of June 30, 2019, June 30, 2020 and June 30, 2021, an affidavit sworn or affirmed by a senior officer of eToro:

      (1) confirming that (a) eToro does not have any accounts open for clients resident in Ontario during the prior twelve month period, and (b) the Enhanced Procedures and Controls remain in place at eToro (unless by that time eToro is authorized to trade in securities or derivatives in Ontario or is properly relying on available exemptions from the requirement to register, in which case the two confirmations described in this subparagraph will not be required); and

      (2) listing the Funded Ontario Accounts with funds remaining in them, and confirming that eToro has taken the steps to attempt to obtain instructions from each account holder in accordance with the steps set out in subparagraphs 2(i)(1) and (2) above.

ETORO (EUROPE) LIMITED

"Avi Sela"
We have authority to bind the corporation
Name: "Avi Sela"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

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

IN THE MATTER OF ETORO (EUROPE) LIMITED

ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Citation: *eToro (Europe) Limited*, 2018 ONSEC 49
Date: 2018-10-11
File No.: 2018-44

Hearing:	October 10, 2018	
Decision:	October 11, 2018	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
	William J. Furlong	Commissioner
	M. Cecilia Williams	Commissioner
Appearances:	Derek J. Ferris Kai Olson	For Staff of the Commission
	Adam Chisholm Paola Ramirez (student-at-law)	For eToro (Europe) Limited

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

I. OVERVIEW

[1] The parties have jointly submitted that it would be in the public interest for the Panel to issue an order approving a settlement agreement between the parties (the **Settlement Agreement**) and imposing sanctions on the respondent, eToro (Europe) Limited (**eToro**). After considering the submissions of the parties, and for the following reasons, the Panel agrees that the requested order is in the public interest.

[2] A detailed description of the facts is provided in the Settlement Agreement, which will be publicly available, so we will be brief in describing the background and the conduct at issue.

II. BACKGROUND

A. eToro

[3] eToro is a brokerage firm resident in Cyprus. eToro is regulated by the Cyprus Securities and Exchange Commission and operates under and is subject to the Markets in Financial Instruments Directive.

[4] eToro is not registered as a dealer in Ontario. eToro is not a reporting issuer in Ontario and has not filed a prospectus or a preliminary prospectus with the Ontario Securities Commission (the **Commission**).

B. The Ontario Accounts

[5] From eToro's inception in 2008 until approximately October 2, 2017 (the **Material Time**), eToro opened and operated nearly 2,500 accounts for Ontario residents (the **Ontario Accounts**).

[6] eToro's online trading platform (the **eToro Platform**) allowed Ontario investors to trade contracts for differences (**CFDs**). A CFD typically involves a contract between two parties, a seller and a buyer, that creates payment rights and obligations based on the price movements of an underlying asset. CFDs allow participants to take long or short positions in relation to the price movements of underlying assets, but without acquiring ownership of the underlying asset.

[7] Ontario investors used the eToro Platform to trade CFDs that were based on exposure to underlying assets which included cryptocurrencies and stocks. eToro was the counterparty to the CFD trades, and the holders of the Ontario Accounts were therefore exposed to the conduct and credit of this offshore entity that lacked Ontario regulatory oversight.

[8] OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* states that, when offered to investors in Ontario, CFDs constitute "investment contracts" and "securities" for the purpose of Ontario securities law.

[9] During the Material Time, eToro earned revenues totalling USD $1,791,163 from the Ontario Accounts.

C. eToro's Misleading Communications with Staff

[10] In November 2010, staff of the Commission (**Staff**) raised concerns with eToro that eToro was in breach of Ontario securities law because Ontario residents were participating in the eToro Platform. In response to Staff's concerns, eToro agreed to ensure that eToro's sales and support team understood that eToro is not registered in Ontario and does not accept trades from Ontario residents.

[11] In response to further inquiries by Staff in September 2011 and May 2015, eToro confirmed that its sales and support team was familiar with the policy of not accepting trades from Ontario residents.

[12] In fact, during the Material Time, and contrary to eToro's representations to Staff, eToro's sales and support team played no role in screening prospective new clients to confirm whether they were Ontario residents. Further, eToro had no written policies regarding Ontario residents and no meaningful controls in place to prevent Ontario residents from opening accounts with eToro.

[13] As a result, even after three inquiries from Staff, eToro continued to open accounts and accept trades from Ontario residents, which included opening 2,172 new Ontario Accounts in 2017 alone.

D. Current Status of the Ontario Accounts and eToro's Procedures and Controls

[14] eToro advised Staff that it has now closed all of the Ontario Accounts and has been attempting to return any funds remaining in the Ontario Accounts to the account holders. Currently, 417 of the closed Ontario Accounts have funds remaining in them (the **Funded Ontario Accounts**). The remaining funds total approximately USD $56,000 (the **Remaining Funds**). eToro advised that it has been unsuccessful in its attempts to contact the holders of these accounts to obtain instructions for returning the Remaining Funds.

[15] As part of its settlement with the Commission, eToro has provided an undertaking (the **Undertaking**) to periodically contact these account holders to obtain instructions regarding the Remaining Funds. If by July 1, 2021 eToro has not obtained such instructions, eToro undertakes to donate the Remaining Funds to a Canadian registered charity and provide confirmation of the donation to Staff.

[16] eToro has also advised Staff that, as of the date of the Settlement Agreement, eToro has developed enhanced procedures and controls designed to prevent Ontario residents from opening accounts with eToro. These consist of the following:

a. automatically blocking access to eToro's website by users with a Canadian IP address,

b. revising eToro's online account application process to automatically reject applicants who indicate they reside in Canada,

c. informing eToro's "KYC Verification Department" that Canadian residents are not permitted to open accounts, and

d. adopting a written policy that eToro does not accept clients from Canada.

[17] eToro has also agreed to put the following measures in effect no later than October 31, 2018:

a. automatically rejecting applicants with Canadian phone numbers or who use ".ca" email domains, and

b. making further inquiries where a deposit is made using a Canadian-based credit card or wire transfer from a Canadian financial institution to ensure that the account holder is resident outside of Canada

(all of these enhanced procedures and controls, collectively, the **Enhanced Procedures and Controls**).

III. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

[18] eToro admits that it has breached Ontario securities law and acted contrary to the public interest by

a. engaging in the business of trading in securities without registration, or an exemption from registration, contrary to s. 25 of the Act[1], and

b. engaging in a distribution of securities without complying with the prospectus requirements, or without an exemption from the prospectus requirements, contrary to s. 53 of the Act.

IV. THE TERMS OF THE SETTLEMENT AGREEMENT

[19] The Settlement Agreement executed by eToro and Staff proposes sanctions and costs against eToro that include:

a. an administrative penalty in the amount of CDN $550,000,

b. disgorgement in the amount of USD $1,791,163,

c. costs in the amount of CDN $25,000, and

d. a reprimand.

[20] As part of the Undertaking provided to the Commission, eToro has also committed to providing Staff with an affidavit sworn by a senior officer of eToro, each year until June 30, 2021, confirming:

a. that eToro did not have any accounts open for Ontario residents during the prior twelve-month period,

b. that the Enhanced Procedures and Controls remain in place at eToro,

c. the number of Funded Ontario Accounts with funds remaining in them, and

d. the steps eToro has taken to return the Remaining Funds.

[21] We have been advised that all amounts payable to the Commission have now been paid by eToro.

[22] We acknowledge eToro's cooperation in attaining the settlement, including not putting Staff to the task of bringing a matter involving a foreign respondent to a hearing. The settlement also includes Enhanced Procedures and Controls designed to prevent a recurrence of the events described in the Settlement Agreement.

V. ANALYSIS

[23] The role of the Panel is to decide whether the proposed Settlement Agreement, as presented and agreed to, falls within an acceptable range and should be approved as being in the public interest. It is important to note, however, that the agreed sanctions need not be the sanctions that the Panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondent and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.

A. Administrative Penalty

[24] We find that that the administrative penalty in the amount of CDN $550,000 is within a reasonable range in light of the history of penalties for non-registration cases, including those involving foreign market participants that overlooked or ignored the fact that their activities involving Ontario residents triggered the regulatory obligations that arise in this

[1] *Securities Act*, RSO 1990, c S.5 (the **Act**).

case. We are concerned that this case involves repeated, unwarranted assurances to Staff concerning the verification measures that were being taken. We are also aware that this case involves a brokerage firm operating in multiple jurisdictions that should be expected to have robust compliance systems to ensure that it is authorized to deal with its customer base. Notwithstanding the result in this settlement and prior similar cases, firms that are found to have ignored these obligations in the future should be considered to be on notice and can reasonably expect to face more stringent consequences. Both specific and general deterrence will likely require stronger measures if such conduct arises in the future.

B. Disgorgement

[25] We have ordered disgorgement of USD $1,791,163, an amount agreed to constitute all fees received as a result of the operation of the Ontario Accounts, denying eToro any benefit from these violations.

[26] The Settlement Agreement reflects that eToro has closed the Ontario Accounts in an orderly way and has returned or is seeking to return the Remaining Funds in the Ontario Accounts to Ontario investors.

C. Costs

[27] Costs in the amount of CDN $25,000 have been agreed and we will order this payment.

D. Market Participation

[28] Should eToro seek to register in Ontario in the future, the conduct detailed in the Settlement Agreement will, of course, have to be considered by the Commission's Compliance and Registrant Regulation Branch in evaluating whether eToro should then be registered, and the conditions that should be imposed.

[29] In light of that required review, we were satisfied that market participation restrictions were not required to bring this settlement into a reasonable range of consequences to obtain our approval.

VI. CONCLUSION

[30] In our view, the sanctions proposed by the parties take into consideration the seriousness of the misconduct. The settlement is reasonable and its approval is in the public interest. An order will be issued following this hearing in substantially the form proposed by the parties.

[31] The terms of eToro's settlement with the Commission and the order that will be issued contemplate a reprimand of eToro. Avi Sela, eToro's Managing Director, is participating in this Hearing by videoconference and, through him, eToro is hereby reprimanded.

[32] We are grateful to all counsel for their assistance in this matter.

Dated at Toronto on this 11th day of October, 2018.

"D. Grant Vingoe"

"William J. Furlong"

"M. Cecilia Williams"

3.1.2 Caldwell Investment Management Ltd.

IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.

REASONS AND DECISION ON A DISCLOSURE MOTION

Citation: *Caldwell Investment Management Ltd. (Re)*, 2018 ONSEC 50
Date: 2018-10-12
File No.: 2018-36

Hearing:	September 29, 2018	
Decision:	October 12, 2018	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Appearances:	Derek Ferris Raphael Eghan	For Staff of the Commission
	Rene Sorell Shane D'Souza	For Caldwell Investment Management Ltd.

TABLE OF CONTENTS

REASONS AND DECISION ON A DISCLOSURE MOTION

I. BACKGROUND

A. Introduction

[1] On June 14, 2018, Staff of the Ontario Securities Commission (the **Commission**) commenced an enforcement proceeding against Caldwell Investment Management Ltd. (**CIM** or the **Respondent**) by issuing a Statement of Allegations.

[2] Staff have alleged that, among other things, CIM failed in its obligation to provide best execution of equity and bond trades for its clients contrary to section 4.2 of National Instrument 23-101 *Trading Rules* between January 1, 2013 and November 15, 2016 (**Relevant Period**) by sending to its affiliated dealer trades of securities with excessive commissions or mark-ups.

[3] On September 17, 2018, CIM brought a motion for an order that Staff disclose:

i. documents and information in Staff's possession as to what procedures are followed and what reasonable efforts are typically taken by OSC-regulated advisors to achieve best execution of orders, including the foregoing in relation to:

(a) discussions between Staff and witnesses or potential witnesses, experts and potential experts or other third parties;

(b) researching and preparing Concept Paper 23-402 *Best Execution and Soft Dollar Agreements*, OSC Staff Notice 33-748 *Annual Summary Report for Dealers, Advisors and Investment Fund Managers* (page 63 to 65), and OSC Staff Notice 33-734 2010 *Compliance and Registrant Regulation Branch Annual Report* (pages 24 and 25);

(c) performing compliance reviews of OSC-regulated advisors during the Relevant Period and responses from such advisors, redacted in each case to protect confidentiality; and

ii. documents and information in Staff's possession concerning the comparative commission rates as between affiliated and unaffiliated dealers, including the foregoing in relation to:

(a) commissions or bond spreads charged by unaffiliated dealers; and

(b) best execution practices, including quantitative information, and written policies and procedures, redacted for confidentiality.

B. Chronology of Events

[4] On July 3, 2018, Staff provided CIM with some disclosure at the first attendance. The disclosure consisted primarily of documents provided by CIM to Staff during Staff's investigation.

[5] By Commission Order, dated July 5, 2018, Staff was ordered to file and serve a witness list and serve a summary of each witness' anticipated evidence on CIM and indicate any intention to call any expert witness by no later than October 11, 2018.

[6] On July 31, 2018, CIM requested from Staff, among other things, information known to Staff as to what procedures are followed and what reasonable efforts are typically taken by OSC-regulated advisors to achieve best execution, and materials cautioning advisors from sending orders to an affiliated dealer or prescribing the terms upon which such orders can be sent.

[7] On August 23, 2018, CIM requested information about fixed income spreads or charges.

[8] On August 24, 2018, Staff responded to CIM's requests for information. Staff indicated that it would not provide information as to what procedures are followed and what reasonable efforts are typically taken by OSC-regulated advisors to achieve best execution of orders for bond and equity trades when acting for clients. They took the position that this information is not directly relevant to Staff's allegations, and that the request is overly broad and objectionable on the basis of confidentiality.

[9] Staff also provided a binder of materials to CIM including:

i. Concept Paper 23-402 *Best Execution and Soft Dollar Arrangements*

ii. Comment Letters received for Concept Paper 23-402

iii. Mutual Fund Governance – Cost Benefit Analysis – Final Report prepared for the OSC by Keith A. Martin, July 2003

iv. OSC Staff Notice 33-748 *Annual Summary Report for Dealers, Advisors and Investment Fund Managers*

v. OSC Staff Notice 33-734 2010 *Compliance and Registrant Regulation Branch Annual Report*

vi. In the Matter of Staff's Recommendation to Impose Terms and Conditions on the Registration of Acker Finley Asset Management Inc.

[10] On August 30, 2018, Staff advised CIM that it plans to call an expert to testify concerning equity commission rates and bond spreads and that the name of any expert and the issues to which the expert is expected to testify will be provided in accordance with the Commission's *Practice Guideline*[1]. Staff further indicated that any information obtained to date

[1] Ontario Securities Commission *Practice Guideline* (2017), 40 OSCB 9009.

from third parties concerning commission rates and bond spreads is privileged and falls outside Staff's disclosure obligations.

[11] On September 10, 2018, in response to further communications between CIM and Staff, Staff advised CIM that it had retained one expert, and spoken to others.

[12] On September 21, 2018, Staff advised CIM that Vidis Vaiciunas (**Vaiciunas**) has been retained as an expert and provided the issues upon which he is expected to testify. Staff also advised that they intend to call a bond expert but that no bond expert has been retained and they would provide the information to CIM if an expert is retained.

[13] Staff's Factum filed with respect to the Motion, dated September 26, 2018, indicates that Staff had caused the relevant branches of the Commission to seek to retrieve the information and materials underlying Staff reports described in sub-paragraph i.(b) of paragraph [3] above that is potentially relevant to the allegations against CIM or responsive to the request for procedures to achieve best execution.

[14] Staff provided a confidential binder of documents (Disclosure Binder) to the Panel at the motion hearing related to discussions with Vaiciunas and potential experts so that I could assess whether each of these documents needed to be disclosed to CIM. This binder was accompanied by a log (Disclosure Log) identifying each numbered document by date, description and reason for non-disclosure, which was provided to CIM's counsel. Aside from the retainer agreement with Vaiciunas included after Tab 1 in the Disclosure Binder (Retainer Agreement), where Staff indicated that they will consider whether this document needs to be provided when an expert's report is delivered, Staff refused to provide any of the documents in the binder to CIM's counsel based upon an assertion of litigation privilege.

[15] It appears from the Disclosure Log that the only third-party witnesses or potential witnesses that Staff has had discussions with that may be responsive to the Respondent's disclosure demands are Vaiciunas and potential experts that Staff have considered retaining.

II. THE ISSUES

[16] The issues to be decided are:

i. Does litigation privilege apply to the materials related to discussions with Vaiciunas and potential experts set out in the Disclosure Binder or are they required to be disclosed to the Respondent in order to enable the Respondent to make full answer and defence?

ii. Does Staff have to disclose materials to the Respondent related to the best execution practices and procedures of other OSC registrants obtained through the Commission's regulatory programs, including such information for firms that use affiliated dealers to execute orders on behalf of their clients, in order to enable the Respondent to make full answer and defence, or are such materials either irrelevant to the allegations against CIM and/or subject to confidentiality considerations making disclosure of such materials inappropriate in the public interest?

iii. Should an order be issued to require Staff to produce the materials underlying Staff reports described in paragraph [13]?

III. THE POSITIONS OF THE PARTIES

[17] The parties agree that Staff's disclosure obligation is set out in *R v Stinchcombe*[2] and that Staff is obligated to take a "generous view" of relevance[3].

[18] There was also general agreement that if an expert or potential expert provided relevant facts to Staff that, if disclosed to the Respondent, would assist the Respondent in its defence, such factual information would need to be disclosed. A clear example would be if it turned out that the expert or potential expert had direct knowledge of CIM's commission rates for a particular client not otherwise in Staff's possession, this factual information would have to be disclosed.

A. CIM

[19] CIM submits that Staff is obliged to provide CIM with the views, opinions and analysis of others it has approached, even potential experts it has not retained. CIM submits that there are several cases, including *Stinchcombe*, that support that the right to make full answer and defence can overcome litigation privilege.

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2 [1991] 3 SCR 326.

3 *Deloitte & Touche LLP v Ontario (Securities Commission)*, [2002] OJ No 2350 (Ont Ca) aff'd 2003 SCC 61, at para 41 (***Deloitte***).

[20] CIM further submits that to defend itself (on the merits or at a sanctions hearing) and to make tactical decisions, it is critical to know what best execution procedures and reasonable efforts were undertaken by other OSC-regulated advisors to achieve best execution and the actual execution charges of OSC-regulated advisors during the Relevant Period, as well as all of the information in Staff's possession that speaks to the best execution standards applicable to advisors during the Relevant Period.

[21] CIM submits that pursuant to *Stinchcombe* standards and *Deloitte*, Staff's disclosure obligation includes material that has a "reasonable possibility of being relevant" to a respondent's ability to make full answer and defence. This includes material that can be used to rebut the case presented by Staff, advance a defence, or material that may assist them in making tactical decisions.[4] Further, CIM submits that Staff must err on the side of disclosure unless the information is "clearly irrelevant", as expressed in *Re Biovail Corp*[5].

[22] CIM expressed that they need the requested information to assess whether its procedures were consistent with industry standards during the Relevant Period. CIM submits that this information is central to the allegations against them and is needed to make a defence. CIM submitted that this is especially true where the proceeding involves the first time a violation is asserted in a Commission enforcement proceeding involving an industry practice since such practice could be relevant to both a determination of whether a violation occurred or in the consideration of sanctions.[6]

[23] CIM submits that confidentiality concerns with regard to information received by Commission staff through its examinations of its registrants or otherwise can be dealt with by appropriate redactions of identifying information and undertakings by the Respondent.

B. Staff

[24] Staff submits that disclosure of privileged documents are not captured under Rule 27 of the Commission's *Rules of Procedure and Forms*[7]. Staff considers the notes of discussions with Vaiciunas and potential bond experts to be the subject of litigation privilege and therefore expressly excluded from Staff's disclosure obligation.

[25] Staff submit that the two conditions for litigation privilege are that the communication with third parties must have been specifically made with existing or contemplated litigation in mind and the privilege only attaches if the dominant purpose of the third-party communication is to assist in possible forthcoming litigation. Staff cites the Supreme Court's decision in *Lizotte v Aviva Insurance Company of Canada*[8] which emphasized the importance of litigation privilege as fundamental to the functioning of our legal system and concluded that litigation privilege cannot be abrogated without clear, and explicit legislative language to that effect.

[26] Staff submit that the zone of privacy in adversarial proceedings is fully engaged with respect to initial dealings with Vaiciunas, and it continues to be engaged now that he's been asked to prepare an expert report. They submit that early communications and dealings pre-Statement of Allegations cannot be distinguished from the post-Statement of Allegations and that the same principles apply across the board and apply to all notes regarding communications with Vaiciunas.

[27] Staff submit that Vaiciunas and the potential bond experts are not fact witnesses and that any notes from meetings or telephone calls evidencing preliminary views or opinions are more akin to preliminary views or opinions from a draft report.

[28] Relying on *Moore v Getahun*[9], *Simons v Canada (Minister of Public Safety and Correctional Service)*[10], *Maxrelco Immeubles Inc v Jim Pattison Industries (c.o.b. Pattison Sign Group)*[11], and *2060619 Ontario Inc. v Durham (Region Municipality)*[12], Staff's position is that in the same manner that litigation privilege prevents draft reports from being generally disclosed, litigation privilege also applies to prevent any preliminary opinions or views expressed by Vaiciunas from being disclosed.

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4 *Deloitte*, at paras 40-41.

5 2008 ONSEC 14, (2008), 31 OSCB 7161, at paras 15 and 32.

6 CIM cites *R. v. Hudson*, 2016 NUCJ 7 (***Hudson***), a decision of the Nunavut Court of Justice, not binding upon this panel, as an example where a court ordered disclosure of observations by a prosecuting agency as to whether the gear of other fishing vessels drifted into prohibited fishing waters during prior years as potentially relevant to a due diligence defence by the accused.

7 (2017), 40 OSCB 8988.

8 2016 SCC 52, at para 65.

9 2015 ONCA 55.

10 2018 ONSC 3741.

11 2017 ONSC 5836.

12 116 LCR 39.

[29] Staff further submits that the best execution procedures of other OSC-regulated advisors identified during compliance reviews are irrelevant to the allegations made against CIM and its ability to make full answer and defence to those allegations since the circumstances of each firm in relation to the services it offers its client base are highly fact specific.

[30] Staff submits that the policies and procedures of other advisors are irrelevant in a vacuum and must be viewed in conjunction with a particular advisor's conduct and specific business model, including size, nature, and number of funds and/or accounts it may manage.

[31] Staff also submits there are public interest considerations that support its position that the documents should not be provided, namely, (i) the need to preserve third party confidentiality; (ii) the need for transparency between Compliance and Registrant Regulation Branch Staff and registered firms; and (iii) ensuring proceedings are conducted in a just, expeditious and cost-effective manner.

[32] With respect to CIM's request for documents and information related to Concept Papers and Staff Notices, Staff submits that this issue is premature as the request for this information is recent and Staff is in the process of determining what information, if any, they have and whether the information is relevant.

IV. ANALYSIS

1. Information and materials related to Vaiciunas and potential experts

[33] Having reviewed the Disclosure Binder, I find, with one exception, that the materials that were included do not contain facts requiring disclosure by Staff. They contain background information related to the qualifications and experience of Vaiciunas and the potential experts who are identified in these materials, and information regarding the general approaches to best execution considered by these individuals.

[34] These documents came into existence when an enforcement proceeding was within reasonable contemplation. These documents form a very partial outline of considerations that may be reflected in an expert report. They are properly regarded as materials constituting partial draft expert reports, which are within the scope of litigation privilege. Such materials are within the zone of privacy necessary to enable Staff to prepare its case within and are subject to litigation privilege.

[35] Since an expert report, if relied upon by Staff, will be provided to the Respondent, there is no compelling reason to subordinate the privilege to a need to disclose to allow for full answer and defence.

[36] Paragraphs (4) to (6) of Rule 27 of the Commission's *Rules of Procedure* prescribe the requirements related to disclosure of the intention to rely on expert evidence and experts' reports. The Respondent is asking us to rewrite these rules to provide earlier and much more extensive disclosure concerning expert and potential expert evidence on the asserted constitutional ground that it would be helpful to the Respondent in making full answer and defence.

[37] The Respondent takes issue with Rule 27 in a very general sense. However, this Rule was designed to provide fair disclosure to enable respondents to meet the case against them, while preserving an appropriate scope for Staff to assert litigation privilege and to have discussions with its experts and potential experts and be involved in reviewing successive drafts of expert reports without the entire process of producing an expert report being open to scrutiny by a respondent. Except for the one instance described below, nothing in the Disclosure Binder revealed relevant facts of the kind described in the example in paragraph [18] that would require disclosure.

[38] If the Respondent wished to challenge the constitutional efficacy of Rule 27, this would be a matter of general importance requiring compliance with Rule 31 requiring notice of the constitutional question to the Attorneys General of Canada and Ontario. They did not provide this notice, so the broader question of the constitutionality of Rule 27 is not before this panel.

[39] The one exception, where I find that Staff must make disclosure, is the last handwritten notation, consisting of four lines of text, in Tab 24 beginning with "CSL" at the left margin in which the notes reflect that certain facts were imparted outside of the person's role as a potential expert. This is directly relevant factual information involving a recollection of events occurring when the person was performing other responsibilities and when the expert role was not in contemplation.

2. Information and materials related to other OSC registrants

[40] I am persuaded by Staff's argument that data related to commission rates and mark-ups arising from individual examinations by OSC Staff of other registrants are not relevant to the case against CIM.

[41] At issue based upon the Statement of Allegations are CIM's best execution practices measured against the applicable regulatory standard. Business models, services that are either included or not included in these compensation metrics, range of securities, markets and client types will all vary among firms. Firm practices will also evolve over time and will be subject to the exercise of discretion in administering these practices within each firm and for reasons that may be very specific to individual circumstances or clients. Without such accompanying analysis and history, raw data and written policies will be factually irrelevant to the case against CIM. There is no principle that would require Staff to afford such an accompanying detailed analysis to the Respondent to accompany any factual data that is produced.

[42] In the absence of such analysis, the raw materials demanded by the Respondent will not be helpful in its defence and it is highly speculative whether such material could ever be helpful to the Respondent even if all the surrounding facts were known for each firm whose materials would be disclosed.

[43] In addition, based on the Respondent's very broad demand, this information would likely involve the entire universe of OSC-registered portfolio managers. In addition to a lack of relevance, this production would be a very onerous task that would adversely affect the efficiency of a proceeding of this kind.

[44] The need for the overlay of detailed analysis necessary to make the requested information of any potential utility to the Respondent distinguishes this case from *Hudson* where the fact at issue was whether fishing gear merely crossed a fishery border, a matter requiring limited cartographical analysis.

[45] In addition, the disclosure of commission and mark-up data and procedures for the entire universe of Ontario-regulated portfolio managers would undermine registrants' expectations of confidentiality in the examination process. While firms may understand that such documents may, in appropriate cases, have to be disclosed pursuant to discovery obligations, it would be highly unexpected that this extensive disclosure, of no practical utility to the Respondent without an overlay of analysis, would be an anticipated use of their regulatory information.

[46] Disclosure in these circumstances would have a negative effect on the candor expected of registrants in the examination process and would therefore undermine the ability of the Commission to carry out its mandates of investor protection and fair and efficient capital markets.

[47] The Respondent itself is an experienced player in the Canadian portfolio management business. It knows who its competitors are. It also knows that it would likely face loud objections from those firms if it asked for their information by name. Those firms are very much the parties in interest if their information may be disclosed, and yet they are not parties to the proceeding in which the need for such disclosure and the practicality of confidentiality restrictions are assessed. The confidentiality of this examination information and the fact that the affected parties whose information would be disclosed are not heard on this motion are additional reasons for denying disclosure in this case.

[48] This again is very distinct from *Hudson* where the conduct at issue was physical conduct occurring in the open, capable of being assessed by any vessel in the area whose personnel wished to make those observations.

3. Information and materials underlying Staff Reports

[49] Since Staff is seeking to retrieve from off-site locations and assess whether it will provide additional information or materials as described in paragraph [13] above, and the results of these efforts and Staff's position with regard to any materials retrieved are not yet known, this matter remains hypothetical at this stage, with no need for urgency since the merits hearing has not yet been scheduled.

[50] I also find that it is premature to address the Retainer Agreement pending Staff's consideration of whether it will be disclosed in connection with the delivery of an expert report.

[51] If these issues require consideration of a disclosure order in the future following a new motion, the potential timing involved can then be considered by the panel at that time in relation to what is transpiring in the proceeding at that stage.

V. CONCLUSION

[52] For the foregoing reasons, the Respondent's motion is denied with the exception of the one item described in paragraph [39].

Dated at Toronto this 12th day of October, 2018.

"D. Grant Vingoe"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Top Strike Resources Corp.	October 5, 2018	October 10, 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 6

Request for Comments

6.1.1 Proposed Amendments to National Instrument 24-102 Clearing Agency Requirements and Proposed Changes to Companion Policy 24-102 Clearing Agency Requirements

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Proposed Amendments to National Instrument 24-102 Clearing Agency Requirements and *Proposed Changes to Companion Policy 24-102 Clearing Agency Requirements*

October 18, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90 day comment period proposed amendments to National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and proposed changes to Companion Policy 24-102 *Clearing Agency Requirements* (**Companion Policy**), altogether referred as the **Proposed Amendments**. The Instrument and the Companion Policy are collectively referred to as **NI 24-102**.

The purposes of the Proposed Amendments are described in the "Substance and Purpose" section below.

This Notice contains the following annexes:

- **Annex A** – Proposed Amendments to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex B** – Proposed Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex C** – Blacklined Proposed Amendments to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Proposed Amendments to the Instrument)
- **Annex D** – Blacklined Proposed Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Proposed Changes to the CP)
- **Annex E** – Local Matters (published only in local jurisdictions where such additional information is relevant)

This Notice, including its annexes, is available on websites of CSA jurisdictions, including:

www.albertasecurities.com
www.bcsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.lautorite.qc.ca
www.msc.gov.mb.ca
nssc.novascotia.ca
www.osc.gov.on.ca

The 90-day comment period will expire on January 16, 2019. For further details, see the "Request for Comments" section below.

Background

The Instrument sets out ongoing requirements for recognized clearing agencies, including requirements that are based on international standards applicable to financial market infrastructures (**FMIs**) operating as a central counterparty (**CCP**), central securities depository (**CSD**) or securities settlement system (**SSS**). These international standards are described in the April 2012 report (**PFMI Report**) *Principles for financial market infrastructures* (the **PFMI Principles**) published by the Committee on Payments and Market Infrastructures (**CPMI**)[1] and the International Organization of Securities Commissions (**IOSCO**).[2] The Companion Policy presently includes an annex (Annex I) that sets forth supplementary guidance (**Joint Supplementary Guidance**) that was developed jointly by the Bank of Canada and CSA regulators. The Joint Supplementary Guidance is intended to provide additional clarity on the PFMI Principles for domestic recognized clearing agencies that are also overseen by the Bank of Canada. The Instrument also sets forth certain requirements for clearing agencies intending to apply for recognition as a clearing agency under securities legislation, or for an exemption from the recognition requirement. NI 24-102, including the Joint Supplementary Guidance, came into force February 17, 2016.[3]

Since the development of the PFMIs and their adoption by CPMI and IOSCO members, CPMI-IOSCO has undertaken to monitor global implementation of the PFMIs. On August 2, 2018, a report was published by CPMI-IOSCO which provides an assessment of Canada's implementation of the PFMIs within its legislative and regulatory structure.[4] The report presents the conclusions of CPMI-IOSCO as to whether, and to what degree, the Canadian legal, regulatory and oversight frameworks, including rules and regulations and any relevant policy statements, implement the PFMIs with regards to systemically important CCPs, CSDs and SSSs (as well as trade repositories and payment systems). The report generally found that the PFMIs were implemented in a complete and consistent manner through the implementation measures of the Canadian authorities. These findings are discussed further below.

Substance and Purpose

1. Purposes of Proposed Amendments

The Proposed Amendments seek to enhance operational system requirements, align aspects of NI 24-102 more closely with similar provisions in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), and reflect latest developments and findings of CPMI-IOSCO with relevance for the Canadian market.

In particular, the purposes of the Proposed Amendments are the following:

- enhance the systems-related requirements in Part 4, Division 3, of the Instrument and related provisions in the Companion Policy, by aligning them more closely with similar provisions in NI 21-101, emphasizing the importance of cyber resilience, and clarifying testing and reporting expectations;
- update NI 24-102 to include a general reference in the Companion Policy to CPMI-IOSCO guidance reports that have been published on various aspects of the PFMI Principles since the publication of the PFMI Report;
- adopt findings made by the CPMI-IOSCO PFMI implementation monitoring assessment, including substantially simplifying the Joint Supplementary Guidance; and
- make other non-substantive changes, corrections and clarifications to NI 24-102.

2. Summary of Proposed Amendments

We discuss briefly the changes and policy rationales for the key Proposed Amendments below.

a. Systems requirements

(i) The concept of 'cyber resilience' has been added to subparagraph 4.6(1)(a)(ii) as one of the information technology general controls that a recognized clearing agency must develop and maintain. While cyber resilience should already be covered by an entity's controls, the explicit addition of the concept in the Instrument is intended to be reflective of the increasing importance of ensuring that an entity has taken adequate steps to address cyber resilience, as discussed in the June 2016 CPMI-IOSCO *Guidance on cyber resilience for financial market infrastructures*.[5]

1 Prior to September 2014, CPMI was known as the Committee on Payment and Settlement Systems (**CPSS**)

2 The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

3 In Saskatchewan, the effective date was February 19, 2016.

4 The assessment report on Canada's adoption of the PFMIs is available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD608.pdf.

5 The guidance is available at https://www.bis.org/cpmi/publ/d146.pdf.

(ii) The concept of "security breach" in relation to the notifications that must be provided by a recognized clearing agency pursuant to subsection 4.6(c) has been broadened to "security incident". The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We describe "security incidents" in the Companion Policy with reference to general definition of the concept used by the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST),[6] a recognized standard also followed by CPMI-IOSCO.

(iii) In line with the reporting requirements in existing recognized clearing agencies' recognition orders, for clarity and consistency we have added requirements in the Instrument under section 4.6 and proposed section 4.6.1 that recognized clearing agencies keep records of any systems failures, malfunctions, delays or security incidents and if applicable document reasons with respect to the materiality of the event, and provide a report to us on a quarterly basis.

(iv) To better align the systems requirements in the Instrument with those for marketplaces in NI 21-101, we propose two amendments. Firstly, a new section 4.6.1 regarding auxiliary systems has been added. An auxiliary system is one that shares network resources with one or more systems, operated by or on behalf of a recognized clearing agency, that supports its clearing, settlement and depository functions and that, if breached, would pose a security threat to one or more of the previously mentioned systems. We note that the new section is not intended to introduce any new substantive requirement, but to clarify what is already implicit in PFMI Principle 17: Operational risk; namely, that recognized clearing agencies are expected to identify and manage all plausible sources of operational risks internally and externally including those that may result from auxiliary systems.

Secondly, under section 4.7, we make clear that we expect a recognized clearing agency to engage a "qualified external auditor" to conduct and report on its independent systems reviews. A qualified external auditor is considered to be a person or company, or a group of persons or companies, with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. As contemplated by section 6.1 of the Instrument, we may consider applications for exemption from the requirement to engage a qualified external auditor in certain circumstances, subject to such conditions or restrictions as may be imposed in the exemption. Before engaging a qualified external auditor, we would also expect the clearing agency to discuss with us its choice for qualified external auditor and the scope of the systems review mandate.

b. Additional CPMI-IOSCO guidance reports

The Companion Policy currently states that, in interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report unless otherwise indicated in section 3.1 or Part 3 of the Companion Policy. Since the publication of the PFMI Report, CPMI-IOSCO have published related documents and additional guidance on certain specific aspects of the PFMI Principles, including the following:[7]

- December 2012 – *Principles for financial market infrastructures: disclosure framework and assessment methodology*
- October 2014 – *Recovery of financial market infrastructures*
- December 2014 – *Principles for financial market infrastructures: Assessment methodology for the oversight expectations applicable to critical service providers*
- February 2015 – *Public quantitative disclosure standards for central counterparties*
- August 2015 – *Application of the "Principles for financial market infrastructures" to central bank FMIs*
- February 2016 – *Clearing of deliverable FX instruments*
- June 2016 – Guidance *on cyber resilience for financial market infrastructures*
- July 2017 – *Resilience of central counterparties: further guidance on the PFMI*
- April 2018 – *Framework for supervisory stress testing of central counterparties (CCPs)*

We are proposing to amend the Companion Policy to include the general reference that these and other future additional CPMI-IOSCO reports should be used as guidance in interpreting and implementing the PFMI Principles.

6 The NIST definition of "security incident" is available at https://csrc.nist.gov/Glossary.

7 Links to all of the documents are presently available at https://www.bis.org/cpmi/info_pfmi.htm.

c. CPMI-IOSCO implementation monitoring assessment

Following from the CPMI-IOSCO implementation monitoring assessment, which found that Canada has generally implemented the PFMIs in a complete and consistent way, the report does recommend making some clarifications within the Canadian regime applicable to clearing agencies. As a result, we propose to make two main changes to the NI 24-102 to address these findings.

Firstly, we propose to amend subsection 4.3(1) by removing the permissive ability of a recognized clearing agency's chief risk officer and chief compliance officer to report directly to the chief executive officer, if its board of directors so determines. This change will address the CPMI-IOSCO finding that a reporting line to the chief executive officer may result in insufficient independence of the risk and audit functions unless there are adequate safeguards in place that address potential conflicts of interest.

Secondly, as the CPMI-IOSCO implementation monitoring assessment found that certain limited aspects of the Joint Supplementary Guidance may introduce confusion in relation to the implementation of two PFMI Principles, we propose to substantially simplify such guidance, and in the process, remove any lack of clarity with respect to the application of the PFMI Principles to domestic recognized clearing agencies that are also overseen by the Bank of Canada. Beyond removal of all guidance that is duplicative of the text of the PFMI Report, including all guidance presently included for PFMI Principle 2: *Governance* and PFMI Principle 23: *Disclosure of rules, key procedures, and market data*, these changes will address the CPMI-IOSCO finding in respect of PFMI Principle 7: *Liquidity risk* that confusion may follow by allowing the use of "other liquid resources" which are not "qualifying liquid resources" to meet a certain portion of minimum liquid resource requirements. The changes will also address the finding related to the Joint Supplementary Guidance for PFMI Principle 15: *General business risk* that "any extraordinary expenses" (i.e. unessential, infrequent or one-off costs) should not be excluded from the calculation of current operating expenses. Joint Supplementary Guidance presently included for PFMI Principle 3: *Framework for the comprehensive management of risks* related to 'Recovery Plans' is not removed or simplified, however. Such guidance is unchanged but moved to a new Annex II to the Companion Policy.

d. Non-substantive changes

Lastly, a number of non-substantive changes, corrections and clarifications are proposed, including modernizing the drafting of NI 24-102 in accordance with recent revised CSA rule-making drafting guidelines. By their nature, none of the non-substantive changes should have any impact on the application of NI 24-102 to market participants.

Request for Comments

We welcome your comments on the Proposed Amendments. Please submit your comments in writing on or before January 16, 2019. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to the following CSA member commissions:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-595-2318
E-mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions with respect to this Notice or the Proposed Amendments may be referred to:

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Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5871
Email: liz.kutarna@gov.sk.ca

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

AMENDING INSTRUMENT

1. National Instrument 24-102 Clearing Agency Requirements is amended by this Instrument.

2. The definition "publicly accountable enterprise***" in section 1.1 is amended by italicizing "***Acceptable Accounting Principles and Auditing Standards***".***

3. Section 1.2 is amended

(a) in subsection (2),

(i) by replacing "company if***" with "***company if any of the following applies:***",***

(ii) by replacing "fifty percent***" with "***50%***", wherever the words occur, and***

(iii) by deleting "or***" at the end of paragraph (b), and***

(b) in subsection (3),

(i) by replacing "company if***" with "***company if either of the following applies:***", and***

(ii) by replacing paragraph (a) with the following:

(a) it is a controlled entity of any of the following:

(i) that other;

(ii) that other and one or more persons or companies, each of which is a controlled entity of that other;

(iii) two or more persons or companies, each of which is a controlled entity of that other;***.***

4. Section 1.3 is replaced with the following:

1.3 Interpretation – Extended Meaning of Affiliated Entity – For the purposes of the PFMI Principles, a person or company is considered to be an affiliate of a participant, the person or company and the participant each being described in this section as a "party", where either of the following applies:

(a) a party holds, otherwise than by way of security only, voting securities of the other party carrying more than 20% of the votes for the election of directors;

(b) in the event paragraph (a) is not applicable either of the following applies:

(i) a party holds, otherwise than by way of security only, an interest in the other party that allows it to direct the management or operations of the other party;

(ii) financial information in respect of both parties is consolidated for financial reporting purposes.***.***

5. Paragraph 2.1(1)(b) is replaced with the following:

(b) sufficient information to demonstrate either of the following:

(i) the applicant is in compliance with provincial and territorial securities legislation;

(ii) the applicant is subject to and in compliance with comparable regulatory requirements of the foreign jurisdiction in which the applicant's head office or principal place of business is located;***.***

6. Subsection 2.1(2) is amended

(a) by replacing "books and records***" with "***books, records and other documents***", wherever the words occur, and***

(b) in paragraph (b), by replacing "such***" with "***the***".***

7. Subsection 2.1(3) is amended by replacing "*Submission to Jurisdiction and Appointment of Agent for Service****" with "****Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process****".***

8. Subsection 2.1(4) is amended by replacing "material change to the information provided in its application***" with "***change to the information provided in its application that is material***".***

9. Subsection 2.2(1) is amended

(a) by adding "*any of the following:****" immediately after "****in relation to a clearing agency,****", and***

(b) by replacing "recognition terms and conditions.***" with "***terms and conditions of a decision to recognize the clearing agency under securities law.***".***

10. Subsection 2.2(3) is replaced with the following:

(3) The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency.***.***

11. Subsection 2.3(1) is replaced with the following:

(1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority at least 90 days before ceasing to carry on business.***.***

12. Subsection 2.5(2) is replaced with the following:

(2) A recognized clearing agency or exempt clearing agency must file interim financial statements for each interim period as defined in National Instrument 51-102 *Continuous Disclosure Obligations* that comply with the requirements set out in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45th day after the end of each interim period of the recognized clearing agency's or exempt clearing agency's financial year.***.***

13. Section 3.1 is amended

(a) by replacing the first paragraph with the following:

3.1 A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13 and 15 to 23, other than key consideration 9 in PFMI Principle 20 and any of the following:***, and***

(***b) by deleting "***and***" at the end of paragraph (b).***

14. Section 4.1. is amended in paragraph (2)(b), by replacing "not employees or executive officers of a participant or***" with "***neither employees or officers of a participant nor***".***

15. Section 4.3. is amended

(a) in subsection (1), by deleting "or, if determined by the board of directors, to the chief executive officer***",***

(b) in paragraph (2)(a),

(i) by deleting "full***", and***

(ii) replacing "maintain, implement***" with "***implement, maintain***",***

(c) by replacing the "," with a ";" at the end of each of subparagraphs (3)(c)(i) and (ii),

(d) ***in subparagraph (3)(c)(iii), by replacing "***non-compliance, or" ***with "***non-compliance;***",***

(e) ***in paragraph (3)(f), by replacing "***such***" with "***the***".***

16. Section 4.4 is amended

(a) ***in paragraph (4)(b), by replacing "***not employees or executive officers of a participant or***" with "***neither employees or officers of a participant nor***", and***

(b) ***by adding the following subsections:***

(5) For the purpose of subsection (3) and paragraph (4)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(6) For the purposes of subsection (5), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.**.**

17. Section 4.6. is amended

(a) ***by renumbering it as subsection 4.6(1),***

(b) ***in paragraph (a)***

(i) ***by replacing "***an adequate system of internal controls***" with "***adequate internal controls***", and***

(ii) ***by adding "***cyber resilience,***" immediately before "***change management***",***

(c) ***in subparagraph (b)(ii), by replacing "***ability***" with "***processing capability***" and "***process transactions***" with "***perform***",***

(d) ***by replacing paragraph (c) with the following:***

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates on the following:

(i) the status of the failure, malfunction, delay or security incident;

(ii) the resumption of service;

(iii) the results of the clearing agency's internal review of the failure, malfunction, delay or security incident;***, and***

(e) ***by adding the following paragraph:***

(d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the clearing agency considered that the system failure, malfunction, delay or security incident was not material.***, and***

(f) ***by adding the following subsection:***

(2) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident to which paragraph (1)(d) applies.**.**

18. The Instrument is amended by adding the following section:

Auxiliary systems

4.6.1 (1) In this section "auxiliary system" of a recognized clearing agency means a system that shares network resources with one or more of the systems operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement and depository functions and that, if breached, would pose a security threat to one or more of the previously mentioned systems.

(2) For each auxiliary system, a recognized clearing agency must

(a) develop and maintain adequate information security controls that relate to the security threats posed to any system that supports the clearing, settlement and depository functions,

(b) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates on

(i) the status of the incident,

(ii) the resumption of service, where applicable, and

(iii) the results of the clearing agency's internal review of the security incident, and

(c) keep a record of any security incident and, if applicable, document the reasons why the clearing agency considered that such a security incident was not material.

(3) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each security incident to which paragraph (2)(c) applies.**.**

19. Subsection 4.7(1) is replaced with the following:

(1) A recognized clearing agency must

(a) on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(1)(a), and sections 4.6.1 and 4.9, and

(b) on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(1)(a) and 4.6.1(2)(a).**.**

20. Subsection 4.7(2) is amended by replacing "subsection (1)***" with "***paragraph (1)(a)***".***

21. Paragraph 4.10(g) is amended by replacing "an appropriate***" with "***a reasonable***".***

22. Subsection 5.1(1) is amended by deleting "and must keep those other books, records and documents as may otherwise be required under securities legislation***".***

23. Section 5.2 is amended

(a) by replacing subsection (1) with the following:

(1) In this section, "Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions.**,**

(b) in subsection (2), by replacing "a single" ***with "***the***", and***

(c) by adding the following subsection:

(2.1) Throughout the period that the clearing agency is recognized as a clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2).**.**

24. Subsection 6.1(3) is amended by adding "Alberta and**" immediately before "**Ontario**".**

25. Form 24-102F1 is amended

(a) in paragraph 7, by replacing "[province of local jurisdiction]**" with "**[name of local jurisdiction]**",**

(b) **in paragraph 10, by replacing "**be a recognized**" with "**be recognized**", and**

(c) **by deleting "**insert**" wherever it occurs.**

26. **Form 24-102F2 is amended**

(a) ***under the heading "***Exhibit B***", by replacing "***ceasing business***" with "***ceasing to carry on business***",***

(b) ***by replacing "***the cessation of***" with "***ceasing to carry on***" in Exhibit C and D , and***

(c) ***after the heading "*****CERTIFICATE OF CLEARING AGENCY***"***

(i) ***by deleting the round brackets immediately before and after "***Name of clearing agency***",***

(ii) ***by replacing "***(Name of director, officer or partner – please type or print)***" with "***Name of director, officer or partner (please type or print)***",***

(iii) ***by deleting the round brackets immediately before and after "***Signature of director, officer or partner***", and***

(iv) ***by replacing "***(Official capacity – please type or print)***" with "***Official capacity (please type or print)***".***

27. This Instrument comes into force on ●.

ANNEX B

PROPOSED CHANGES TO COMPANION POLICY 24-102CP
TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

CHANGING DOCUMENT

1. Companion Policy 24-102CP to National Instrument 24-102 Clearing Agency Requirements (Companion Policy) is changed by this Document.

2. Subsection 1.1(2) is changed by replacing "this Part 1 of the CP, section 3.2 and 3.3 of Part 3 of this CP, and the text boxes in Annex I***" with "***this section, sections 1.2, 1.3, 3.2 and 3.3 of this CP, and Annex I***".***

3. Subsection 1.2(3) is changed by replacing "Annex I to this CP includes supplementary guidance in text boxes that applies" with "Annexes I and II to this CP include supplementary guidance that applies***".***

4. Part 1 is changed by adding the following section:

1.5 Section 1.5 provides clarity on the application of the different parts of the Instrument to a clearing agency that has been recognized by a securities regulatory authority, or exempted from recognition, as is further described in section 2.0 of this CP. For greater clarity, unless otherwise specified, Parts 1, 2, and 5 to 7 generally apply to both a recognized clearing agency and one that is exempted from recognition.**.**

5. Subsection 2.0(2) is changed by replacing "will generally***" with "***would generally need to***".***

6. Section 2.1 is changed:

(a) by adding "in both substance and process, though its oversight program may differ***" immediately after "***agency is similar***",***

(b) by adding "comprehensive and***" immediately after "***completion of***", and***

(c) by adding "for either recognition or exemption***" immediately after "***application materials***".***

7. Subsection 2.2(2) is replaced with the following:

The written notice should provide a reasonably detailed description of the significant change (as defined in subsection 2.2(1)), the expected date of the implementation of the change, and an assessment of how the significant change is consistent with the PFMI Principles applicable to the clearing agency (see subsection 2.2(3))**.**

8. Section 2.3 is changed by deleting "within the appropriate timelines***".***

9. Part 3 is changed

(a) in section 3.1

(i) by adding "and other reports or explanatory material published by CPMI and IOSCO that provide supplementary guidance to FMIs on the application of the PFMI Principles***" immediately after "***explanatory notes in the PFMI Report***", and***

(ii) by deleting "separate *text boxes* in***",***

(b) in section 3.2 by deleting "(see Box 5.1 in Annex I to this CP)***",***

(c) in section 3.3

(i) by deleting the ":" immediately after the subheading "*– Customers of IIROC dealer members****",***

(ii) by deleting the ":" after the words "domestic cash markets because***" in the paragraph immediately after the subheading "****– Customers of IIROC dealer members****", and***

(iii) by deleting the ":" immediately after the subheading "*– Customers of other types of participants****".***

(d) by deleting the numbering of section 3.2 and 3.3.

10. Section 4.0 is changed by adding "recognized***" immediately before "***clearing agency***".***

11. Subsection 4.1(4) is changed

(a) by replacing "reasonably***" with "***, absent exceptional circumstances,***",***

(b) by deleting "executive***" immediately before "***officer***" in paragraph (a), (b) and (e), and***

(c) by replacing "ten per cent***" with "***10%***" wherever it occurs.***

12. Section 4.2 is removed.

13. Subsection 4.3(3) is changed by adding "(or certain aspects thereof)***" immediately after "***role of a CCO***".***

14. Section 4.6 is changed

(a) by renumbering it as 4.6(1),

(b) by replacing paragraph (a) with the following:

(a) The intent of these provisions is to ensure that controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants – Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO), or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls which support the processing integrity of the models used to quantify, aggregate, and manage the clearing agency's risks.***,***

(c) in paragraph (b), by replacing "4.6(b)***" with "***4.6(1)(b)***" and replacing "***once a year***" with "***once in each 12-month period***", and***

(d) replacing paragraph (c) with the following:

(c) A failure, malfunction, delay or security incident is considered to be "material" if the clearing agency would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the clearing agency's operations or on participants. Non-material events may become material if they recur or have a cumulative effect. It is expected that, as part of the required notification, the clearing agency will provide updates on the status of the incident and the resumption of service. Further, the clearing agency should have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all incidents. In this regard, the clearing agency should undertake a "post-incident" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the clearing agency's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable. A security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of an information system or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies.[1] Any security incident that requires non-routine measures or resources by the clearing agency would be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security incident it did not consider material.***.***

15. Subsection 4.7(1) is replaced with the following:

(1)(a) An independent systems review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the 'Trust Services Criteria' developed by the American Institute of CPAs and CPA

[1] Adapted from the NIST definition of "incident". See https://csrc.nist.gov/Glossary/?term=4730#AlphaIndexDiv.

Canada. For the purposes of paragraph (1)(a), we consider a qualified external auditor to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Before engaging a qualified external auditor to conduct the independent systems review, a clearing agency is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period.

(1)(b) The clearing agency must also establish and perform effective assessment and testing methodologies and practices and would be expected to implement appropriate improvements where necessary. The assessments and testing required in this section, such as vulnerability assessments and penetration tests, are to be carried out by a qualified party on a reasonably frequent basis and, in any event, at least once in each 12-month period. For the purposes of paragraph (1)(b), we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the clearing agency or an affiliated entity of the clearing agency, but may not be persons responsible for the development or operation of the systems or capabilities being tested. The securities regulatory authority may, in accordance with securities legislation, require the clearing agency to provide a copy of any such assessment.*.*

16. Section 4.9 is changed by replacing "annually***" with "***at least once in each 12-month period***".***

17. Subsection 5.2(1) is replaced with the following:

(1) The Global Legal Entity Identifier System defined in subsection 5.2(1) is a G20 endorsed system[2] that is intended to serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers (LEIs) globally in order to uniquely identify parties to transactions. It was designed and implemented under the direction of the LEI Regulatory Oversight Committee, a governance body endorsed by the G20.*.*

18. Subsection 5.2(3) is removed.

19. Annex I is replaced with the following:

ANNEX I
TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE
DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS
ON THE PFMI PRINCIPLES

Joint Supplementary Guidance has been developed by the BOC and the securities regulatory authorities to provide additional clarity on certain aspects of selected PFMI Principles within the Canadian context. It is found on the BOC website and in annexes to the Companion Policy (to the CSA National Instrument 24-102 *Clearing Agency Requirements*).

The Joint Supplementary Guidance applies in respect of recognized domestic clearing agencies that are designated as systemically-important by the BOC and jointly overseen by the BOC and one or more securities regulatory authorities (referred to in this Joint Supplementary Guidance as an "FMI").

Beyond observation of the PFMI Principles, an FMI is expected to take into account the "Explanatory Notes" for each applicable PFMI Principle, other reports and explanatory materials published by CPMI and IOSCO that supplement the PFMI Report and that provide guidance to FMIs on the application of the PFMI Principles, as well as this Joint Supplementary Guidance or any future guidance published jointly by the BOC and the securities regulatory authorities.

The Joint Supplementary Guidance below appears under the relevant headings for each applicable PFMI Principle (referred to by the BOC as its "Risk-Management Standards for Designated FMIs").

[2] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

PFMI Principle 3: Framework for the comprehensive management of risks

a. Joint Supplementary Guidance for PFMI Principle 3 has been developed by the BOC and CSA pertaining to FMI recovery planning. This guidance can be found separately on the BOC website and in Annex II to the Companion Policy.

PFMI Principle 5: Collateral

a. An FMI should not rely solely on external opinions to determine collateral eligibility.

b. In general, most of the FMI's collateral pools should be composed of cash and debt securities issued or guaranteed by the Government of Canada, a provincial government or the U.S. Treasury.

c. Additional asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits. An FMI should limit such assets to a maximum of 40% of the total collateral posted from each participant. It should also limit securities issued by a single issuer to a maximum of 5% of total collateral from each participant. Such assets are:

- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds;
- Asset-backed securities that meet the following criteria:
    1) sponsored by a deposit-taking financial institution that is prudentially-regulated at either the federal of provincial level;
    2) part of a securitization program supported by a liquidity facility; and
    3) backed by assets of an acceptable credit quality;
- Equity securities traded on marketplaces regulated by a member of the CSA; and
- Other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

d. Since it is highly likely that the value of debt and equity securities issued by companies operating in the financial sector would be adversely affected by the default of an FMI participant – introducing wrong-way risk for an FMI that has accepted such securities as collateral – and FMI should:

- Limit the collateral from financial sector issuers to a maximum of 10% of total collateral pledged from each participant; and
- Not allow a participant to pledge as collateral securities issued by itself or an affiliate.

PFMI Principle 7: Liquidity risk

a. Liquidity facilities should include at least three independent liquidity providers to ensure the FMI has access to sufficient liquid resources even in the event one of its liquidity providers defaults.

b. Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposure in Canadian dollars if they meet all of the following additional criteria:

- The liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);
- The facility is fully-collateralized with SLF-eligible collateral; and
- The facility is denominated in Canadian dollars.

PFMI Principle 15: General business risk

a. Liquid net assets funded by equity must be held at the level of the FMI legal entity to ensure they are unencumbered and can be accessed quickly.

PFMI Principle 16: Custody and investment risks

a. It is paramount that an FMI have prompt access to assets held for risk-management purposes with minimal price impact. For the purposes of PFMI Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they are debt instruments that are:

- Securities issued or guaranteed by the Government of Canada;
- Marketable securities issued by the U.S. Treasury;
- Securities issued or guaranteed by a provincial government;
- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds; and
- Asset-backed securities that are:

    1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level;

    2) part of a securitization program supported by a liquidity facility; and

    3) backed by assets of an acceptable credit quality.

b. Investments should also, at a minimum, observe the following:

- To reduce concentration risk, no more than 20% of total investments should be invested in any combination of municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5% of total investments.
- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10% of total investments. An FMI should not invest assets in the securities of its own affiliates.
- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits..

20. The Companion Policy is changed by adding the following Annex II:

ANNEX II
TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE
DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS
ON RECOVERY PLANS

Context

In 2012, to enhance the safety and efficiency of payment, clearing and settlement systems, CPMI and IOSCO released a set of international risk-management standards for FMIs, known as the PFMIs.[1] The PFMIs provide standards regarding FMI recovery planning and orderly wind-down, which were adopted by the Bank of Canada as Standard 24 of the Bank's *Risk-Management Standards for Systemic FMIs*[2] and by the CSA as part of the Instrument.[3] In the context of recovery planning,

> *An FMI is expected to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. This entails preparing appropriate plans for its recovery or orderly wind-down based on the results of that assessment.*

In October 2014, CPMI and IOSCO released its report, "Recovery of Financial Market Infrastructures" (the Recovery Report), providing additional guidance specific to the recovery of FMIs.[4] The Recovery Report explains the required structure and components of an FMI recovery plan and provides guidance on FMI critical services and recovery tools at a level sufficient to accommodate possible differences in the legal and institutional environments of each jurisdiction.

For the purpose of this guidance, FMI recovery is defined as the set of actions that an FMI can take, consistent with its rules, procedures and other ex ante contractual agreements, to address any uncovered loss, liquidity shortfall or capital inadequacy, whether arising from participant default or other causes (such as business, operational or other structural weakness), including actions to replenish any depleted pre-funded financial resources and liquidity arrangements, as necessary, to maintain the FMI's viability as a going concern and the continued provision of critical services.[5], [6]

Recovery planning is not intended as a substitute for robust day-to-day risk management or for business continuity planning. Rather, it serves to extend and strengthen an FMI's risk-management framework, enhancing the resilience of the FMI against financial risks and bolstering confidence in the FMI's ability to function effectively even under extreme but plausible market conditions and operating environments.

Key Components of Recovery Plans

Overview of existing risk-management and legal structures

As part of their recovery plans, FMIs should include overviews of their legal entity structure and capital structure to provide context for stress scenarios and recovery activities.

FMIs should also include an overview of their existing risk-management frameworks – i.e., their pre-recovery risk-management frameworks and activities. As part of this overview, and to determine the relevant point(s) where standard pre-recovery risk-management frameworks are exhausted, FMIs should identify all the material risks they are exposed to and explain how they use their existing pre-recovery risk-management tools to manage these risks to a high degree of confidence.

1 Available at http://www.bis.org/cpmi/publ/d101a.pdf.

2 See key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 which are adopted in the Instrument, section 3.1.

3 The Bank of Canada's *Risk-Management Standards for Systemic FMIs* is available at http://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/.

4 Available at http://www.bis.org/cpmi/publ/d121.pdf.

5 Recovery Report, Paragraph 1.1.1.

6 For a precise definition of orderly wind-down, see the Recovery Report, Paragraph 2.2.2.

Critical services[7]

In their recovery plans, FMIs should identify, in consultation with Canadian authorities and stakeholders, the services they provide that are critical to the smooth functioning of the markets that they serve and to the maintenance of financial stability. FMIs may find it useful to consider the degree of **substitutability** and **interconnectedness** of each of these critical services, specifically

- the degree of criticality of an FMI's service is likely to be high if there are no, or only a small number of, alternative service providers. Factors related to the substitutability of a service could include (i) the size of a service's market share, (ii) the existence of alternative providers that have the capacity to absorb the number of customers and transactions the FMI maintains, and (iii) the FMI participants' capability to transfer positions to the alternative provider(s).

- the degree of criticality of an FMI's service may be high if the service is significantly interconnected with other market participants, both in terms of breadth and depth, thereby increasing the likelihood of contagion if the service were to be discontinued. Potential factors to consider when determining an FMI's interconnectedness are (i) what services it provides to other entities and (ii) which of those services are critical for other entities to function

Stress scenarios[8]

In their recovery plans, FMIs should identify scenarios that may prevent them from being able to provide their critical services as a going concern. Stress scenarios should be focused on the risks an FMI faces from its payment, clearing and settlement activity. An FMI should then consider stress scenarios that cause financial stress in excess of the capacity of its existing pre-recovery risk controls, thereby placing the FMI into recovery. An FMI should organize stress scenarios by the types of risk it faces; for each stress scenario, the FMI should clearly explain the following:

- the assumptions regarding market conditions and the state of the FMI within the stress scenario, accounting for the differences that may exist depending on whether the stress scenario is systemic or idiosyncratic;

- the estimated impact of a stress scenario on the FMI, its participants, participants' clients and other stakeholders; and

- the extent to which an FMI's existing pre-recovery risk-management tools are insufficient to withstand the impacts of realized risks in a recovery stress scenario and the value of the loss and/or of the negative shock required to generate a gap between existing risk-management tools and the losses associated with the realized risks.

Triggers for recovery

For each stress scenario, FMIs should identify the triggers that would move them from their pre-recovery risk-management activities (e.g., those found in a CCP's default waterfall) to recovery. These triggers should be both qualified (i.e., outlined) and, where relevant, quantified to demonstrate a point at which recovery plans will be implemented without ambiguity or delay.

While the boundary between pre-recovery risk-management activities and recovery can be clear (for example, when pre-funded resources are fully depleted), judgment may be needed in some cases. When this boundary is not clear, FMIs should lay out in their recovery plans how they will make decisions.[9] This includes detailing in advance their communication plans, as well as the escalation process associated with their decision-making procedures. They should also specify the decision-makers responsible for each step of the escalation process to ensure that there is adequate time for recovery tools to be implemented if required.

More generally, it is important to identify and place the triggers for recovery early enough in a stress scenario to allow for sufficient time to implement recovery tools described in the recovery plan. Triggers placed too late in a scenario will impede the effective rollout of these tools and hamper recovery efforts. Overall, in determining the moment when recovery should commence, and especially where there is uncertainty around this juncture, an FMI should be prudent in its actions and err on the side of caution.

7 Recovery Report, Paragraphs 2.4.2–2.4.4.

8 Recovery Report, Paragraph 2.4.5.

9 Recovery Report, Paragraph 2.4.8.

Selection and Application of Recovery Tools[10]

A comprehensive plan for recovery

The success of a recovery plan relies on a comprehensive set of tools that can be effectively applied during recovery. The applicability of these tools and their contribution to recovery varies by system, stress event and the order in which they are applied.

A robust recovery plan relies on a range of tools to form an adequate response to realized risks. Canadian authorities will provide feedback on the comprehensiveness of selected recovery tools when reviewing an FMI's complete recovery plan.

Characteristics of recovery tools

In providing this guidance, Canadian authorities used a broad set of criteria (described below), including those from the Recovery Report, to determine the characteristics of effective recovery tools.[11] FMIs should aim for consistency with these criteria in the selection and application of tools. In this context, recovery tools should be:

- Reliable and timely in their application and have a strong legal and regulatory basis. This includes the need for FMIs to mitigate the risk that a participant may be unable or unwilling to meet a call for financial resources in a timely manner, or at all (i.e., performance risk), and to ensure that all recovery activities have a strong legal and regulatory basis.

- Measurable, manageable and controllable to ensure that they can be applied effectively while keeping in mind the objective of minimizing their negative effects on participants and the broader financial system. To this end, using tools in a manner that results in participant exposures that are determinable and fixed provides better certainty of the tools' impacts on FMI participants and their contribution to recovery. Fairness in the allocation of uncovered losses and shortfalls, and the capacity to manage the associated costs, should also be considered.

- Transparent to participants: this should include a predefined description of each recovery tool, its purpose and the responsibilities and procedures of participants and the FMIs subject to the recovery tool's application to effectively manage participants' expectations. Transparency also mitigates performance risk by detailing the obligations and procedures of FMIs and participants beforehand to support the timely and effective rollout of recovery tools.

- Designed to create appropriate incentives for sound risk management and encourage voluntary participation in recovery to the greatest extent possible. This may include distributing post-recovery proceeds to participants that supported the FMI through the recovery process.

Systemic stability

Certain tools may have serious consequences for participants and for the stability of financial markets more generally. FMIs should use prudence and judgment in the selection of appropriate tools. Canadian authorities are of the view that FMIs should be cautious in using tools that can create uncapped, unpredictable or ill-defined participant exposures, and which could create uncertainty and disincentives to participate in an FMI. Any such use would need to be carefully justified. Participants' ability to predict and manage their exposures to recovery tools is important, both for their own stability and for the stability of the indirect participants of an FMI.

In assessing FMI recovery plans, Canadian authorities are concerned with the possibility of systemic disruptions from the use of certain tools or tools that pose unquantifiable risks to participants. When determining which recovery tools should be included in a recovery plan, and selecting and applying such tools during the recovery phase, FMIs should keep in mind the objective of minimizing their negative impacts on participants, the FMI and the broader financial system.

Recommended recovery tools

This section outlines recommended recovery tools for use in FMI recovery plans. Not all tools are applicable for the different types of FMIs (e.g., a payment system versus a central counterparty), nor is this an exhaustive list of tools that

[10] Recovery Report, Paragraph 2.3.6 – 2.3.7 and 2.5.6 and Paragraphs 3.4.1 – 3.4.7.

[11] Recovery Report, Paragraph 3.3.1.

may be available for recovery. Each FMI should use discretion when determining the most appropriate tools for inclusion in its recovery plan, consistent with the considerations discussed above.

❖ **Cash calls**

Cash calls are recommended for recovery plans to the extent that the exposures they generate are fixed and determinable; for example, capped and limited to a maximum number of rounds over a specified period, established in advance. In this context, participant exposures should be linked to each participant's risk-weighted level of FMI activity.

By providing predictable exposures pro-rated to a participant's risk-weighted level of activity, FMIs create incentives for better risk management on the part of participants, while giving the FMI greater certainty over the amount of resources that can be made available during recovery.

Since cash calls rely on contingent resources held by FMI participants, there is a risk that they may not be honoured, reducing their effectiveness as a recovery tool. The management of participants' expectations, especially through the placement of clear limits on participant exposure, can mitigate this concern.

Cash calls can be designed in multiple ways to structure incentives, vary their impacts on participants and respond to different stress scenarios. When designing cash calls, FMIs should, to the greatest extent possible, seek to minimize the negative consequences of the tool's use.

❖ **Variation margin gains haircutting (VMGH)**

VMGH is recommended for recovery plans because participant exposure under this tool can be measured with reasonable confidence, as it is tied to the level of risk held in the variation margin (VM) fund and the potential for gains. Where recovery plans allow for multiple rounds of VMGH, Canadian authorities will consider the impact of each successive round of haircutting with increasing focus on systemic stability.

VMGH relies on participant resources posted at the FMI as variation margin (VM). Where the price movements of underlying instruments create sufficient VM gains for use in recovery, VMGH provides an FMI with a reliable and timely source of financial resources without the performance risk that is associated with tools reliant on resources held by participants.

VMGH assigns losses and shortfalls only to participants with net position gains; as a result, the pro rata financial burden is higher for these participants. The negative effects of VMGH can also be compounded for participants who rely on variation margin gains to honour obligations outside the FMI. FMIs should seek to minimize these negative effects to the greatest extent possible.

❖ **Voluntary contract allocation**

To recover from an unmatched book caused by a participant default, a CCP can use its powers to allocate unmatched contracts.[12] In the context of recovery, contract allocation is encouraged on a voluntary basis –for example, by auction. Voluntary contract allocation addresses unmatched positions while taking participant welfare into account, since only participants who are willing to take on positions will participate.

The reliance on a voluntary process, such as an auction, introduces the risk that not all positions will be matched or that the auction process is not carried out in a timely manner. Defining the responsibilities and procedures for voluntary contract allocation (e.g., the auction rules) in advance will mitigate this risk and increase the reliability of the tool. To ensure that there is adequate participation in an auction process, FMIs should create incentives for participants to take on unmatched positions. FMIs may also wish to consider expanding the auction beyond direct participants to increase the chances that all positions will be matched.

❖ **Voluntary contract tear-up**

Since eliminating positions can help re-establish a matched book, Canadian authorities view voluntary contract tear-up as a potentially effective tool for FMI recovery. To this end, FMIs may want to consider using incentives to encourage voluntary tear-up during recovery.[13] While contract tear-up undertaken on a voluntary

[12] A CCP "matched book" occurs when a position taken on by the CCP with one clearing member is offset by an opposite position taken on with a second clearing member. A matched book must be maintained for the CCP to complete a trade. An unmatched book occurs when one participant defaults on its position in the trade, leaving the CCP unable to complete the transaction.

[13] Recovery Report, Paragraph 4.5.3.

basis is a recommended tool, the forced termination of an incomplete trade may represent a disruption of a critical FMI service, and can be intrusive to apply (see the section "Tools requiring further justification" for a discussion of forced contract tear-up).

To the extent that voluntary contract tear-up may disrupt critical FMI services, it can produce disincentives to participate in an FMI. There should be a strong legal basis for the relevant processes and procedures when voluntary contract tear-up is included in a recovery plan. This will help to manage participant expectations for this tool and ensure that confidence in the FMI is maintained.

Other tools available for FMI recovery include standing third-party liquidity lines, contractual liquidity arrangements with participants, insurance against financial loss, increased contributions to pre-funded resources, and use of an FMI's own capital beyond the default waterfall. These and other tools are often already found in the pre-recovery risk-management frameworks of FMIs. Canadian authorities encourage their use for recovery as well, provided they are in keeping with the criteria for effective recovery tools as found in the Recovery Report and in this guidance.[14] Where system-specific recovery needs necessitate, FMIs can also design recovery tools not explicitly listed in this guidance. The applicability of such tools will be examined by the Canadian authorities when they review the proposed recovery plan.

To the extent that the costs of recovery are shared less equally under some tools (e.g., VMGH), if it is financially feasible, FMIs could consider post-recovery actions to restore fairness where participants have been disproportionately affected. Such actions may include the repayment of participant contributions used to address liquidity shortfalls and other instruments that aim to redistribute the burden of losses allocated during recovery. It is important to note that these actions in the post-recovery period should not impair the financial viability of the FMI as a going concern.

Tools requiring further justification

Due to their uncertain and potentially negative effects on the broader financial system, tools that are more intrusive or result in participant exposures that are difficult to measure, manage or control, must be carefully considered and justified with strong rationale by the FMI when they are included in a recovery plan. Canadian authorities will provide their views on the suitability of any such tools as part of their review of recovery plans.

For example, uncapped and unlimited cash calls and unlimited rounds of VMGH can create ambiguous participant exposures, the negative effects of which must be prudently considered when including them in a recovery plan. In addition, when applied during the recovery process, Canadian authorities will monitor the application of each successive round of cash calls and VMGH with increased focus on systemic stability.

Tools such as involuntary (forced) contract allocation and involuntary (forced) contract tear-up create exposures that are difficult to manage, measure and control. To the extent that these tools are even more intrusive, they have the ability to pose greater risk to systemic stability. Canadian authorities acknowledge that such tools have potential utility when other recovery options are ineffective, and could possibly be used by a resolution authority, but expect FMIs to carefully assess the potential impact of such tools on participants and the stability of the broader financial system.

Canadian authorities do not encourage the use of non-defaulting participants' initial margin in FMI recovery plans considering the potential for significant negative impacts.[15] Similarly, a recovery plan should not assume any extraordinary form of public or central bank support.[16]

Recovery from non-default-related losses and structural weaknesses

Consistent with a defaulter-pays principle, an FMI should rely on FMI-funded resources to address recovery from non-default-related losses (i.e., operational and business losses on the part of an FMI), including losses arising from structural weakness.[17] To this end, FMIs should examine ways to increase the loss absorbency between the FMI's pre-recovery risk-management activities and participant-funded resources (e.g., by using FMI-funded insurance against operational risks).

Structural weakness can be an impediment to the effective rollout of recovery tools and may itself result in non-default-related losses that are a trigger for recovery. An FMI recovery plan should identify procedures detailing how to promptly

[14] Recovery Report, Paragraph 3.3.1.

[15] Recovery Report, Paragraph 4.2.26.

[16] Recovery Report, Paragraph 2.3.1.

[17] Structural weakness can be caused by factors such as poor business strategy, poor investment and custody policy, poor organizational structure, IM/IT-related obstacles, poor legal or regulatory risk frameworks, and other insufficient internal controls.

detect, evaluate and address the sources of underlying structural weakness on a continuous basis (e.g., unprofitable business lines, investment losses).

The use of participant-funded resources to recover from non-default-related losses can lessen incentives for robust risk management within an FMI and provide disincentives to participate. If, despite these concerns, participants consider it in their interest to keep the FMI as a going concern, an FMI and its participants may agree to include a certain amount of participant-funded recovery tools to address some non-default-related losses. Under these circumstances, the FMI should clearly explain under what conditions participant resources would be used and how costs would be distributed.

Defining full allocation of uncovered losses and liquidity shortfalls

Principles 4 (credit risk)[18] and 7 (liquidity risk)[19] of the PFMIs require that FMIs should specify rules and procedures to fully allocate both uncovered losses and liquidity shortfalls caused by stress events. To be consistent with this requirement, **Canadian FMIs should consider various stress scenarios and have rules and procedures that allow them to fully allocate any losses or liquidity shortfalls arising from these stress scenarios, in excess of the capacity of existing pre-recovery risk controls.** Tools used to address full allocation should reflect the Recovery Report's characteristics of effective recovery tools, including the need to have them measurable, manageable and controllable to those who will bear the losses and liquidity shortfalls in recovery, and for their negative impacts to be minimized to the greatest extent possible.

Legal consideration for full allocation

An FMI's rules for allocating losses and liquidity shortfalls should be supported by relevant laws and regulations. There should be a high level of certainty that rules and procedures to fully allocate all uncovered losses and liquidity shortfalls are enforceable and will not be voided, reversed or stayed.[20] This requires that Canadian FMIs design their recovery tools in compliance with Canadian laws. For example, if the FMI's loss-allocation rules involve a guarantee, Canadian law generally requires that the guaranteed amount be determinable and preferably capped by a fixed amount.[21]

FMIs should consider whether it is appropriate to involve indirect participants in the allocation of losses and shortfalls during recovery. To the extent that it is permitted, such arrangements should have a strong legal and regulatory basis; respect the FMI's frameworks for tiered participation, segregation and portability; and involve consultation with indirect participants to ensure that all relevant concerns are taken into account.

Overall, FMIs are responsible for seeking appropriate legal advice on how their recovery tools can be designed and for ensuring that all recovery tools and activities are in compliance with the relevant laws and regulations.

Additional Considerations in Recovery Planning

Transparency and coherence[22]

An FMI should ensure that its recovery plan is coherent and transparent to all relevant levels of management within the FMI, as well as to its regulators and overseers. To do so, a recovery plan should

- contain information at the appropriate level and detail; and
- be sufficiently coherent to relevant parties within the FMI, as well as to the regulators and overseers of the FMI, to effectively support the application of the recovery tools.

An FMI should ensure that the assumptions, preconditions, key dependencies and decision-making processes in a recovery plan are transparent and clearly identified.

[18] Under key consideration 7 of PFMI Principle 4, an FMI should establish explicit rules and procedures that fully address any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI

[19] Under key consideration 10 of PFMI Principle 7, FMIs should establish rules and procedures that address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking or delaying the same-day settlement of payment obligations.

[20] PFMI Report, Paragraph 3.1.10.

[21] The Bank Act, Section 414(1) and IIROC Rule 100.14 prohibit banks and securities dealers, respectively, from providing unlimited guarantees to an FMI or a financial institution.

[22] Recovery Report, Section 2.3.

Relevance and flexibility[23]

An FMI's recovery plan should thoroughly cover the information and actions relevant to extreme but plausible market conditions and other situations that would call for the use of recovery tools. An FMI should take into account the following elements when developing its recovery plan:

- the nature, size and complexity of its operations;
- its interconnectedness with other entities;
- operational functions, processes and/or infrastructure that may affect the FMI's ability to implement its recovery plan; and
- any upcoming regulatory reforms that may have the potential to affect the recovery plan.

Recovery plans should be sufficiently flexible to address a range of FMI-specific and market-wide stress events. Recovery plans should also be structured and written at a level that enables the FMI's management to assess the recovery scenario and initiate appropriate recovery procedures. As part of this expectation, the recovery plan should demonstrate that senior management has assessed the potential two-way interaction between recovery tools and the FMI's business model, legal entity structure, and business and risk-management practices.

Implementation of Recovery Plan[24]

An FMI should have credible and operationally feasible approaches to recovery planning in place and be able to act upon them in a timely manner, under both idiosyncratic and market-wide stress scenarios. To this end, recovery plans should describe

- potential impediments to applying recovery tools effectively and strategies to address them; and
- the impact of a major operational disruption.[25]

This information is important to strengthen a recovery plan's resilience to shocks and ensure that the recovery tools are actionable.

A recovery plan should also include an escalation process and the associated communication procedures that an FMI would take in a recovery situation. Such a process should define the associated timelines, objectives and key messages of each communication step, as well as the decision-makers who are responsible for it.

Consulting Canadian authorities when taking recovery actions

While the responsibility for implementing the recovery plan rests with the FMI, Canadian authorities consider it critical to be informed when an FMI triggers its recovery plan and before the application of recovery tools and other recovery actions. To the extent an FMI intends to use a tool or take a recovery action that might have significant impact on its participants (e.g. tools requiring further justification), the FMI should consult Canadian authorities before using such tools or taking such actions to demonstrate how it has taken into account potential financial stability implications and other relevant public interest considerations. Authorities include those responsible for the regulation, supervision and oversight of the FMI, as well as any authorities who would be responsible for the FMI if it were to be put into resolution.

Relevant Canadian authorities should be informed (or consulted as appropriate) early on and interaction with authorities should be explicitly identified in the escalation process of a recovery plan. Acknowledging the speed at which an FMI may enter recovery, FMIs are encouraged to develop formal communications protocols with authorities in the event that recovery is triggered and immediate action is required.

Review of Recovery Plan[26]

An FMI should include in its recovery plan a robust assessment of the recovery tools presented and detail the key factors that may affect their application. It should recognize that, while some recovery tools may be effective in

[23] Recovery Report, Section 2.3.

[24] Recovery Report, Paragraph 2.3.9.

[25] This is also related to the FMI's backup and contingency planning, which are distinct from recovery plans.

[26] Recovery Report, Paragraph 2.3.8.

returning the FMI to viability, these tools may not have a desirable effect on its participants or the broader financial system.

A framework for testing the recovery plan (for example, through scenario exercises, periodic simulations, back-testing and other mechanisms) should be presented either in the plan itself or linked to a separate document. This impact assessment should include an analysis of the effect of applying recovery tools on financial stability and other relevant public interest considerations.[27] Furthermore, an FMI should demonstrate that the appropriate business units and levels of management have assessed the potential consequences of recovery tools on FMI participants and entities linked to the FMI.

Annual review of recovery plan

An FMI should review and, if necessary, update its recovery plan on an annual basis. The recovery plan should be subject to approval by the FMI's Board of Directors.[28] Under the following circumstances, an FMI is expected to review its recovery plan more frequently:

- if there is a significant change to market conditions or to an FMI's business model, corporate structure, services provided, risk exposures or any other element of the firm that could have a relevant impact on the recovery plan;
- if an FMI encounters a severe stress situation that requires appropriate updates to the recovery plan to address the changes in the FMI's environment or lessons learned through the stress period; and
- if the Canadian authorities request that the FMI update the recovery plan to address specific concerns or for additional clarity.

Canadian authorities will also review and provide their views on an FMI's recovery plan before it comes into effect. This is to ensure that the plan is in line with the expectations of Canadian authorities.

Orderly Wind-Down Plan as Part of a Recovery Plan[29]

Canadian authorities expect FMIs to prepare, as part of their recovery plans, for the possibility of an orderly wind-down. However, developing an orderly wind-down plan may not be appropriate or operationally feasible for some critical services. In this instance, FMIs should consult with the relevant authorities on whether they can be exempted from this requirement.

Considerations when developing an orderly wind-down plan

An FMI should ensure that its orderly wind-down plan has a strong legal basis. This includes actions concerning the transfer of contracts and services, the transfer of cash and securities positions of an FMI, or the transfer of all or parts of the rights and obligations provided in a link arrangement to a new entity.

In developing orderly wind-down plans, an FMI should elaborate on

- the scenarios where an orderly wind-down is initiated, including the services considered for wind-down;
- the expected wind-down period for each scenario, including the timeline for when the wind-down process for critical services (if applicable) would be complete; and
- measures in place to port critical services to another FMI that is identified and assessed as operationally capable of continuing the services.

Disclosure of recovery and orderly wind-down plans

An FMI should disclose sufficient information regarding the effects of its recovery and orderly wind-down plans on FMI participants and stakeholders, including how they would be affected by (i) the allocation of uncovered losses and liquidity shortfalls and (ii) any measures the CCP would take to re-establish a matched book. In terms of disclosing the

[27] This is in line with key consideration 1 of PFMI Principle 2 (Governance), which states that an FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.

[28] Recovery Report, Paragraph 2.3.3.

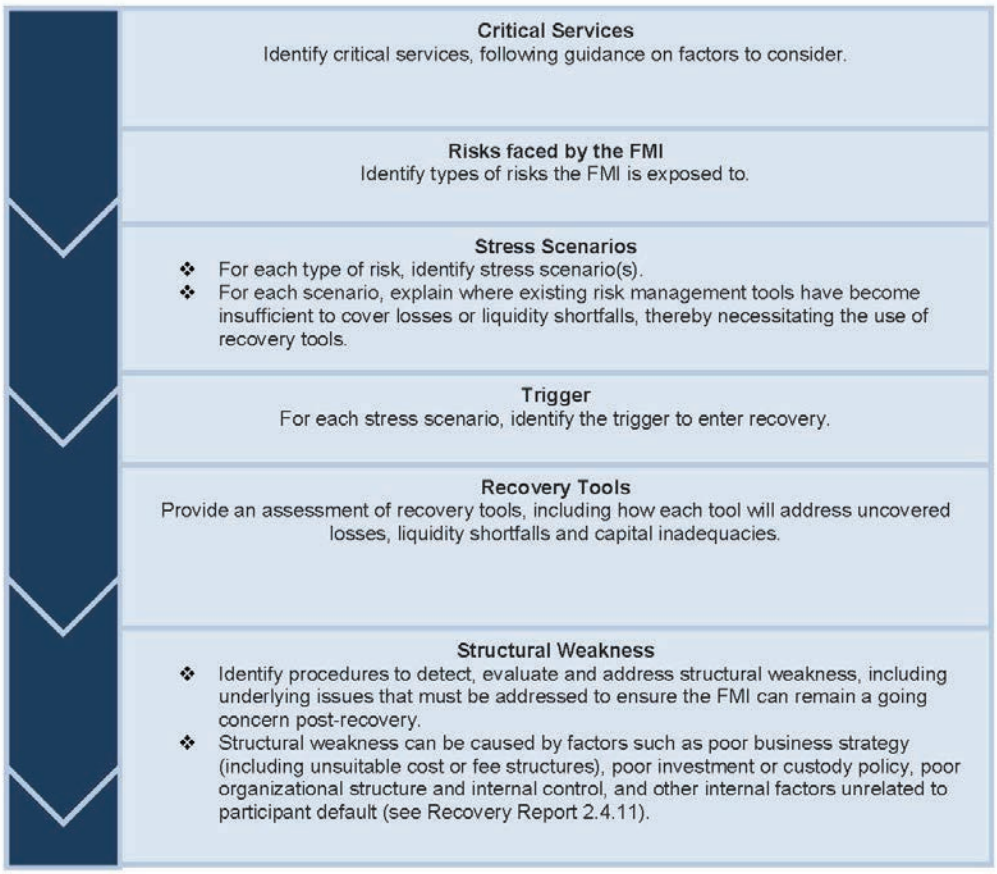
[29] Recovery Report, Paragraph 2.2.2.

degree of discretion an FMI has in applying recovery tools, an FMI should make it clear to FMI participants and all other stakeholders ahead of time that all recovery tools and orderly wind-down actions that an FMI can apply will only be employed after consulting with the relevant Canadian authorities.

Note that recovery and orderly wind-down plans need not be two separate documents; the orderly wind-down of critical services may be a part or subset of the recovery plan. Furthermore, Canadian FMIs may consider developing orderly wind-down plans for non-critical services in the context of recovery if winding down non-critical services could assist in or benefit the recovery of the FMI.

Appendix: Guidelines on the Practical Aspects of FMI Recovery Plans

The following example provides suggestions on how an FMI recovery plan could be organized.



21. These changes become effective on ●.

ANNEX C

BLACKLINED PROPOSED AMENDMENTS
TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

TABLE OF CONTENTS

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NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

1.1 In this Instrument

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"auditing standards" means auditing standards as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"board of directors" means, in the case of a recognized clearing agency that does not have a board of directors, a group of individuals that acts for the clearing agency in a capacity similar to a board of directors;

"central counterparty" means a person or company that interposes itself between the counterparties to securities or derivatives transactions in one or more financial markets, acting functionally as the buyer to every seller and the seller to every buyer or the counterparty to every party;

"central securities depository" means a person or company that provides centralized facilities as a depository of securities, including securities accounts, central safekeeping services and asset services, which may include the administration of corporate actions and redemptions;

"exempt clearing agency" means a clearing agency that has been granted a decision of the securities regulatory authority pursuant to securities legislation exempting it from the requirement in such legislation to be recognized by the securities regulatory authority as a clearing agency;

"link" means, in relation to a clearing agency, contractual and operational arrangements that directly or indirectly through an intermediary connect the clearing agency and one or more other systems for the clearing, settlement or recording of securities or derivatives transactions;

"participant" means a person or company that has entered into an agreement with a clearing agency to access the services of the clearing agency and is bound by the clearing agency's rules and procedures;

"PFMI Disclosure Framework Document" means a disclosure document completed substantially in the form of *Annex A: FMI disclosure template* of the December 2012 report *Principles for financial market infrastructures: Disclosure framework and Assessment methodology* published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, as amended, supplemented or superseded from time to time, or a similar disclosure document required to be completed regularly and disclosed publicly by a clearing agency in accordance with the regulatory requirements of a foreign jurisdiction in which the clearing agency is located;

"PFMI Principle" means a principle, including applicable key considerations, in the April 2012 report *Principles for financial market infrastructures* published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, as amended from time to time;

"publicly accountable enterprise" means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"securities settlement system" means a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.

Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

1.2 (1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if any of the following applies:

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than ~~fifty percent~~50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than ~~fifty percent~~50% of the interests in the partnership; ~~or~~

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if either of the following applies:

(a) it is a controlled entity of any of the following:

(i) that other~~,~~;

(ii) that other and one or more persons or companies, each of which is a controlled entity of that other;~~, or~~

(iii) two or more persons or companies, each of which is a controlled entity of that other; ~~or~~

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

Interpretation – Extended Meaning of Affiliated Entity

1.3 For the purposes of the PFMI Principles, a person or company is considered to be an affiliate of a participant, the person or company and the participant each being described in this section as a "party" where~~,~~ either of the following applies:

(a) a party holds, otherwise than by way of security only, voting securities of the other party carrying more than 20~~percent~~% of the votes for the election of directors~~, or~~;

(b) in the event paragraph (a) is not applicable~~,~~ either of the following applies:

(i) a party holds, otherwise than by way of security only, an interest in the other party that allows it to direct the management or operations of the other party; ~~or~~

(ii) financial information in respect of both parties is consolidated for financial reporting purposes.

Interpretation – Clearing Agency

1.4 For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house, a central securities depository and a settlement system within the meaning of the Québec *Securities Act* and a clearing house and a settlement system within the meaning of the Québec *Derivatives Act*.

Application

1.5 (1) Part 3 applies to a recognized clearing agency that operates as any of the following:

(a) a central counterparty;

(b) a central securities depository;

(c) a securities settlement system.

(2) Unless the context otherwise indicates, Part 4 applies to a recognized clearing agency whether or not it operates as a central counterparty, central securities depository or securities settlement system.

(3) In Québec, if there is a conflict or an inconsistency between section 2.2 and the provisions of the Québec *Derivatives Act* governing the self-certification process with respect to a clearing agency implementing a significant change or a fee change, the provisions of the Québec *Derivatives Act* prevail.

(4) The requirements of section 2.2 or 2.5 apply only to the extent that the subject matters of the section are not otherwise governed by the terms and conditions of a decision of the securities regulatory authority that recognizes a clearing agency or that exempts a clearing agency from a recognition requirement.

PART 2
CLEARING AGENCY RECOGNITION OR EXEMPTION FROM RECOGNITION

Application and initial filing of information

2.1 (1) An applicant for recognition as a clearing agency under securities legislation, or for exemption from the requirement to be recognized as a clearing agency under securities legislation, must include in its application all of the following:

(a) if applicable, the applicant's most recently completed PFMI Disclosure Framework Document;

(b) sufficient information to demonstrate ~~that~~either of the following:

(i) the applicant is in compliance with provincial and territorial securities legislation~~, or~~;

(ii) the applicant is subject to and in compliance with comparable ~~the~~ regulatory ~~regime~~requirements of ~~a~~the foreign jurisdiction in which the applicant's head office or principal place of business is located;

(c) any additional relevant information sufficient to demonstrate that it is in the public interest for the securities regulatory authority to recognize or exempt the applicant, as the case may be.

(2) In addition to the requirement set out in subsection (1), an applicant that has a head office or principal place of business located in a foreign jurisdiction must

(a) certify that it will assist the securities regulatory authority in accessing the applicant's books, ~~and~~ records and other documents and in undertaking an onsite inspection and examination at the applicant's premises, and

(b) certify that it will provide the securities regulatory authority, if requested by ~~such~~the authority, with an opinion of legal counsel that the applicant has, as a matter of law, the power and authority to

(i) provide the securities regulatory authority with prompt access to its books, ~~and~~ records and other documents, and

(ii) submit to onsite inspection and examination by the securities regulatory authority.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 24-102F1 *Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process*.

(4) An applicant must inform the securities regulatory authority in writing of any ~~material~~ change to the information provided in its application that is material, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the applicant becomes aware of any inaccuracy.

Significant changes, fee changes and other changes in information

2.2 (1) In this section, for greater certainty, a "significant change" includes, in relation to a clearing agency, any of the following:

(a) any change to the clearing agency's constating documents or by-laws;

(b) any change to the clearing agency's corporate governance or corporate structure, including any change of control of the clearing agency, whether direct or indirect;

(c) any material change to an agreement among the clearing agency and participants in connection with the clearing agency's operations and services, including those agreements to which the clearing agency is a party and those agreements among participants to which the clearing agency is not a party, but that are expressly referred to in the clearing agency's rules or procedures and are made available by participants to the clearing agency;

(d) any material change to the clearing agency's rules, operating procedures, user guides, manuals, or other documentation governing or establishing the rights, obligations and relationships among the clearing agency and participants in connection with the clearing agency's operations and services;

(e) any material change to the design, operation or functionality of any of the clearing agency's operations and services;

(f) the establishment or removal of a link or any material change to an existing link;

(g) commencing to engage in a new type of business activity or ceasing to engage in a business activity in which the clearing agency is then engaged;

(h) any other matter identified as a significant change in the ~~recognition~~ terms and conditions of a decision to recognize the clearing agency under securities law.

(2) Subject to subsection (4), a recognized clearing agency must not implement a significant change unless it has filed a written notice of the significant change with the securities regulatory authority at least 45 days before implementing the change.

(3) ~~If a proposed significant change referred to in subsection (2) would affect the information set out in its PFMI Disclosure Framework Document filed with the securities regulatory authority, a recognized clearing agency must complete and file with the securities regulatory authority, concurrently with providing t~~The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency~~, and appropriate amendment to its PFMI Disclosure Framework Document~~.

(4) If a recognized clearing agency proposes to modify a fee or introduce a new fee for any of its clearing, settlement or depository services, the clearing agency must notify in writing the securities regulatory authority of such fee change before

implementing the fee change within a period stipulated by the terms and conditions of a decision of the securities regulatory authority that recognizes the clearing agency.

(5) An exempt clearing agency must notify in writing the securities regulatory authority of any material change to the information provided to the securities regulatory authority in its PFMI Disclosure Framework Document and related application materials, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the exempt clearing agency becomes aware of any inaccuracy.

Ceasing to carry on business

2.3 (1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority at least 90 days before ceasing to carry on business.

~~(a) at least 180 days before ceasing to carry on business if a significant reason for ceasing to carry on business relates to the clearing agency's financial viability or any other matter that is preventing, or may potentially prevent, it from being able to provide its operations and services as a going concern or;~~

~~(b) at least 90 days before ceasing to carry on business for any other reason.~~

(2) A recognized clearing agency or exempt clearing agency that involuntarily ceases to carry on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority as soon as practicable after it ceases to carry on that business.

Filing of initial audited financial statements

2.4 (1) An applicant must file audited financial statements for its most recently completed financial year with the securities regulatory authority as part of its application under section 2.1.

(2) The financial statements referred to in subsection (1) must

(a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, IFRS or the generally accepted accounting principles of the foreign jurisdiction in which the person or company is incorporated, organized or located,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) be audited in accordance with Canadian GAAS, International Standards on Auditing or the generally accepted auditing standards of the foreign jurisdiction in which the person or company is incorporated, organized or located.

(3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

(a) expresses an unmodified or unqualified opinion,

(b) identifies all financial periods presented for which the auditor's report applies,

(c) identifies the auditing standards used to conduct the audit,

(d) identifies the accounting principles used to prepare the financial statements,

(e) is prepared in accordance with the same auditing standards used to conduct the audit, and

(f) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

2.5 (1) A recognized clearing agency or exempt clearing agency must file annual audited financial statements that comply with the requirements set out in subsections 2.4(2) and (3) with the securities regulatory authority no later than the 90th day after the end of the recognized clearing agency or exempt clearing agency's financial year.

(2) A recognized clearing agency or exempt clearing agency must file interim financial statements for each interim period as defined in National Instrument 51-102 *Continuous Disclosure Obligations* that comply with the requirements set out in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45th day after the end of each interim period of the recognized clearing agency's or exempt clearing agency's financial year.

PART 3
PFMI PRINCIPLES APPLICABLE TO RECOGNIZED CLEARING AGENCIES

PFMI Principles

3.1 A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13, and 15 to 1923, 20 other than key consideration 9 of PFMI Principle 20, 21 to 23 and any of the following:

(a) if the clearing agency operates as a central counterparty, PFMI Principles 4 to 9, 12 and 14;

(b) if the clearing agency operates as a securities settlement system, PFMI Principles 4, 5, 7 to 9 and12; and

(c) if the clearing agency operates as a central securities depository, PFMI Principle 11.

PART 4
OTHER REQUIREMENTS OF RECOGNIZED CLEARING AGENCIES

Division 1 – Governance:

Board of directors

4.1 (1) A recognized clearing agency must have a board of directors.

(2) The board of directors must include appropriate representation by individuals who are

(a) independent of the clearing agency, and

(b) notneither employees or executive officers of a participant nor their immediate family members.

(3) For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(4) For the purposes of subsection (3), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.

Documented procedures regarding risk spill-overs

4.2 The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill-over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.

Chief Risk Officer and Chief Compliance Officer

4.3 (1) A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors or, if determined by the board of directors, to the chief executive officer of the clearing agency.

(2) The chief risk officer must

(a) have full responsibility and authority to maintain, implement, maintain and enforce the risk management framework established by the clearing agency,

(b) make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,

(c) monitor the effectiveness of the clearing agency's risk management framework, and

(d) report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.

(3) The chief compliance officer must

(a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,

,

(b) monitor compliance with the policies and procedures described in paragraph (a),

(c) report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:

(i) the non-compliance creates a risk of harm to a participant~~.~~;

(ii) the non-compliance creates a risk of harm to the broader financial system~~.~~;

(iii) the non-compliance is part of a pattern of non-compliance~~, or~~;

(iv) the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,

(d) prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,

(e) report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and

(f) concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of ~~such~~the report with the securities regulatory authority.

Board or advisory committees

4.4 (1) The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.

(2) If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.

(3) Subject to subsection (4), a committee must have an appropriate representation by individuals who are independent of the clearing agency.

(4) An audit or risk committee must have an appropriate representation by individuals who are

(a) independent of the clearing agency, and

(b) ~~not~~neither employees or ~~executive~~ officers of a participant nor their immediate family members.

(5) For the purpose of subsection (3) and paragraph (4)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(6) For the purposes of subsection (5), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.

Division 2 – Default management:

Use of own capital

4.5 A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults.

Division 3 – Operational risk:

Systems requirements

4.6 (1) For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must

(a) develop and maintain

(i) an adequate system of internal controls over that system, and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the processing capabilityability of that system to process transactionsperform in an accurate, timely and efficient manner, and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any material systems failure, malfunction, delay or security breachincident that is material, and provide timely updates on the following:

(i) the status of the failure, malfunction, delay or security breachincident,;

(ii) the resumption of service;, and

(iii) the results of the clearing agency's internal review of the failure, malfunction, delay or security breachincident;

.

(d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the clearing agency considered that the system failure, malfunction, delay or security incident was not material.

(2) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident to which paragraph (1)(d) applies.

Auxiliary systems

4.6.1 (1) In this section "auxiliary system" of a recognized clearing agency means a system that shares network resources with one or more of the systems operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement and depository functions and that, if breached, would pose a security threat to one or more of the previously mentioned systems.

(2) For each auxiliary system, a recognised clearing agency must

(a) develop and maintain adequate information security controls that relate to the security threats posed to any system that supports the clearing, settlement and depository functions,

(b) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates on

(i) the status of the incident,

(ii) the resumption of service, where applicable, and

(iii) the results of the clearing agency's internal review of the security incident, and

(c) keep a record of any security incident and, if applicable, document the reasons why the clearing agency considered that such a security incident was not material.

(3) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each security incident to which paragraph (2)(c) applies.

Systems reviews

4.7 (1) A recognized clearing agency must

(a) on a reasonably frequent basis and, in any event, at least annually, engage ~~a~~ one or more qualified ~~party~~ external auditors to conduct an independent systems review ~~and vulnerability assessment~~ and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(1)(a), and sections 4.6.1 and ~~section~~ 4.9, and

(b) on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(1)(a) and 4.6.1(2)(a).

(2) The clearing agency must provide the report resulting from the review conducted under ~~subsection~~paragraph (1)(a) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

Clearing agency technology requirements and testing facilities

4.8 (1) A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(2) After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(3) The clearing agency must not begin operations before

(a) it has complied with paragraphs (1)(a) and (2)(a), and

(b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the clearing agency have been tested according to prudent business practices and are operating as designed.

(4) The clearing agency must not implement a material change to the systems referred to in section 4.6 before

(a) it has complied with paragraphs (1)(b) and (2)(b), and

(b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(5) Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

(a) the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and

(b) the clearing agency discloses to its participants the changed technology requirements as soon as practicable.

Testing of business continuity plans

4.9 A recognized clearing agency must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and

(b) test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.

Outsourcing

4.10 If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:

(a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;

(b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;

(c) enter into a written contract with the service provider to which a critical service or system is outsourced that

(i) is appropriate for the materiality and nature of the outsourced activities,

(ii) includes service level provisions, and

(iii) provides for adequate termination procedures;

(d) maintain access to the books and records of the service provider relating to the outsourced activities;

(e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;

(f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Instrument have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;

(g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests ~~an appropriate~~a reasonable business continuity plan, including a disaster recovery plan;

(h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only

in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;

(i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.

Division 4 – Participation requirements:

Access requirements and due process

4.11 (1) A recognized clearing agency must not

(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,

(b) unreasonably discriminate among its participants or indirect participants,

(c) impose any burden on competition that is not reasonably necessary and appropriate,

(d) unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and

(e) impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.

(2) For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that

(a) the participant or applicant is given an opportunity to be heard or make representations, and

(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.

(3) Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.

PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Books and records

5.1 (1) A recognized clearing agency or exempt clearing agency must keep books, records and other documents as are necessary to account for the conduct of its clearing, settlement and depository activities, business transactions and financial affairs ~~and must keep those other books, records and documents as may otherwise be required under securities legislation~~.

(2) The clearing agency must retain the books and records maintained under this section

(a) for a period of seven years from the date the record was made or received, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits them to be provided promptly to the securities regulatory authority.

Legal Entity Identifier

5.2 (1) In this section,

"Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions, ~~developed by the LEI Regulatory Oversight Committee, and~~

"LEI Regulatory Oversight Committee means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012.

(2) For the purposes of any recordkeeping and reporting requirements required under securities legislation, a recognized clearing agency or exempt clearing agency must identify itself by means of a singlethe legal entity identifier assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System.

(2.1) Throughout the period that the clearing agency is recognized as a clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2).

(3) LAPSED. If the Global Legal Entity Identifier System is unavailable to the clearing agency, all of the following apply:

(a) the clearing agency must obtain a substitute legal entity identifier that complies with the standards established by the LEI Regulatory Oversight Committee for pre-legal entity identifiers;

(b) the clearing agency must use the substitute legal entity identifier until a legal entity identifier is assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System;

(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System, the clearing agency must ensure that it is identified only by the assigned identifier.

PART 6
EXEMPTIONS

Exemption

6.1 (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 7
EFFECTIVE DATE AND TRANSITION

Effective date and transition

7.1 (1) [LAPSED.] This Instrument comes into force on February 17, 2016.

(2) [LAPSED.] Despite section 3.1, until December 31, 2016, a recognized clearing agency is not required to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds the following:

(a) PFMI Principle 14;

(b) key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 with respect to a clearing agency's recovery and orderly wind-down plans; and

(c) PFMI Principle 19.

(3) [LAPSED.] In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after February 17, 2016, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

FORM 24-102F1

CLEARING AGENCY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of clearing agency (the "Clearing Agency"):

   _____

2. Jurisdiction of incorporation, or equivalent, of Clearing Agency:

   _____

3. Address of principal place of business of Clearing Agency:

   _____

4. Name of the agent for service of process (the "Agent") for the Clearing Agency:

   _____

5. Address of the Agent in _____ [name of local jurisdiction]:

   _____

6. The _____ [name of securities regulatory authority] ("securities regulatory authority") issued an order recognizing the Clearing Agency as a clearing agency pursuant to securities legislation, or the securities regulatory authority issued an order exempting the Clearing Agency from the requirement to be recognized as a clearing agency pursuant to such legislation, on _____.

7. The Clearing Agency designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Clearing Agency in _____ [~~province~~name of local jurisdiction]. The Clearing Agency hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Clearing Agency.

8. The Clearing Agency agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of _____ [name of local jurisdiction] and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Clearing Agency in _____ [name of local jurisdiction].

9. The Clearing Agency must file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Clearing Agency ceases to be recognized or exempted by the securities regulatory authority, to be in effect for six years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with section 10.

10. Until six years after it has ceased to be ~~a~~ recognized or exempted by the securities regulatory authority, the Clearing Agency must file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

11. The Clearing Agency agrees that this submission to jurisdiction and appointment of agent for service of process is to be governed by and construed in accordance with the laws of _____ [name of local jurisdiction].

Dated: _____

_____
Signature of the Clearing Agency

_____
Print name and title of signing officer of the Clearing Agency

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, _____ [name of Agent in full; if a corporation, full corporate name] of _____ [business address], hereby accept the appointment as agent for service of process of _____ [~~insert~~ name of Clearing Agency] and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ [~~insert~~ name of Clearing Agency] on _____ [~~insert~~ date].

Dated: _____

_____
Signature of Agent

_____
Print name of person signing and,
if Agent is not an individual,
the title of the person

FORM 24-102F2

CESSATION OF OPERATIONS REPORT FOR CLEARING AGENCY

1. Identification:

   A. Full name of the recognized or exempted clearing agency:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date clearing agency proposes to cease carrying on business as a clearing agency:

3. If cessation of business was involuntary, date clearing agency has ceased to carry on business as a clearing agency:

Exhibits

File all exhibits with the Cessation of Operations Report. For each exhibit, include the name of the clearing agency, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any exhibit required is inapplicable, a statement to that effect must be provided instead of the exhibit.

Exhibit A

The reasons for the clearing agency ceasing to carry on business as a clearing agency.

Exhibit B

A list of all participants in Canada during the last 30 days prior to ceasing to carry on business as a clearing agency.

Exhibit C

A description of the alternative arrangements available to participants in respect of the services offered by the clearing agency immediately before ~~the cessation of~~ceasing to carry on business as a clearing agency.

Exhibit D

A description of all links the clearing agency had immediately before ~~the cessation of~~ceasing to carry on business as a clearing agency with other clearing agencies or trade repositories.

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20_____

_____

~~(~~Name of clearing agency~~)~~

_____

~~(~~Name of director, officer or partner (~~—~~please type or print)

_____

~~(~~Signature of director, officer or partner~~)~~

_____

~~(~~Official capacity (~~—~~please type or print)

ANNEX D

**BLACKLINED PROPOSED CHANGES TO COMPANION POLICY 24-102CP
TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS***

**COMPANION POLICY 24-102CP
TO
NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS***

TABLE OF CONTENTS

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COMPANION POLICY 24-102CP
TO
NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

PART I

GENERAL COMMENTS

Introduction

1.1 (1) This Companion Policy (CP) sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply provisions of National Instrument 24-102 *Clearing Agency Requirements* (the Instrument) and related securities legislation.

(2) Except for this ~~Part 1~~section, sections 1.2, 1.3~~ of the CP~~, ~~section~~ 3.2 and 3.3~~ of Part 3~~ of this CP, and ~~the *text boxes* in~~ Annex I to this CP, the numbering of Parts, sections and subsections in this CP generally corresponds to the numbering in the Instrument. Any general guidance or introductory comments for a Part appears immediately after the Part's name. Specific guidance on a section or subsection in the Instrument follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this CP will skip to the next provision that does have guidance.

(3) Unless otherwise stated, any reference in this CP to a Part, section, subsection, paragraph or defined term is a reference to the corresponding Part, section, subsection, paragraph or defined term of the Instrument. The CP also makes references to certain paragraphs in the April 2012 report *Principles for financial market infrastructures* (the PFMIs or PFMI Report, as the context requires) and the PFMI Principles set out therein. A reference to a PFMI Principle may include a reference to an applicable key consideration (see definition of "PFMI Principle" in section 1.1).

Background and overview

1.2 (1) Securities legislation in certain jurisdictions of Canada requires an entity seeking to carry on business as a clearing agency in the jurisdiction to be (i) recognized by the securities regulatory authority in that jurisdiction, or (ii) exempted from the recognition requirement.[1] Accordingly, Part 2 sets out certain requirements in connection with the application process for recognition as a clearing agency or exemption from the recognition requirement. Guidance on the CSA's regulatory approach to such an application is set out in this CP.

(2) Parts 3 and 4 set out on-going requirements applicable to a recognized clearing agency. Part 3 adopts the PFMI Principles generally but does restrict their application only to a clearing agency that operates as a central counterparty (CCP), securities settlement system (SSS) or central securities depository (CSD), as relevant. Part 4 applies to a clearing agency whether or not it operates as a CCP, SSS or CSD. The PFMI Principles were developed jointly by the Committee on Payments and Market Infrastructures (CPMI)[2] and the International Organization of Securities Commissions (IOSCO).[3] The PFMI Principles harmonize and strengthen previous international standards for financial market infrastructures (FMIs).[4]

(3) Annexes I and II to this CP include~~s~~ supplementary guidance ~~in *text boxes*~~ that applies to recognized domestic clearing agencies that are also overseen by the Bank of Canada (BOC). The supplementary guidance (Joint Supplementary Guidance) was prepared jointly by the CSA and BOC to provide additional clarity on certain aspects of the PFMI Principles within the Canadian context.

Definitions, interpretation and application

1.3 (1) Unless defined in the Instrument or this CP, defined terms used in the Instrument and this CP have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*.

(2) The terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation. For the purposes of the Instrument, a clearing agency includes, in Quebec, a clearing house, central securities depository and settlement system within the meaning of the Québec *Securities Act* and a clearing house and settlement system within the meaning of the Québec *Derivatives Act*. See section 1.4. The CSA notes that, while Part 3 applies only to a recognized clearing

1 The entity is prohibited from carrying on business as a clearing agency unless recognized or exempted.

2 Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

3 See the CPMI-IOSCO *Principles for Financial Market Infrastructures* Report, published in April 2012, available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

4 See (i) 2001 CPMI report *Core principles for systemically important payment systems*, (ii) 2001 CPMI-IOSCO report *Recommendations for securities settlement systems* (together with the 2002 CPMI-IOSCO report *Assessment methodology for Recommendations for securities settlement systems*); and (iii) 2004 CPMI-IOSCO report *Recommendations for central counterparties*. All of these reports are available on the Bank for International Settlements' website (www.bis.org). The CPMI-IOSCO reports are also available on IOSCO website (www.iosco.org).

agency that operates as a CCP, CSD or SSS, the term "clearing agency" may incorporate certain other centralized post-trade functions that are not necessarily limited to those of a CCP, CSD or SSS, e.g., an entity that provides centralized facilities for comparing data respecting the terms of settlement of a trade or transaction may be considered a clearing agency, but would not be considered a CCP, CSD or SSS. Except in Québec, such an entity would be required to apply either for recognition as a clearing agency or an exemption from the requirement to be recognized.[5] The CSA considers that a recognized clearing agency, which is not a CCP, CSD or SSS, should not be subject to the application of Part 3. Such a clearing agency is, however, subject to provisions in Part 2 and all of Parts 4 and 5.

(3) A clearing agency may serve either or both the securities and derivatives markets. A clearing agency serving the securities markets can be a CCP, CSD or SSS. A clearing agency serving the derivatives markets is typically only a CCP.

(4) In this CP, FMI means a financial market infrastructure, which the PFMI Report describes as follows: payment systems, CSDs, SSSs, CCPs and trade repositories.

1.5 Section 1.5 provides clarity on the application of the different parts of the Instrument to a clearing agency that has been recognized by a securities regulatory authority, or exempted from recognition, as is further described in section 2.0 of this CP. For greater clarity, unless otherwise specified, Parts 1, 2, and 5 to 7 generally apply to both a recognized clearing agency and one that is exempted from recognition.

PART 2
CLEARING AGENCY RECOGNITION OR EXEMPTION FROM RECOGNITION

Recognition and exemption

2.0 (1) An entity seeking to carry on business as a clearing agency in certain jurisdictions in Canada is required under the securities legislation of such jurisdictions to apply for recognition or an exemption from the recognition requirement. For greater clarity, a foreign-based clearing agency that provides, or will provide, its services or facilities to a person or company resident in a jurisdiction would be considered to be carrying on business in that jurisdiction.

– ***Recognition of a clearing agency***

(2) The CSA takes the view that a clearing agency that is systemically important to a jurisdiction's capital markets, or that is not subject to comparable regulation by another regulatory body, ~~will~~would generally need to be recognized by a securities regulatory authority.[6] A securities regulatory authority may consider the systemic importance of a clearing agency to its capital markets based on the following list of guiding factors: value and volume of transactions processed, cleared and settled by the clearing agency;[7] risk exposures (particularly credit and liquidity) of the clearing agency to its participants; complexity of the clearing agency;[8] and centrality of the clearing agency with respect to its role in the market, including its substitutability, relationships, interdependencies and interactions.[9] The list of guiding factors is non-exhaustive, and no single factor described above will be determinative in an assessment of systemic importance. A securities regulatory authority retains the ability to consider additional quantitative and qualitative factors as may be relevant and appropriate.[10]

(3) Because of the approach described in subsection 2.0(2) of this CP, a securities regulatory authority may require a foreign-based clearing agency to be recognized if the clearing agency's proposed business activities in the local jurisdiction are systemically important to the jurisdiction's capital markets, even if it is already subject to comparable regulation in its home jurisdiction. In such circumstances, the recognition decision would focus on key areas that pose material risks to the jurisdiction's market and rely, where appropriate, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. Terms and conditions of a recognition decision that require a foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies. Among other factors, they will depend on whether Canadian securities regulatory authorities have entered into an agreement or memorandum of understanding with the home regulator for sharing information and cooperation.

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5 In Québec, an entity that provides such centralized facilities for comparing data would be required to apply either for recognition as a matching service utility or for an exemption from the recognition requirement, in application of the *Securities Act* or the *Derivatives Act*.

6 We would consider comparable regulation by another regulatory body to be regulation that generally results in similar outcomes in substance to the requirements of Part 3 and 4.

7 We would consider, for example, the current aggregate monetary values and volumes of such transactions, as well as the entity's potential for growth.

8 We would look, for example, to the nature and complexity of the clearing agency, taking into account an analysis of the various products it processes, clears or settles.

9 We would consider, for example, the centrality or importance of the clearing agency to the particular market or markets it serves, based on the degree to which it critically supports, or that its failure or disruption would affect, such markets or the entire Canadian financial infrastructure.

10 Additional factors may be based on the characteristics of the clearing agency under review, such as the nature of its operations, its corporate structure, or its business model.

– ***Exemption from recognition***

(4) Depending on the circumstances, a clearing agency may be granted an exemption from recognition pursuant to securities legislation and subject to appropriate terms and conditions, where it is not considered systemically important or where it does not otherwise pose significant risk to the capital markets. For example, such an approach may be considered for an entity that provides limited services or facilities, thereby not warranting full regulation, such as a clearing agency that does not perform the functions of a CCP, CSD or SSS. However, in such cases, terms and conditions may be imposed. In addition, a foreign-based clearing agency that is already subject to a comparable regulatory regime in its home jurisdiction may be granted an exemption from the recognition requirement as full regulation may be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction. The exemption may be subject to certain terms and conditions, including reporting requirements and prior notification of certain material changes to information provided to the securities regulatory authority.

Application and initial filing of information

2.1 The application process for both recognition and exemption from recognition as a clearing agency is similar in both substance and process, though its oversight program may differ. The entity that applies will typically be the entity that operates the facility or performs the functions of a clearing agency. The application for recognition or exemption will require completion of comprehensive and appropriate documentation. This will include the items listed in subsection 2.1(1). Together, the application materials for either recognition or exemption should present a detailed description of the history, regulatory structure, and business operations of the clearing agency. A clearing agency that operates as a CCP, CSD or SSS will need to describe how it meets or will meet the requirements of Parts 3 and 4. An applicant based in a foreign jurisdiction should also provide a detailed description of the regulatory regime of its home jurisdiction and the requirements imposed on the clearing agency, including how such requirements are similar to the requirements in Parts 3 and 4.

Where specific information items of the PFMI Disclosure Framework Document are not relevant to an applicant because of the nature or scope of its clearing agency activities, its structure, the products it clears or settles, or its regulatory environment, the application should explain in reasonable detail why the information items are not relevant.

The application filed by an applicant will generally be published for public comment for a 30-day period. Other materials filed with the application, which the applicant wishes to maintain confidential, will generally be kept confidential in accordance with securities and privacy legislation. However, the clearing agency will be required to publicly disclose its PFMI Disclosure Framework Document. See PFMI Principle 23, key consideration 5.

Significant changes, fee changes, and other changes in information

2.2 Section 2.2 is subject to the application provisions of subsections 1.5(3) and (4). For example, where the terms and conditions of a recognition decision made by a securities regulatory authority require a recognized clearing agency to obtain the approval of the authority before implementing a new fee for a service, the process to seek such approval set forth in the terms and conditions will apply instead of the prior notification requirement in subsection 2.2(4).

(2) The written notice should provide a reasonably detailed description of the significant change (as defined in subsection 2.2(1)), ~~and~~ the expected date of the implementation of the change, and an assessment of how the significant change is consistent with the PFMI Principles applicable to the clearing agency (see subsection 2.2(3)). It should enclose or attach updated relevant documentation, including clean and blacklined versions of the documentation that show how the significant change will be implemented. If the notice is being filed by a foreign-based clearing agency, the notice should also describe the approval process or other involvement by the primary or home-jurisdiction regulator for implementing the significant change. ~~The clearing agency is required to file concurrently with the notice any changes required to be made to the clearing agency's PFMI Disclosure Framework Document as a result of implementing the significant change, in accordance with subsection 2.2(3).~~

Ceasing to carry on business

2.3 A recognized or exempt clearing agency that ceases to carry on business in a local jurisdiction as a clearing agency, either voluntarily or involuntarily, must file a completed Form 24-102F2 *Cessation of Operations Report for Clearing Agency* ~~within the appropriate timelines~~. In certain jurisdictions, the clearing agency intending to cease carrying on business must also make an application to voluntarily surrender its recognition to the securities regulatory authority pursuant to securities legislation. The securities regulatory authority may accept the voluntary surrender subject to terms and conditions.[11]

[11] See, for example, section 21.4 of the *Securities Act* (Ontario).

PART 3
PFMI PRINCIPLES APPLICABLE TO RECOGNIZED CLEARING AGENCIES

Introduction

3.0 (1) Section 3.1 adopts the PFMI Principles generally but excludes the application of specific PFMI Principles for certain types of clearing agencies. We have adopted only those PFMI Principles that are relevant to clearing agencies operating as a CCP, CSD or SSS.[12]

(2) Part 3, together with the PFMI Principles, is intended to be consistent with a flexible and principles-based approach to regulation. In this regard, Part 3 anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves.

PFMI Principles

3.1 The definition of PFMI Principles in the Instrument includes the applicable key considerations for each principle. Annex E to the PFMI Report provides additional guidance on how each key consideration will apply to the specified types of clearing agencies. In interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report and other reports or explanatory material published by CPMI and IOSCO that provide supplementary guidance to FMIs on the application of the PFMI Principles, as appropriate, unless otherwise indicated in section 3.1 or this Part 3 of the CP.[13] As discussed in subsection 1.2(3) of this CP, the CSA and BOC have together developed Joint Supplementary Guidance to provide additional clarity on certain aspects of some PFMI Principles within the Canadian context. The Joint Supplementary Guidance is directed at recognized domestic clearing agencies that are also overseen by the BOC. The Joint Supplementary Guidance is included in ~~separate *text boxes* in~~ Annex I to this CP under the relevant headings of the PFMI Principles. Except as otherwise indicated in this Part 3 of the CP, other recognized domestic clearing agencies should assess the applicability of the Joint Supplementary Guidance to their respective entity as well.

PFMI Principle 5: Collateral

~~3.2~~ Notwithstanding section 3.1 of the CP and the Joint Supplementary Guidance relating to PFMI Principle 5: *Collateral* ~~(see Box 5.1. in Annex I to this CP)~~, we are of the view that letters of credit may be permitted as collateral by a recognized domestic clearing agency operating as a CCP serving derivatives markets that is not also overseen by the BOC, provided that the collateral and the clearing agency's collateral policies and procedures otherwise meet the requirements of PFMI Principle 5: Collateral. However, the recognized clearing agency must first obtain regulatory approval of its rules and procedures that govern the use of letters of credit as collateral before accepting letters of credit.

PFMI Principle 14: Segregation and portability for CCPs serving cash markets

~~3.3~~ PFMI Principle 14: *Segregation and portability* requires, pursuant to section 3.1, that a CCP have rules and procedures that enable the segregation and portability[14] of positions and related collateral of a CCP participant's customers, particularly to protect the customers from the default or insolvency of the participant. The explanatory notes in the PFMI Report offer an "alternate approach" to meeting PFMI Principle 14. The report notes that, in certain jurisdictions, cash market CCPs operate in legal regimes that facilitate segregation and portability to achieve the protection of customer assets by alternate means that offer the same degree of protection as the approach in PFMI Principle 14.[15] The features of the alternate approach are described in the PFMI Report.[16]

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12 PFMI Principles that are relevant to payment systems and trade repositories, but not CCPs, SSSs and CSDs, are not adopted in Part 3.

13 For example, the Instrument uses specialized terminology related to the clearing and settlement area. Not all such terminology is defined in the Instrument, but instead may be defined or explained in the PFMI Report. Regard should be given to the PFMI Report in understanding such terminology, as appropriate, including Annex H: *Glossary*.

14 Portability refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party. See paragraph 3.14.3 of the PFMI Report.

15 See paragraph 3.14.6 of the PFMI Report, at p. 83.

16 Features of such regimes are that, if a participant fails, (a) the customer positions can be identified in a timely manner, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed or failing participant to another participant in a timely manner, and (c) customer assets can be restored. As an example, the PFMIs suggest that domestic law may subject participants to explicit and comprehensive financial responsibility and customer protection requirements that obligate participants to make frequent determinations (for example, daily) that they maintain possession and control of all customers' fully paid and excess margin securities and to segregate their proprietary activities from those of their customers. Under these types of regimes, pending securities purchases do not belong to the customer; thus there is no customer trade or position entered into the CCP. As a result, participants who provide collateral to the CCP do not identify whether the collateral is provided on behalf of their customers regardless of whether they are acting on a principal or agent basis, and the CCP is not able to identify positions or the assets of its participants' customers.

– *Customers of IIROC dealer members*

Currently, most participants of domestic cash market CCPs that clear for customers are investment dealers.[17] They are required to be members of the Investment Industry Regulatory Organization of Canada (IIROC)[18] and to contribute to the Canadian Investor Protection Fund (CIPF).[19] The CSA is of the view that the customer asset protection regime applicable to investment dealers (IIROC-CIPF regime) is an appropriate alternative framework for customers of investment dealers that are direct participants of a cash-market CCP. The IIROC-CIPF regime meets the criteria for the alternate approach for CCPs serving certain domestic cash markets because~~:~~

:

- IIROC's requirements governing, among other things, an investment dealer's books and records, capital adequacy, internal controls, client account margining, and segregation of client securities and cash help ensure that customer positions and collateral can be identified timely,
- customers of an investment dealer are protected by CIPF, and
- through a combination of IIROC's member rules and oversight powers, CIPF's role in the administration of the bankruptcy of a dealer, and the overarching policy objectives of Part XII of the federal Bankruptcy and Insolvency Act (BIA) (discussed below), customer accounts can be moved from a failing dealer to another dealer in a timely manner and customers' assets can be restored.

Part XII of the BIA sets out a special bankruptcy regime for administering the insolvency of a securities firm. The regime generally provides for all cash and securities of a bankrupt securities firm, whether held for its own account and for its customers, to vest in the appointed trustee in bankruptcy. The trustee, in turn, is directed to pool such assets into a "customer pool fund" for the benefit of the customers, which are entitled to a pro rata share of the customer pool fund according to their respective "net equity" claims as a priority claim before the general creditors are paid. To the extent there is a shortfall in customer recovery from the customer pool fund and any remaining assets in the insolvent estate, the assets are allocated among the customers on a pro rata basis. CIPF, which works in conjunction with IIROC and the bankruptcy trustee,[20] provides protection to eligible customers for losses up to $1 million per account.[21]

– *Customers of other types of participants~~:~~*

A recognized clearing agency operating as a cash market CCP for participants that are not IIROC investment dealers will need to have segregation and portability arrangements at the CCP level that meet PFMI Principle 14. Where the clearing agency is proposing to rely on an alternate approach for the purposes of protecting the customers of such participants, the clearing agency will need to demonstrate how the applicable legal or regulatory framework in which it operates achieves the same degree of protection and efficiency for such customers that would otherwise be achieved by segregation and portability arrangements at the CCP level described in PFMI Principle 14. See the PFMI Report, at paragraph 3.14.6.

PART 4
OTHER REQUIREMENTS OF RECOGNIZED CLEARING AGENCIES

Introduction

4.0 As discussed in section 1.2(2) of this CP, the provisions of Part 4 are in addition to the requirements of Part 3, and apply to a recognized clearing agency whether or not it operates as a CCP, SSS or CSD.

[17] Investment dealers are firms registered in the category of "investment dealer" under provincial securities legislation. Investment dealers are required to be members of IIROC. See section 9.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

[18] IIROC is the national self-regulatory organization (SRO) which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. It is a recognized SRO in all 10 provinces in Canada and is subject to regulation and oversight by the CSA.

[19] CIPF is an investor compensation protection fund that is sponsored by IIROC and approved by the CSA.

[20] CIPF is a "customer compensation body" for the purposes of Part XII of the BIA. Where the accounts of a securities firm are protected (in whole or in part) by CIPF, the trustee in bankruptcy is required to consult with CIPF on the administration of the bankruptcy, and CIPF may designate an inspector to act on its behalf. See section 264 of the BIA.

[21] The losses must be in respect of a claim for the failure of the dealer to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property received, acquired or held by the dealer in an account for the customer.

Division 1 – Governance:

Board of directors

4.1 (4) Consistent with the explanatory notes in the PFMI Report (see paragraph 3.2.10), we are of the view that the following individuals have a relationship with a clearing agency that would, absent exceptional circumstances, ~~reasonably~~ be expected to interfere with the exercise of the individual's independent judgment;~~:~~

(a) an individual who is, or has been within the last year, an employee or ~~executive~~ officer of the clearing agency or any of its affiliated entities;

(b) an individual whose immediate family member is, or has been within the last year, an ~~executive~~ officer of the clearing agency or any of its affiliated entities;

(c) an individual who beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding;

(d) an individual whose immediate family member beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding;

(e) an individual who is, or has been within the last year, an ~~executive~~ officer of a person or company that beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding~~;~~, and

(f) an individual who accepts or who received within the last year, directly or indirectly, any audit, consulting, advisory or other compensatory fee from the clearing agency or any of its affiliated entities, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee.

For the purposes of paragraph (f) above, compensatory fees would not normally include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the clearing agency if the compensation is not contingent in any way on continued service. Also, the indirect acceptance by an individual of any audit, consulting, advisory or other compensatory fee includes acceptance of a fee by (a) an individual's immediate family member; or (b) an entity in which such individual is a partner, a member, an officer such as a managing director occupying a comparable position or an executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the clearing agency or any of its affiliated entities.

In addition, an individual appointed to the board of directors or board committee of the clearing agency or any of its affiliated entities or of a person or company referred to in paragraph (e) above would not be considered to have a material relationship with the clearing agency solely because the individual acts, or has previously acted, as a chair or vice-chair of the board of directors or a board committee.

~~**Documented procedures regarding risk spill-overs**~~

~~**4.2** For guidance on this provision, see the Joint Supplementary Guidance in Box 2.2 in Annex I of this CP.~~

Chief Risk Officer (CRO) and Chief Compliance Officer (CCO)

4.3 Section 4.3 is consistent with PFMI Principle 2, key consideration 5, which requires a clearing agency to have an experienced management with a mix of skills and the integrity necessary to discharge its operations and risk management responsibilities.

(3) The reference to "harm to the broader financial system" in subparagraph 4.3(3)(c)(ii) may be in relation to the domestic or international financial system. The CSA is of the view that the role of a CCO (or certain aspects thereof) may, in certain circumstances, be performed by the Chief Legal Officer or General Counsel of the clearing agency, where the individual has sufficient time to properly carry out his or her duties and, provided that there are appropriate safeguards in place to avoid conflicts of interest.

Board or advisory committees

4.4 Section 4.4 is intended to reinforce the clearing agency's obligations to meet the PFMI Principles, particularly PFMI Principles 2 and 3. The CSA is of the view that the mandates of the committees should, at a minimum, include the following:

(a) providing advice and recommendations to the board of directors to assist it in fulfilling its risk management responsibilities, including reviewing and assessing the clearing agency's risk management policies and procedures, the adequacy of the implementation of appropriate procedures to mitigate and manage such risks, and the clearing agency's participation standards and collateral requirements;

(b) ensuring adequate processes and controls are in place over the models used to quantify, aggregate, and manage the clearing agency's risks;

(c) monitoring the financial performance of the clearing agency and providing financial management oversight and direction to the business and affairs of the clearing agency;

(d) implementing policies and processes to identify, address, and manage potential conflicts of interest of board members; and

(e) regularly reviewing the board of directors' and senior management's performance and the performance of each individual member.

Section 4.4 is a minimum requirement. Consistent with the explanatory notes in the PFMI Principles (see paragraph 3.2.9), a recognized clearing agency should also consider forming other types of board committees, such as a compensation committee. All committees should have clearly assigned responsibilities and procedures. The clearing agency's internal audit function should have sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of its risk-management and control processes. See section 4.1 for the concept of independence. A board will typically establish an audit committee to oversee the internal audit function. In addition to reporting to senior management, the audit function should have regular access to the board through an additional reporting line.

Division 2 – Default management:

Use of own capital

4.5 The CSA is of the view that a CCP's own capital contribution should be used in the default waterfall, immediately after a defaulting participant's contributions to margin and default fund resources have been exhausted, and prior to non-defaulting participants' contributions. Such equity should be significant enough to attract senior management's attention, and separately retained and not form part of the CCP's resources for other purposes, such as to cover general business risk.

Division 3 – Operational risk:

4.6 to 4.10 Sections 4.6 to 4.10 complement PFMI Principle 17, which requires a clearing agency to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. PFMI Principle 17 further requires that systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity, and business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

Systems requirements

4.6 (1)(a) The intent of these provisions is to ensure that controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the ~~'Information Technology Control Guidelines from the~~ Chartered Professional Accountants – Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO), ~~Canadian Institute of Chartered Accountants (CICA) and 'COBIT' from the IT Governance Institute~~ or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls which support the processing integrity of the models used to quantify, aggregate, and manage the clearing agency's risks.

(b) Capacity management requires that the clearing agency monitor, review, and test (including stress test) the actual capacity and performance of the system on an ongoing basis. Accordingly, under subsection 4.6(1)(b), the clearing agency is required to meet certain standards for its estimates and for testing. These standards are consistent with prudent business practice. The

activities and tests required in this subsection are to be carried out at least once in each 12-month period~~a year~~. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(c) A failure, malfunction, ~~or~~ delay or security ~~other~~ incident is considered to be "material" if the clearing agency would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the clearing agency's operations or on participants. Non-material events may become material if they recur or have a cumulative effect. It is ~~also~~ expected that, as part of ~~this~~the required notification, the clearing agency will provide updates on the status of the ~~failure~~incident and the resumption of service. Further, the clearing agency should have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all ~~operational~~ incidents. In this regard, the clearing agency should undertake a "post-incident" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the clearing agency's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable. ~~Subsection 4.6(c) also refers to a material security breach.~~ A ~~material~~ security ~~breach or systems intrusion~~incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of an information system or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies ~~unauthorized entry into any of the systems that support the functions of the clearing agency or any system that shares resources with one or more of these systems~~.[22] Any security incident that requires non-routine measures or resources by the clearing agency ~~Virtually any security breach~~ would be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security ~~breach~~incident it did not consider material.

Systems reviews

4.7 (1)(a) An independent systems review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the 'Trust Services Criteria' developed by the American Institute of CPAs and CPA Canada. For the purposes of paragraph (1)(a), we consider a~~A~~ qualified external auditor ~~party is~~ to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. ~~Qualified persons may include external auditors or third party information system consultants, as well as employees of the clearing agency or an affiliated entity of the clearing agency, but may not be persons responsible for the development or operation of the systems or capabilities being tested~~Before engaging a qualified ~~party~~external auditor to conduct the independent systems review, a clearing agency ~~should~~is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period.

(1)(b) The clearing agency must also establish and perform effective assessment and testing methodologies and practices and would be expected to implement appropriate improvements where necessary. The assessments and testing required in this section, such as vulnerability assessments and penetration tests, are to be carried out by a qualified party on a reasonably frequent basis and, in any event, at least once in each 12-month period. For the purposes of paragraph (1)(b), we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the clearing agency or an affiliated entity of the clearing agency, but may not be persons responsible for the development or operation of the systems or capabilities being tested. The securities regulatory authority may, in accordance with securities legislation, require the clearing agency to provide a copy of any such assessment.

Clearing agency technology requirements and testing facilities

4.8 (1) The technology requirements required to be disclosed under subsection 4.8(1) do not include detailed proprietary information.

(5) We expect the amended technology requirements to be disclosed as soon as practicable, either while the changes are being made or immediately after.

[22] Adapted from the NIST definition of "incident". See https://csrc.nist.gov/Glossary/?term=4730#AlphaIndexDiv.

Testing of business continuity plans

4.9 Business continuity management is a key component of a clearing agency's operational risk-management framework. A recognized clearing agency's business continuity plan and its associated arrangements should be subject to frequent review and testing. At a minimum, under section 4.9, such tests must be conducted at least once in each 12-month period~~annually~~. Tests should address various scenarios that simulate wide-scale disasters and inter-site switchovers. The clearing agency's employees should be thoroughly trained to execute the business continuity plan and participants, critical service providers, and linked clearing agencies should be regularly involved in the testing and be provided with a general summary of the testing results. The CSA expects that the clearing agency will also facilitate and participate in industry-wide testing of the business continuity plan (domestically-based recognized clearing agencies are required to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority, pursuant to National Instrument 21-101 *Marketplace Operation*). The clearing agency should make appropriate adjustments to its business continuity plan and associated arrangements based on the results of the testing exercises.

Outsourcing

4.10 Where a recognized clearing agency relies upon or outsources some of its operations to a service provider, it should generally ensure that those operations meet the same requirements they would need to meet if they were provided internally. Under section 4.10, the clearing agency must meet various requirements in respect of the outsourcing of critical services or systems to a service provider. These requirements apply regardless of whether the outsourcing arrangements are with third-party service providers, or with affiliated entities of the clearing agency.

Generally, the clearing agency is required to establish, implement, maintain and enforce policies and procedures to evaluate and approve outsourcing agreements to critical service providers. Such policies and procedures should include assessing the suitability of potential service providers and the ability of the clearing agency to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. The clearing agency is also required to monitor and evaluate the on-going performance and compliance of the service provider to which they outsourced critical services, systems or facilities. Accordingly, the clearing agency should define key performance indicators that will measure the service level. Further, the clearing agency should have robust arrangements for the substitution of such providers, timely access to all necessary information, and the proper controls and monitoring tools.

Under section 4.10, a contractual relationship should be in place between the clearing agency and the critical service provider allowing it and relevant authorities to have full access to necessary information. The contract should ensure that the clearing agency's approval is mandatory before the critical service provider can itself outsource material elements of the service provided to the clearing agency, and that in the event of such an arrangement, full access to the necessary information is preserved. Clear lines of communication should be established between the outsourcing clearing agency and the critical service provider to facilitate the flow of functions and information between parties in both ordinary and exceptional circumstances.

Where the clearing agency outsources operations to critical service providers, it should disclose the nature and scope of this dependency to its participants. It should also identify the risks from its outsourcing and take appropriate actions to manage these dependencies through appropriate contractual and organisational arrangements. The clearing agency should inform the securities regulatory authority about any such dependencies and the performance of these critical service providers. To that end, the clearing agency can contractually provide for direct contacts between the critical service provider and the securities regulatory authority, contractually ensure that the securities regulatory authority can obtain specific reports from the critical service provider, or the clearing agency may provide full information to the securities regulatory authority.

Division 4 – Participation requirements:

Access requirements and due process

4.11 Section 4.11 complements PFMI Principle 18, which requires a clearing agency to have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

(1)(b) We consider an indirect participant to be an entity that relies on the services provided by other entities (participants) to use a clearing agency's clearing and settlement facilities. As defined in the Instrument, a participant (sometimes also referred to as a "direct participant") is an entity that has entered into an agreement with a clearing agency to access the services of the clearing agency and is bound by the clearing agency's rules and procedures. While indirect participants are generally not bound by the rules of the clearing agency, their transactions are cleared and settled through the clearing agency in accordance with the clearing agency's rules and procedures. The concept of indirect participant is discussed in the PFMI Report, at paragraph 3.19.1.

(1)(d) We are of the view that a requirement on participants of a clearing agency serving the derivatives markets to use a trade repository that is an affiliated entity to report derivatives trades would be unreasonable.

PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Legal Entity Identifiers

5.2 (1) The Global Legal Entity Identifier System defined in subsection 5.2(1) ~~and referred to in subsections 5.2(2) and 5.2(3)~~ is a G20 endorsed system[23] that ~~will~~is intended to serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers (LEIs) globally ~~to counterparties that enter into transactions~~ in order to uniquely identify parties to transactions. It ~~is currently being~~was designed and implemented under the direction of the LEI Regulatory Oversight Committee ~~(ROC)~~, a governance body endorsed by the G20.

~~**(3)** If the Global LEI System is not available at the time a clearing agency is required to fulfill their recordkeeping or reporting requirements under securities legislation, they must use a substitute LEI. The substitute LEI must be in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational, a clearing agency or its affiliated entities must cease using their substitute LEI and commence using their LEI. It is conceivable that the two identifiers could be identical.~~

PART 6
EXEMPTIONS

Exemptions

6.1 As Part 3 adopts a principles-based approach to incorporating the PFMI Principles into the Instrument, the CSA has sought to minimize any substantive duplication or material inefficiency due to cross-border regulation. Where a recognized foreign-based clearing agency does face some conflict or inconsistency between the requirements of sections 2.2 and 2.5 and Part 4 and the requirements of the regulatory regime in its home jurisdiction, the clearing agency is expected to comply with the Instrument. However, where such a conflict or inconsistency causes a hardship for the clearing agency, and provided that the entity is subject to requirements in its home jurisdiction resulting in similar outcomes in substance to the requirements of sections 2.2 and 2.5 and Part 4, an exemption from a provision of the Instrument may be considered by a securities regulatory authority. The exemption may be subject to appropriate terms or conditions.

[23] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

ANNEX I
TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE
DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS
ON THE PFMI PRINCIPLES

Joint Supplementary Guidance has been developed by the BOC and the securities regulatory authorities to provide additional clarity on certain aspects of selected PFMI Principles within the Canadian context. It is found on the BOC website and in annexes to the Companion Policy (to the CSA National Instrument 24-102 *Clearing Agency Requirements*).

The Joint Supplementary Guidance applies in respect of recognized domestic clearing agencies that are designated as systemically-important by the BOC and jointly overseen by the BOC and one or more securities regulatory authorities (referred to in this Joint Supplementary Guidance as an "FMI").

Beyond observation of the PFMI Principles, an FMI is expected to take into account the "Explanatory Notes" for each applicable PFMI Principle, other reports and explanatory materials published by CPMI and IOSCO that supplement the PFMI Report and that provide guidance to FMIs on the application of the PFMI Principles, as well as this Joint Supplementary Guidance or any future guidance published jointly by the BOC and the securities regulatory authorities.

The Joint Supplementary Guidance below appears under the relevant headings for each applicable PFMI Principle (referred to by the BOC as its "Risk-Management Standards for Designated FMIs").

PFMI Principle 3: Framework for the comprehensive management of risks

a. Joint Supplementary Guidance for PFMI Principle 3 has been developed by the BOC and CSA pertaining to FMI recovery planning. This guidance can be found separately on the BOC website and in Annex II to the Companion Policy.

PFMI Principle 5: Collateral

a. An FMI should not rely solely on external opinions to determine collateral eligibility.

b. In general, most of the FMI's collateral pools should be composed of cash and debt securities issued or guaranteed by the Government of Canada, a provincial government or the U.S. Treasury.

c. Additional asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits. An FMI should limit such assets to a maximum of 40% of the total collateral posted from each participant. It should also limit securities issued by a single issuer to a maximum of 5% of total collateral from each participant. Such assets are:

- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds;
- Asset-backed securities that meet the following criteria:
  1) sponsored by a deposit-taking financial institution that is prudentially-regulated at either the federal of provincial level;
  2) part of a securitization program supported by a liquidity facility; and
  3) backed by assets of an acceptable credit quality;
- Equity securities traded on marketplaces regulated by a member of the CSA; and
- Other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

d. Since it is highly likely that the value of debt and equity securities issued by companies operating in the financial sector would be adversely affected by the default of an FMI participant – introducing wrong-way risk for an FMI that has accepted such securities as collateral – and FMI should:

- Limit the collateral from financial sector issuers to a maximum of 10% of total collateral pledged from each participant; and
- Not allow a participant to pledge as collateral securities issued by itself or an affiliate.

PFMI Principle 7: Liquidity risk

a. Liquidity facilities should include at least three independent liquidity providers to ensure the FMI has access to sufficient liquid resources even in the event one of its liquidity providers defaults.

b. Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposure in Canadian dollars if they meet all of the following additional criteria:

- The liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);
- The facility is fully-collateralized with SLF-eligible collateral; and
- The facility is denominated in Canadian dollars.

PFMI Principle 15: General business risk

a. Liquid net assets funded by equity must be held at the level of the FMI legal entity to ensure they are unencumbered and can be accessed quickly.

PFMI Principle 16: Custody and investment risks

a. It is paramount that an FMI have prompt access to assets held for risk-management purposes with minimal price impact. For the purposes of PFMI Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they are debt instruments that are:

- Securities issued or guaranteed by the Government of Canada;
- Marketable securities issued by the U.S. Treasury;
- Securities issued or guaranteed by a provincial government;
- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds; and
- Asset-backed securities that are:

  1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level;

  2) part of a securitization program supported by a liquidity facility; and

  3) backed by assets of an acceptable credit quality.

b. Investments should also, at a minimum, observe the following:

- To reduce concentration risk, no more than 20% of total investments should be invested in any combination of municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5% of total investments.

- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10% of total investments. An FMI should not invest assets in the securities of its own affiliates.

- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

ANNEX II
TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE
DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS
ON RECOVERY PLANS

Context

In 2012, to enhance the safety and efficiency of payment, clearing and settlement systems, CPMI and IOSCO released a set of international risk-management standards for FMIs, known as the PFMIs.[1] The PFMIs provide standards regarding FMI recovery planning and orderly wind-down, which were adopted by the Bank of Canada as Standard 24 of the Bank's *Risk-Management Standards for Systemic FMIs*[2] and by the CSA as part of the Instrument.[3] In the context of recovery planning,

> *An FMI is expected to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. This entails preparing appropriate plans for its recovery or orderly wind-down based on the results of that assessment.*

In October 2014, CPMI and IOSCO released its report, "Recovery of Financial Market Infrastructures" (the Recovery Report), providing additional guidance specific to the recovery of FMIs.[4] The Recovery Report explains the required structure and components of an FMI recovery plan and provides guidance on FMI critical services and recovery tools at a level sufficient to accommodate possible differences in the legal and institutional environments of each jurisdiction.

For the purpose of this guidance, FMI recovery is defined as the set of actions that an FMI can take, consistent with its rules, procedures and other ex ante contractual agreements, to address any uncovered loss, liquidity shortfall or capital inadequacy, whether arising from participant default or other causes (such as business, operational or other structural weakness), including actions to replenish any depleted pre-funded financial resources and liquidity arrangements, as necessary, to maintain the FMI's viability as a going concern and the continued provision of critical services.[5], [6]

Recovery planning is not intended as a substitute for robust day-to-day risk management or for business continuity planning. Rather, it serves to extend and strengthen an FMI's risk-management framework, enhancing the resilience of the FMI against financial risks and bolstering confidence in the FMI's ability to function effectively even under extreme but plausible market conditions and operating environments.

Key Components of Recovery Plans

Overview of existing risk-management and legal structures

As part of their recovery plans, FMIs should include overviews of their legal entity structure and capital structure to provide context for stress scenarios and recovery activities.

FMIs should also include an overview of their existing risk-management frameworks – i.e., their pre-recovery risk-management frameworks and activities. As part of this overview, and to determine the relevant point(s) where standard pre-recovery risk-management frameworks are exhausted, FMIs should identify all the material risks they are exposed to and explain how they use their existing pre-recovery risk-management tools to manage these risks to a high degree of confidence.

Critical services[7]

In their recovery plans, FMIs should identify, in consultation with Canadian authorities and stakeholders, the services they provide that are critical to the smooth functioning of the markets that they serve and to the maintenance of financial stability. FMIs may find it useful to consider the degree of **substitutability** and **interconnectedness** of each of these critical services, specifically

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1 Available at http://www.bis.org/cpmi/publ/d101a.pdf.
2 See key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 which are adopted in the Instrument, section 3.1.
3 The Bank of Canada's *Risk-Management Standards for Systemic FMIs* is available at http://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/.
4 Available at http://www.bis.org/cpmi/publ/d121.pdf.
5 Recovery Report, Paragraph 1.1.1.
6 For a precise definition of orderly wind-down, see the Recovery Report, Paragraph 2.2.2.
7 Recovery Report, Paragraphs 2.4.2–2.4.4.

- the degree of criticality of an FMI's service is likely to be high if there are no, or only a small number of, alternative service providers. Factors related to the substitutability of a service could include (i) the size of a service's market share, (ii) the existence of alternative providers that have the capacity to absorb the number of customers and transactions the FMI maintains, and (iii) the FMI participants' capability to transfer positions to the alternative provider(s).

- the degree of criticality of an FMI's service may be high if the service is significantly interconnected with other market participants, both in terms of breadth and depth, thereby increasing the likelihood of contagion if the service were to be discontinued. Potential factors to consider when determining an FMI's interconnectedness are (i) what services it provides to other entities and (ii) which of those services are critical for other entities to function

Stress scenarios[8]

In their recovery plans, FMIs should identify scenarios that may prevent them from being able to provide their critical services as a going concern. Stress scenarios should be focused on the risks an FMI faces from its payment, clearing and settlement activity. An FMI should then consider stress scenarios that cause financial stress in excess of the capacity of its existing pre-recovery risk controls, thereby placing the FMI into recovery. An FMI should organize stress scenarios by the types of risk it faces; for each stress scenario, the FMI should clearly explain the following:

- the assumptions regarding market conditions and the state of the FMI within the stress scenario, accounting for the differences that may exist depending on whether the stress scenario is systemic or idiosyncratic;

- the estimated impact of a stress scenario on the FMI, its participants, participants' clients and other stakeholders; and

- the extent to which an FMI's existing pre-recovery risk-management tools are insufficient to withstand the impacts of realized risks in a recovery stress scenario and the value of the loss and/or of the negative shock required to generate a gap between existing risk-management tools and the losses associated with the realized risks.

Triggers for recovery

For each stress scenario, FMIs should identify the triggers that would move them from their pre-recovery risk-management activities (e.g., those found in a CCP's default waterfall) to recovery. These triggers should be both qualified (i.e., outlined) and, where relevant, quantified to demonstrate a point at which recovery plans will be implemented without ambiguity or delay.

While the boundary between pre-recovery risk-management activities and recovery can be clear (for example, when pre-funded resources are fully depleted), judgment may be needed in some cases. When this boundary is not clear, FMIs should lay out in their recovery plans how they will make decisions.[9] This includes detailing in advance their communication plans, as well as the escalation process associated with their decision-making procedures. They should also specify the decision-makers responsible for each step of the escalation process to ensure that there is adequate time for recovery tools to be implemented if required.

More generally, it is important to identify and place the triggers for recovery early enough in a stress scenario to allow for sufficient time to implement recovery tools described in the recovery plan. Triggers placed too late in a scenario will impede the effective rollout of these tools and hamper recovery efforts. Overall, in determining the moment when recovery should commence, and especially where there is uncertainty around this juncture, an FMI should be prudent in its actions and err on the side of caution.

Selection and Application of Recovery Tools[10]

A comprehensive plan for recovery

The success of a recovery plan relies on a comprehensive set of tools that can be effectively applied during recovery. The applicability of these tools and their contribution to recovery varies by system, stress event and the order in which they are applied.

A robust recovery plan relies on a range of tools to form an adequate response to realized risks. Canadian authorities will provide feedback on the comprehensiveness of selected recovery tools when reviewing an FMI's complete recovery plan.

[8] Recovery Report, Paragraph 2.4.5.
[9] Recovery Report, Paragraph 2.4.8.
[10] Recovery Report, Paragraph 2.3.6 – 2.3.7 and 2.5.6 and Paragraphs 3.4.1 – 3.4.7.

Characteristics of recovery tools

In providing this guidance, Canadian authorities used a broad set of criteria (described below), including those from the Recovery Report, to determine the characteristics of effective recovery tools.[11] FMIs should aim for consistency with these criteria in the selection and application of tools. In this context, recovery tools should be:

- Reliable and timely in their application and have a strong legal and regulatory basis. This includes the need for FMIs to mitigate the risk that a participant may be unable or unwilling to meet a call for financial resources in a timely manner, or at all (i.e., performance risk), and to ensure that all recovery activities have a strong legal and regulatory basis.

- Measurable, manageable and controllable to ensure that they can be applied effectively while keeping in mind the objective of minimizing their negative effects on participants and the broader financial system. To this end, using tools in a manner that results in participant exposures that are determinable and fixed provides better certainty of the tools' impacts on FMI participants and their contribution to recovery. Fairness in the allocation of uncovered losses and shortfalls, and the capacity to manage the associated costs, should also be considered.

- Transparent to participants: this should include a predefined description of each recovery tool, its purpose and the responsibilities and procedures of participants and the FMIs subject to the recovery tool's application to effectively manage participants' expectations. Transparency also mitigates performance risk by detailing the obligations and procedures of FMIs and participants beforehand to support the timely and effective rollout of recovery tools.

- Designed to create appropriate incentives for sound risk management and encourage voluntary participation in recovery to the greatest extent possible. This may include distributing post-recovery proceeds to participants that supported the FMI through the recovery process.

Systemic stability

Certain tools may have serious consequences for participants and for the stability of financial markets more generally. FMIs should use prudence and judgment in the selection of appropriate tools. Canadian authorities are of the view that FMIs should be cautious in using tools that can create uncapped, unpredictable or ill-defined participant exposures, and which could create uncertainty and disincentives to participate in an FMI. Any such use would need to be carefully justified. Participants' ability to predict and manage their exposures to recovery tools is important, both for their own stability and for the stability of the indirect participants of an FMI.

In assessing FMI recovery plans, Canadian authorities are concerned with the possibility of systemic disruptions from the use of certain tools or tools that pose unquantifiable risks to participants. When determining which recovery tools should be included in a recovery plan, and selecting and applying such tools during the recovery phase, FMIs should keep in mind the objective of minimizing their negative impacts on participants, the FMI and the broader financial system.

Recommended recovery tools

This section outlines recommended recovery tools for use in FMI recovery plans. Not all tools are applicable for the different types of FMIs (e.g., a payment system versus a central counterparty), nor is this an exhaustive list of tools that may be available for recovery. Each FMI should use discretion when determining the most appropriate tools for inclusion in its recovery plan, consistent with the considerations discussed above.

- **Cash calls**

  Cash calls are recommended for recovery plans to the extent that the exposures they generate are fixed and determinable; for example, capped and limited to a maximum number of rounds over a specified period, established in advance. In this context, participant exposures should be linked to each participant's risk-weighted level of FMI activity.

  By providing predictable exposures pro-rated to a participant's risk-weighted level of activity, FMIs create incentives for better risk management on the part of participants, while giving the FMI greater certainty over the amount of resources that can be made available during recovery.

[11] Recovery Report, Paragraph 3.3.1.

Since cash calls rely on contingent resources held by FMI participants, there is a risk that they may not be honoured, reducing their effectiveness as a recovery tool. The management of participants' expectations, especially through the placement of clear limits on participant exposure, can mitigate this concern.

Cash calls can be designed in multiple ways to structure incentives, vary their impacts on participants and respond to different stress scenarios. When designing cash calls, FMIs should, to the greatest extent possible, seek to minimize the negative consequences of the tool's use.

❖ **Variation margin gains haircutting (VMGH)**

VMGH is recommended for recovery plans because participant exposure under this tool can be measured with reasonable confidence, as it is tied to the level of risk held in the variation margin (VM) fund and the potential for gains. Where recovery plans allow for multiple rounds of VMGH, Canadian authorities will consider the impact of each successive round of haircutting with increasing focus on systemic stability.

VMGH relies on participant resources posted at the FMI as variation margin (VM). Where the price movements of underlying instruments create sufficient VM gains for use in recovery, VMGH provides an FMI with a reliable and timely source of financial resources without the performance risk that is associated with tools reliant on resources held by participants.

VMGH assigns losses and shortfalls only to participants with net position gains; as a result, the pro rata financial burden is higher for these participants. The negative effects of VMGH can also be compounded for participants who rely on variation margin gains to honour obligations outside the FMI. FMIs should seek to minimize these negative effects to the greatest extent possible.

❖ **Voluntary contract allocation**

To recover from an unmatched book caused by a participant default, a CCP can use its powers to allocate unmatched contracts.[12] In the context of recovery, contract allocation is encouraged on a voluntary basis –for example, by auction. Voluntary contract allocation addresses unmatched positions while taking participant welfare into account, since only participants who are willing to take on positions will participate.

The reliance on a voluntary process, such as an auction, introduces the risk that not all positions will be matched or that the auction process is not carried out in a timely manner. Defining the responsibilities and procedures for voluntary contract allocation (e.g., the auction rules) in advance will mitigate this risk and increase the reliability of the tool. To ensure that there is adequate participation in an auction process, FMIs should create incentives for participants to take on unmatched positions. FMIs may also wish to consider expanding the auction beyond direct participants to increase the chances that all positions will be matched.

❖ **Voluntary contract tear-up**

Since eliminating positions can help re-establish a matched book, Canadian authorities view voluntary contract tear-up as a potentially effective tool for FMI recovery. To this end, FMIs may want to consider using incentives to encourage voluntary tear-up during recovery.[13] While contract tear-up undertaken on a voluntary basis is a recommended tool, the forced termination of an incomplete trade may represent a disruption of a critical FMI service, and can be intrusive to apply (see the section "Tools requiring further justification" for a discussion of forced contract tear-up).

To the extent that voluntary contract tear-up may disrupt critical FMI services, it can produce disincentives to participate in an FMI. There should be a strong legal basis for the relevant processes and procedures when voluntary contract tear-up is included in a recovery plan. This will help to manage participant expectations for this tool and ensure that confidence in the FMI is maintained.

Other tools available for FMI recovery include standing third-party liquidity lines, contractual liquidity arrangements with participants, insurance against financial loss, increased contributions to pre-funded resources, and use of an FMI's own capital beyond the default waterfall. These and other tools are often already found in the pre-recovery risk-management frameworks of FMIs. Canadian authorities encourage their use for recovery as well, provided they are in keeping with the criteria for effective recovery tools as found in the Recovery Report and in this guidance.[14] Where system-specific recovery needs necessitate, FMIs

[12] A CCP "matched book" occurs when a position taken on by the CCP with one clearing member is offset by an opposite position taken on with a second clearing member. A matched book must be maintained for the CCP to complete a trade. An unmatched book occurs when one participant defaults on its position in the trade, leaving the CCP unable to complete the transaction.

[13] Recovery Report, Paragraph 4.5.3.

[14] Recovery Report, Paragraph 3.3.1.

can also design recovery tools not explicitly listed in this guidance. The applicability of such tools will be examined by the Canadian authorities when they review the proposed recovery plan.

To the extent that the costs of recovery are shared less equally under some tools (e.g., VMGH), if it is financially feasible, FMIs could consider post-recovery actions to restore fairness where participants have been disproportionately affected. Such actions may include the repayment of participant contributions used to address liquidity shortfalls and other instruments that aim to redistribute the burden of losses allocated during recovery. It is important to note that these actions in the post-recovery period should not impair the financial viability of the FMI as a going concern.

Tools requiring further justification

Due to their uncertain and potentially negative effects on the broader financial system, tools that are more intrusive or result in participant exposures that are difficult to measure, manage or control, must be carefully considered and justified with strong rationale by the FMI when they are included in a recovery plan. Canadian authorities will provide their views on the suitability of any such tools as part of their review of recovery plans.

For example, uncapped and unlimited cash calls and unlimited rounds of VMGH can create ambiguous participant exposures, the negative effects of which must be prudently considered when including them in a recovery plan. In addition, when applied during the recovery process, Canadian authorities will monitor the application of each successive round of cash calls and VMGH with increased focus on systemic stability.

Tools such as involuntary (forced) contract allocation and involuntary (forced) contract tear-up create exposures that are difficult to manage, measure and control. To the extent that these tools are even more intrusive, they have the ability to pose greater risk to systemic stability. Canadian authorities acknowledge that such tools have potential utility when other recovery options are ineffective, and could possibly be used by a resolution authority, but expect FMIs to carefully assess the potential impact of such tools on participants and the stability of the broader financial system.

Canadian authorities do not encourage the use of non-defaulting participants' initial margin in FMI recovery plans considering the potential for significant negative impacts.[15] Similarly, a recovery plan should not assume any extraordinary form of public or central bank support.[16]

Recovery from non-default-related losses and structural weaknesses

Consistent with a defaulter-pays principle, an FMI should rely on FMI-funded resources to address recovery from non-default-related losses (i.e., operational and business losses on the part of an FMI), including losses arising from structural weakness.[17] To this end, FMIs should examine ways to increase the loss absorbency between the FMI's pre-recovery risk-management activities and participant-funded resources (e.g., by using FMI-funded insurance against operational risks).

Structural weakness can be an impediment to the effective rollout of recovery tools and may itself result in non-default-related losses that are a trigger for recovery. An FMI recovery plan should identify procedures detailing how to promptly detect, evaluate and address the sources of underlying structural weakness on a continuous basis (e.g., unprofitable business lines, investment losses).

The use of participant-funded resources to recover from non-default-related losses can lessen incentives for robust risk management within an FMI and provide disincentives to participate. If, despite these concerns, participants consider it in their interest to keep the FMI as a going concern, an FMI and its participants may agree to include a certain amount of participant-funded recovery tools to address some non-default-related losses. Under these circumstances, the FMI should clearly explain under what conditions participant resources would be used and how costs would be distributed.

Defining full allocation of uncovered losses and liquidity shortfalls

Principles 4 (credit risk)[18] and 7 (liquidity risk)[19] of the PFMIs require that FMIs should specify rules and procedures to fully allocate both uncovered losses and liquidity shortfalls caused by stress events. To be consistent with this requirement, **Canadian FMIs should consider various stress scenarios and have rules and procedures that allow them to fully**

[15] Recovery Report, Paragraph 4.2.26.

[16] Recovery Report, Paragraph 2.3.1.

[17] Structural weakness can be caused by factors such as poor business strategy, poor investment and custody policy, poor organizational structure, IM/IT-related obstacles, poor legal or regulatory risk frameworks, and other insufficient internal controls.

[18] Under key consideration 7 of PFMI Principle 4, an FMI should establish explicit rules and procedures that fully address any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI

[19] Under key consideration 10 of PFMI Principle 7, FMIs should establish rules and procedures that address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking or delaying the same-day settlement of payment obligations.

allocate any losses or liquidity shortfalls arising from these stress scenarios, in excess of the capacity of existing pre-recovery risk controls. Tools used to address full allocation should reflect the Recovery Report's characteristics of effective recovery tools, including the need to have them measurable, manageable and controllable to those who will bear the losses and liquidity shortfalls in recovery, and for their negative impacts to be minimized to the greatest extent possible.

Legal consideration for full allocation

An FMI's rules for allocating losses and liquidity shortfalls should be supported by relevant laws and regulations. There should be a high level of certainty that rules and procedures to fully allocate all uncovered losses and liquidity shortfalls are enforceable and will not be voided, reversed or stayed.[20] This requires that Canadian FMIs design their recovery tools in compliance with Canadian laws. For example, if the FMI's loss-allocation rules involve a guarantee, Canadian law generally requires that the guaranteed amount be determinable and preferably capped by a fixed amount.[21]

FMIs should consider whether it is appropriate to involve indirect participants in the allocation of losses and shortfalls during recovery. To the extent that it is permitted, such arrangements should have a strong legal and regulatory basis; respect the FMI's frameworks for tiered participation, segregation and portability; and involve consultation with indirect participants to ensure that all relevant concerns are taken into account.

Overall, FMIs are responsible for seeking appropriate legal advice on how their recovery tools can be designed and for ensuring that all recovery tools and activities are in compliance with the relevant laws and regulations.

Additional Considerations in Recovery Planning

Transparency and coherence[22]

An FMI should ensure that its recovery plan is coherent and transparent to all relevant levels of management within the FMI, as well as to its regulators and overseers. To do so, a recovery plan should

- contain information at the appropriate level and detail; and
- be sufficiently coherent to relevant parties within the FMI, as well as to the regulators and overseers of the FMI, to effectively support the application of the recovery tools.

An FMI should ensure that the assumptions, preconditions, key dependencies and decision-making processes in a recovery plan are transparent and clearly identified.

Relevance and flexibility[23]

An FMI's recovery plan should thoroughly cover the information and actions relevant to extreme but plausible market conditions and other situations that would call for the use of recovery tools. An FMI should take into account the following elements when developing its recovery plan:

- the nature, size and complexity of its operations;
- its interconnectedness with other entities;
- operational functions, processes and/or infrastructure that may affect the FMI's ability to implement its recovery plan; and
- any upcoming regulatory reforms that may have the potential to affect the recovery plan.

Recovery plans should be sufficiently flexible to address a range of FMI-specific and market-wide stress events. Recovery plans should also be structured and written at a level that enables the FMI's management to assess the recovery scenario and initiate appropriate recovery procedures. As part of this expectation, the recovery plan should demonstrate that senior management has assessed the potential two-way interaction between recovery tools and the FMI's business model, legal entity structure, and business and risk-management practices.

[20] PFMI Report, Paragraph 3.1.10.

[21] The Bank Act, Section 414(1) and IIROC Rule 100.14 prohibit banks and securities dealers, respectively, from providing unlimited guarantees to an FMI or a financial institution.

[22] Recovery Report, Section 2.3.

[23] Recovery Report, Section 2.3.

Implementation of Recovery Plan[24]

An FMI should have credible and operationally feasible approaches to recovery planning in place and be able to act upon them in a timely manner, under both idiosyncratic and market-wide stress scenarios. To this end, recovery plans should describe

- potential impediments to applying recovery tools effectively and strategies to address them; and
- the impact of a major operational disruption.[25]

This information is important to strengthen a recovery plan's resilience to shocks and ensure that the recovery tools are actionable.

A recovery plan should also include an escalation process and the associated communication procedures that an FMI would take in a recovery situation. Such a process should define the associated timelines, objectives and key messages of each communication step, as well as the decision-makers who are responsible for it.

Consulting Canadian authorities when taking recovery actions

While the responsibility for implementing the recovery plan rests with the FMI, Canadian authorities consider it critical to be informed when an FMI triggers its recovery plan and before the application of recovery tools and other recovery actions. To the extent an FMI intends to use a tool or take a recovery action that might have significant impact on its participants (e.g. tools requiring further justification), the FMI should consult Canadian authorities before using such tools or taking such actions to demonstrate how it has taken into account potential financial stability implications and other relevant public interest considerations. Authorities include those responsible for the regulation, supervision and oversight of the FMI, as well as any authorities who would be responsible for the FMI if it were to be put into resolution.

Relevant Canadian authorities should be informed (or consulted as appropriate) early on and interaction with authorities should be explicitly identified in the escalation process of a recovery plan. Acknowledging the speed at which an FMI may enter recovery, FMIs are encouraged to develop formal communications protocols with authorities in the event that recovery is triggered and immediate action is required.

Review of Recovery Plan[26]

An FMI should include in its recovery plan a robust assessment of the recovery tools presented and detail the key factors that may affect their application. It should recognize that, while some recovery tools may be effective in returning the FMI to viability, these tools may not have a desirable effect on its participants or the broader financial system.

A framework for testing the recovery plan (for example, through scenario exercises, periodic simulations, back-testing and other mechanisms) should be presented either in the plan itself or linked to a separate document. This impact assessment should include an analysis of the effect of applying recovery tools on financial stability and other relevant public interest considerations.[27] Furthermore, an FMI should demonstrate that the appropriate business units and levels of management have assessed the potential consequences of recovery tools on FMI participants and entities linked to the FMI.

Annual review of recovery plan

An FMI should review and, if necessary, update its recovery plan on an annual basis. The recovery plan should be subject to approval by the FMI's Board of Directors.[28] Under the following circumstances, an FMI is expected to review its recovery plan more frequently:

- if there is a significant change to market conditions or to an FMI's business model, corporate structure, services provided, risk exposures or any other element of the firm that could have a relevant impact on the recovery plan;
- if an FMI encounters a severe stress situation that requires appropriate updates to the recovery plan to address the changes in the FMI's environment or lessons learned through the stress period; and

[24] Recovery Report, Paragraph 2.3.9.
[25] This is also related to the FMI's backup and contingency planning, which are distinct from recovery plans.
[26] Recovery Report, Paragraph 2.3.8.
[27] This is in line with key consideration 1 of PFMI Principle 2 (Governance), which states that an FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.
[28] Recovery Report, Paragraph 2.3.3.

- if the Canadian authorities request that the FMI update the recovery plan to address specific concerns or for additional clarity.

Canadian authorities will also review and provide their views on an FMI's recovery plan before it comes into effect. This is to ensure that the plan is in line with the expectations of Canadian authorities.

Orderly Wind-Down Plan as Part of a Recovery Plan[29]

Canadian authorities expect FMIs to prepare, as part of their recovery plans, for the possibility of an orderly wind-down. However, developing an orderly wind-down plan may not be appropriate or operationally feasible for some critical services. In this instance, FMIs should consult with the relevant authorities on whether they can be exempted from this requirement.

Considerations when developing an orderly wind-down plan

An FMI should ensure that its orderly wind-down plan has a strong legal basis. This includes actions concerning the transfer of contracts and services, the transfer of cash and securities positions of an FMI, or the transfer of all or parts of the rights and obligations provided in a link arrangement to a new entity.

In developing orderly wind-down plans, an FMI should elaborate on

- the scenarios where an orderly wind-down is initiated, including the services considered for wind-down;
- the expected wind-down period for each scenario, including the timeline for when the wind-down process for critical services (if applicable) would be complete; and
- measures in place to port critical services to another FMI that is identified and assessed as operationally capable of continuing the services.

Disclosure of recovery and orderly wind-down plans

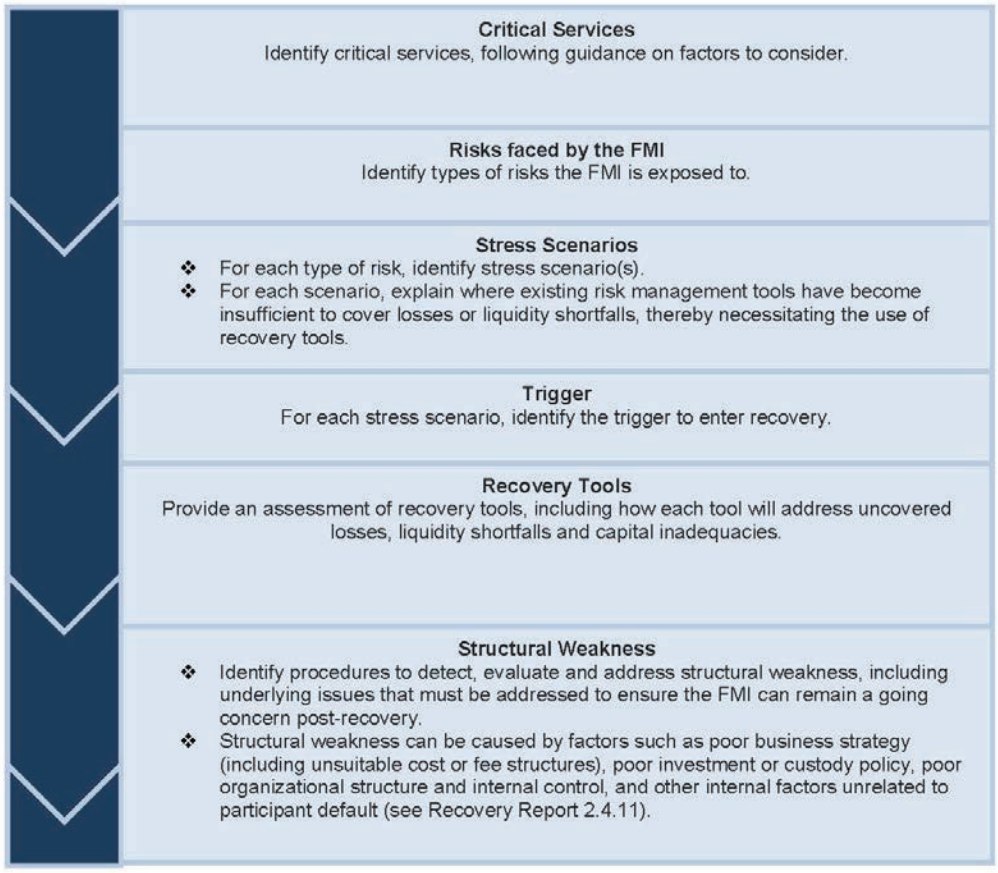
An FMI should disclose sufficient information regarding the effects of its recovery and orderly wind-down plans on FMI participants and stakeholders, including how they would be affected by (i) the allocation of uncovered losses and liquidity shortfalls and (ii) any measures the CCP would take to re-establish a matched book. In terms of disclosing the degree of discretion an FMI has in applying recovery tools, an FMI should make it clear to FMI participants and all other stakeholders ahead of time that all recovery tools and orderly wind-down actions that an FMI can apply will only be employed after consulting with the relevant Canadian authorities.

Note that recovery and orderly wind-down plans need not be two separate documents; the orderly wind-down of critical services may be a part or subset of the recovery plan. Furthermore, Canadian FMIs may consider developing orderly wind-down plans for non-critical services in the context of recovery if winding down non-critical services could assist in or benefit the recovery of the FMI.

[29] Recovery Report, Paragraph 2.2.2.

Appendix: Guidelines on the Practical Aspects of FMI Recovery Plans

The following example provides suggestions on how an FMI recovery plan could be organized.



Annex I
to Companion Policy 24-102CP

Joint Supplementary Guidance
Developed by the Bank of Canada and Canadian Securities Administrators

PFMI Principle 2: Governance

Box 2.1:
Joint Supplementary Guidance –
Financial Stability and Other Public Interest Considerations

Context

The PFMIs define governance as the set of relationships between an FMI's owners, board of directors (or equivalent), management, and other relevant parties, including participants, authorities, and other stakeholders (such as participants' customers, other interdependent FMIs, and the broader market). Governance provides the processes through which an organization sets its objectives, determines the means for achieving those objectives, and monitors performance against those objectives. This note provides supplementary regulatory guidance for Canadian FMIs on their governance arrangements as it relates to supporting relevant public interest considerations.

Public interest considerations in the context of the PFMIs

The PFMIs indicate that FMIs should "explicitly support financial stability and other relevant public interests." However, there may be circumstances where providing explicit support of relevant public interests conflict with other FMI objectives and therefore require appropriate prioritization and balancing. For example, addressing the potential trade-offs between protecting the participants and the FMI while ensuring the financial stability interests are upheld.

Guidance within the PFMIs

The following text has been extracted directly from the PFMIs. The pertinent information is in bold italics.

PFMI paragraph 3.2.2:

> ***Given the importance of FMIs and the fact that their decisions can have widespread impact, affecting multiple financial institutions, markets, and jurisdictions, it is essential for each FMI to place a high priority on the safety and efficiency of its operations and explicitly support financial stability and other relevant public interests. Supporting the public interest is a broad concept that includes, for example, fostering fair and efficient markets.*** *For example, in certain over the counter derivatives markets, industry standards and market protocols have been developed to increase certainty, transparency, and stability in the market. If a CCP in such markets were to diverge from these practices, it could, in some cases, undermine the market's efforts to develop common processes to help reduce uncertainty. An FMI's governance arrangements should also include appropriate consideration of the interests of participants, participants' customers, relevant authorities, and other stakeholders. (...) For all types of FMIs, governance arrangements should provide for fair and open access (see Principle 18 on access and participation requirements) and for effective implementation of recovery or wind-down plans, or resolution.*

PFMI paragraph 3.2.8:

> ***An FMI's board has multiple roles and responsibilities that should be clearly specified. These roles and responsibilities should include*** *(a) establishing clear strategic aims for the entity; (b) ensuring effective monitoring of senior management (including selecting its senior managers, setting their objectives, evaluating their performance, and, where appropriate, removing them); (c) establishing appropriate compensation policies (which should be consistent with best practices and based on long-term achievements, in particular, the safety and efficiency of the FMI); (d) establishing and overseeing the risk-management function and material risk decisions; (e) overseeing internal control functions (including ensuring independence and adequate resources); (f) ensuring compliance with all supervisory and oversight requirements;* ***(g) ensuring consideration of financial stability and other relevant public interests****; and (h) providing accountability to the owners, participants, and other relevant stakeholders.*

The CPMI-IOSCO PFMI Disclosure framework and Assessment methodology provides questions to guide the assessment of the FMI against the PFMIs. Questions related to public interest considerations are focused on ensuring that the FMI's

objectives are clearly defined, giving a high priority to safety, financial stability and efficiency while also ensuring all other public interest considerations are identified and reflected in the FMI's objectives.

Supplementary Guidance for designated Canadian FMIs

By definition the PFMIs apply to systemically important FMIs, so safety and financial stability objectives should be given a high priority.

Efficiency is also a high priority that should contribute to (but not supersede) the safety and financial stability objectives.

Other public interest considerations such as competition and fair and open access should also be considered in the broader safety and financial stability context.

A framework (objectives, policies and procedures) should be in place for default and other emergency situations. The framework should articulate explicit principles to ensure financial stability and other relevant public interests are considered as part of the decision making process. For example, it should provide guidance on discretionary management decisions, consider the trade offs between protecting the participants and the FMI while also ensuring the financial stability interests are upheld, and articulate a communication protocol with the board and regulators.

Practical questions/approaches to assessing the appropriateness of the framework include:

- Does the enabling legislation, articles of incorporation, corporate by-laws, corporate mission, vision statements, corporate risk statements/frameworks/methodology clearly articulate the objectives and are they appropriately aligned and communicated (transparent)?
- Do the objectives give appropriate priority to safety, financial stability, efficiency and other public interest considerations?
- Does the Board structure ensure the right mix of skills/experience and interests are in place to ensure the objectives are clear, appropriately prioritized, achieved and measured?
- What is the training provided to the Board and management to support the objectives?
- Do the service offerings and business plans support the objectives?
- Do the system design, rules, procedures support the objectives?
- Are the inter dependencies and key dependencies considered and managed in the context of the broader financial stability objectives? For instance, do problem and default management policies and procedures appropriately provide for consideration of the broader financial stability interests and do they engage the key stakeholders and regulators?
- Are there procedures in place to get timely engagement of the Board to discuss emerging/current issues, consider scenarios, provide guidance and make decision?
- Does the framework ensure that the broader financial stability issues are considered in any actions relating to a participant suspension?

Box 2.2:
Joint Supplementary Guidance–
Vertically and Horizontally Integrated FMIs

Context

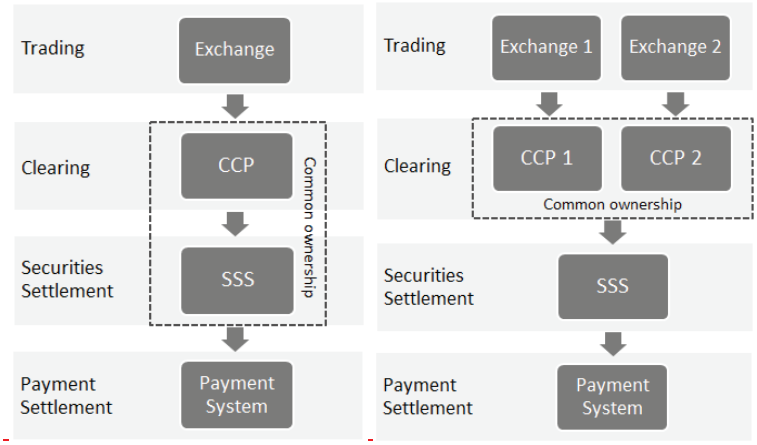
Consolidation, or integration, of FMI services may bring about benefits for merging FMIs; however it may also create new governance challenges. The PFMIs contain some general guidance regarding how FMIs should manage governance issues that arise in integrated entities. This note provides supplementary regulatory guidance for Canadian FMIs that either belong to an integrated entity or are considering consolidating with another entity to form one. The guidance applies to both vertically and horizontally integrated entities.

Vertical and horizontal integration in the context of FMIs

The PFMIs define a vertically integrated FMI group as one that brings together post-trade infrastructure providers under common ownership with providers of other parts of the value chain (for example, one entity owning and operating an exchange, CCP and SSS) and a horizontally integrated group as one that provides the same post-trade service offerings across a number of different products (for example, one entity offering CCP services for derivatives and cash markets).[1] Examples are shown in Figure 1.

Figure 1: Examples of FMI integration in the value chain

a) Example of vertically integrated FMIs b) Example of horizontally integrated FMIs



Guidance within the PFMIs

The following text has been extracted directly from the PFMIs. The pertinent information is in bold italics.

PFMI paragraph 3.2.5:

> *Depending on its ownership structure and organisational form, an FMI may need to focus particular attention on certain aspects of its governance arrangements.* ***An FMI that is part of a larger organisation, for example, should place particular emphasis on the clarity of its governance arrangements, including in relation to any conflicts of interests and outsourcing issues that may arise because of the parent or other affiliated organisation's structure. The FMI's governance arrangements should also be adequate to ensure that decisions of affiliated organisations are not detrimental to the FMI.[2] An FMI that is, or is part of, a for-profit entity may need to place particular emphasis on managing any conflicts between income generation and safety.***

PFMI paragraph 3.2.6:

> *An FMI may also need to focus particular attention on certain aspects of its risk-management arrangements as a result of its ownership structure or organisational form.* ***If an FMI provides services that present a distinct risk profile from, and potentially pose significant additional risks to, its payment, clearing, settlement, or recording function, the FMI needs to manage those additional risks adequately. This may include separating the additional services that the FMI provides from its payment, clearing, settlement, and recording function legally, or taking equivalent action.*** *The ownership structure and organisational form may also need to be considered in the preparation and implementation of the FMI's recovery or wind-down plans or in assessments of the FMI's resolvability.*

[1] CPMI-IOSCO 2010. "Market structure developments in the clearing industry: implications for financial stability." CPMI-IOSCO Paper No 92. Available at: http://www.bis.org/publ/cpss92.htm.

[2] If an FMI is wholly owned or controlled by another entity, authorities should also review the governance arrangements of that entity to see that they do not have adverse effects on the FMI's observance of this principle.

Supplementary guidance for designated Canadian FMIs

An FMI that is part of a larger entity faces additional risk considerations compared to stand-alone FMIs. While there are potential benefits from integrating services into one large entity, including potential risk reduction benefits, integrated entities could face additional risks such as a greater degree of general business risk. Examples of how this could occur include the following:

- losses in one function may spill over to the entity's other functions;
- the consolidated entity may face high combined exposures across its functions; and
- the consolidated entity may face exposures to the same participants across its functions.

For a more extensive discussion of potentially heightened risks that integrated FMIs may face, see CPMI, "Market structure developments in the clearing industry: implications for financial stability" (2010).[3]

If an FMI belongs to a larger entity, or is considering consolidating with another entity, it should consider how its risk profile differs as part of the consolidated entity, and take appropriate measures to mitigate these risks.

In addition, FMIs that either belong to an integrated entity or are considering merging to form one should meet the following conditions.

1) Measures to protect critical FMI functions

- FMIs may be part of a larger consolidated entity. These FMIs must either:
  - legally separate FMI-related functions[4] from non-FMI-related functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI related functions; or
  - have satisfactory policies and procedures in place to manage additional risks resulting from the non-FMI-related functions appropriately to ensure the FMI's financial and operational viability.
- If an FMI performs multiple FMI-related functions with distinct risk profiles within the same entity, the operator should effectively manage the additional risks that may result. The FMI should hold sufficient financial resources to manage the risks in all services it offers, including the combined or compounded risks that would be associated with offering the services through a single legal entity. If the FMI provides multiple services, it should disclose information about the risks of the combined services to existing and prospective participants to give an accurate understanding of the risks they incur by participating in the FMI. The FMI should carefully consider the benefits of offering critical services with distinct risk profiles through separate legal entities.
- If an FMI offers CCP services as part of its FMI related functions, further conditions apply. CCPs take on more risk than other FMIs, and are inherently at higher risk of failure. Therefore, the FMI must either legally separate its CCP functions from other critical (non-CCP) FMI related functions, or have satisfactory policies and procedures in place to manage additional risks appropriately to ensure the FMI's financial and operational viability.
- Legal separation of critical functions is intended to maximize their bankruptcy remoteness and would not necessarily preclude integration of common organizational management activities such as IT and legal services across functions as long as any related risks are appropriately identified and mitigated.

2) Independence of governance and risk management

- FMIs and non-FMIs may have different corporate objectives and risk management appetites which could conflict at the parent level. For example, non-FMI-related functions, such as trading venues, are generally more focused on profit generation than risk management and do not have the same risk profile as FMI-related functions. A trading venue in a vertically integrated entity may benefit from increased participation in its service if its associated clearing function lessens its participation requirements.

[3] Available at http://www.bis.org/cpmi/publ/d92.pdf.

[4] FMI-related functions are CCP, SSS, and CSD functions, including other core aspects of clearing and settlement necessary to perform the CCP, SSS, and CDS functions (see the CPMI-IOSCO glossary definitions of "clearing" and "settlement", available at http://www.bis.org/cpmi/publ/d00b.pdf).

- To mitigate potential conflicts, in particular the ability of other functions to negatively influence the FMI's risk controls, each FMI subsidiary should have a governance structure and risk management decision-making process that is separate and independent from the other functions and should maintain an appropriate level of autonomy from the parent and other functions to ensure efficient decision making and effective management of any potential conflicts of interest. In addition, the consolidated entity's broad governance arrangements should be reviewed to ensure they do not impede the FMI-related function's observance of the CPMI-IOSCO principle on governance.

3) Comprehensive management of risks

- Although risk management governance and decision-making should remain independent, it is nonetheless necessary that the consolidated entity is able to manage risk appropriately across the entity. At a consolidated level, the entity should have an appropriate risk management framework that considers the risks of each subsidiary and the additional risks related to their interdependencies.

- An FMI should identify and manage the risks it bears from and poses to other entities as a result of interdependencies. Consolidated FMIs should also identify and manage the risks they pose to one another as a result of their interdependencies. Consolidated FMIs may have exposures to the same participants, liquidity providers, and other critical service providers across products, markets and/or functions. This may increase the entity's dependence on these providers and may heighten the systemic risk associated with the consolidated entity compared to a stand-alone FMI. Where possible, the consolidated entity and its FMIs should consider ways to mitigate risks arising from shared dependencies. The consolidated entity and its FMIs should also consider conducting entity-wide operational risk testing related to identifying and mitigating these risks.

4) Sufficient capital to cover potential losses

- Consolidated entities face the risk that a single participant defaults in more than one subsidiary simultaneously. This could result in substantial losses for the consolidated entity which will then also need to replenish resources for the FMIs to continue to operate. FMIs should consider such risks in developing their resource replenishment plan.

- Consolidated entities may face higher or lower business risk than individual FMIs depending on size, complexity and diversification across affiliates. Consolidated entities should consider these impacts in their general business risk profiles and in determining the appropriate level of liquid assets needed to cover their potential general business losses.[5]

– PFMI Principle 5: Collateral

Box 5.1:
Joint Supplementary Guidance – Collateral

Context

The PFMIs establish the form and attributes of collateral that an FMI holds to manage its own credit exposures or those of its participants. This note provides additional guidance for Canadian FMIs to meet the components of the collateral principle related to: (i) acceptance of collateral with low credit, liquidity and market risk; (ii) concentrated holdings of certain assets; and (iii) calculating haircuts. In certain circumstances, regulators may allow exceptions to the collateral policy on a case-by-case basis if the FMI demonstrates that the risks can be adequately managed.

(i) Acceptable collateral

An FMI should conduct its own assessment of risks when determining collateral eligibility. In general, collateral held to manage the credit exposures of the FMI or those of its participants should have minimal credit, liquidity and market risk, even in stressed market conditions. However, asset categories with additional risk may be accepted when subject to conservative haircuts and adequate concentration limits.[6]

[5] Liquid assets held for general business losses must be funded by equity (such as common stock, disclosed reserves, or retained earnings) rather than debt.

[6] See PFMI Principle 5, key considerations 1 and 4.

The following clarifies regulators' expectations on what is acceptable collateral by specifying:

1) minimum requirements for all assets that are acceptable as collateral;

2) the asset categories that are judged to have minimal credit, liquidity and market risk; and

3) additional asset categories that could be acceptable as collateral if subject to conservative haircuts and concentration limits.

1) An FMI should conduct its own internal assessment of the credit, liquidity and market risk of the assets eligible as collateral. The FMI should review its collateral policy at least annually, and whenever market factors justify a more frequent review. At a minimum, acceptable assets should:

i) be freely transferable without legal, regulatory, contractual or any other constraints that would impair liquidation in a default;

ii) be marketable securities that have an active outright sale market even in stressed market conditions;

iii) have reliable price data published on a regular basis;

iv) be settled over a securities settlement system compliant with the Principles; and

v) be denominated in the same currency as the credit exposures being managed, or in a currency that the FMI can demonstrate it has the ability to manage.

An FMI should not rely only on external opinions to determine what acceptable collateral is. The FMI should conduct its own assessment of the riskiness of assets, including differences within a particular asset category, to determine whether the risks are acceptable. Since the primary purpose of accepting collateral is to manage the credit exposures of the FMI and its participants, it is paramount that assets eligible as collateral can be liquidated for fair value within a reasonable time frame to cover credit losses following a default. The annual review of the FMI's collateral policy provides an opportunity to assess whether risks continue to be adequately managed. Owing to the dynamic nature of capital markets, the FMI should monitor changes in the underlying risk of the specific assets accepted as collateral, and should adjust its collateral policy in the interim period between annual reviews, when required.

At a minimum, an asset should have certain characteristics in order to provide sufficient assurance that it can be liquidated for fair value within a reasonable time frame. These characteristics relate primarily to the FMI's ability to reliably sell the asset as required to manage its credit exposures. The asset should be unencumbered, that is, it must be free of legal, regulatory, contractual or other restrictions that would impede the FMI's ability to sell it. The challenges associated with selling or transferring non-marketable assets, or those without an active secondary market, preclude their acceptance as collateral.

2) Assets generally judged to have minimal credit, liquidity and market risk are the following:

i) cash;

ii) securities issued or guaranteed by the Government of Canada;[7]

iii) securities issued or guaranteed by a provincial government; and

iv) securities issued by the U.S. Treasury.

In general, the assets judged to have minimal risk are cash and debt securities issued by government entities with unique powers, such as the ability to raise taxes and set laws, and that have a low probability of default. Total Canadian debt outstanding is currently dominated by securities issued or guaranteed by the Government of Canada and by provincial governments. The relatively large supply of securities issued by these entities and their generally high creditworthiness contribute to the liquidity of these assets in the domestic capital market. Securities issued by the U.S. Treasury are also deemed to be of high quality for the same reasons. The overall riskiness of securities issued by the Government of Canada and the U.S. Treasury is further reduced by their

[7] Guarantees include securities issued by federal and provincial Crown corporations or other entities with an explicit statement that debt issued by the entity represents the general obligations of the sovereign.

previous record of maintaining value in stressed market conditions, when they tend to benefit from a "flight to safety."

It is essential that an FMI regularly assesses the riskiness of even the specific high-quality assets identified in this section to determine their adequacy as eligible collateral. In some cases, only certain assets within the more general asset category may be deemed acceptable.

3) An FMI should consider its own distinct arrangements for allocating credit losses and managing credit exposures when accepting a broader range of assets as collateral. The following asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits:

i) securities issued by a municipal government;

ii) bankers' acceptances;

iii) commercial paper;

iv) corporate bonds;

v) asset-backed securities that meet the following criteria: (1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility , and (3) backed by assets of an acceptable credit quality;

vi) equity securities traded on marketplaces regulated by a member of the CSA and the Investment Industry Regulatory Organization of Canada; and

vii) other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

An FMI should take into account its specific risk profile when assessing whether accepting certain assets as collateral would be appropriate. The decision to broaden the range of acceptable collateral should also consider the size of collateral holdings to cover the credit exposures of the FMI relative to the size of asset markets. In cases where the total collateral required to cover credit exposures is small compared with the market for high-quality assets, there is less potential strain on participants to meet collateral requirements.

Accepting a broader range of collateral has certain advantages. Most importantly, it provides participants with more flexibility to meet the FMI's collateral requirements, which may be especially important in stressed market conditions. A broader range of collateral diversifies the risk exposures faced by the FMI, since it may be easier to liquidate diversified collateral holdings when liquidity unexpectedly dries up for a particular asset class. It also diversifies market risk by reducing potential exposure to idiosyncratic shocks. Accepting a broader range of assets recognizes the increased cost to market participants of posting only the highest-quality assets, as well as the increasing encumbrance of these assets in order to meet new regulatory standards.[8]

(ii) Concentration Limits

An FMI should avoid concentrated holding of assets where this could potentially introduce credit, market and liquidity risk beyond acceptable levels. In addition, the FMI should mitigate specific wrong-way risk by limiting the acceptance of collateral that would likely lose value in the event of a participant default, and prevent participants from posting assets they or their affiliates have issued. The FMI should measure and monitor the collateral posted by participants on a regular basis, with more frequent analysis required when more flexible collateral policies have been implemented.[9]

The following points clarify regulators' expectations regarding the composition of collateral accepted by an FMI by specifying:

1) broad limits for riskier asset classes to mitigate concentration risk;

2) targeted limits for securities issued by financial sector entities to mitigate specific wrong-way risk; and
3) the level of monitoring required for collateral posted by participants.

[8] The encumbrance of high-quality assets is expected to increase through a number of regulatory reforms, including Basel III, over-the-counter derivatives reform and the Principles.

[9] See Principle 5, key considerations 1 and 4.

1) An FMI should limit assets from the broader range of acceptable assets identified in section (i)3) to a maximum of 40 per cent of the total collateral posted from each participant. Within the broader range of acceptable assets, the FMI should consider implementing more specific concentration limits for different asset categories.

An FMI should limit securities issued by a single issuer from the broader range of acceptable assets to a maximum of 5 per cent of total collateral from each participant.

The guidance limits the acceptance of collateral from the broader range of assets to a maximum of 40 per cent because a higher proportion could potentially create unacceptable risks to FMIs and their participants. This limit is currently applied to the Bank's Standing Liquidity Facility and the Liquidity Coverage Ratio under Basel III. The benefits of expanding collateral – namely, providing participants with more flexibility and achieving greater diversification – are achieved within the limit of 40 per cent, with collateral in excess of this limit increasing the overall risk exposures with less benefit. In some circumstances, regulators may permit an FMI to accept more than 40 per cent of total collateral from the broader range of assets if the risk from a particular participant is low.

Employing a limit of 5 per cent of total collateral for securities issued by a single issuer is a prudent measure to limit exposures from idiosyncratic shocks. It also reduces the need for procyclical adjustments to collateral requirements following a decline in value.

An FMI should consider implementing more stringent concentration limits, as well as imposing limits on certain asset categories, depending on the FMI's specific arrangements for managing credit exposures. The considerations described in section (i) 3) for accepting a broader range of assets as collateral apply equally to the decision over whether more stringent concentration limits should be implemented.

2) An FMI should limit the collateral from financial sector issuers to a maximum of 10 per cent of total collateral pledged from each participant. The FMI should not allow participants to post their own securities or those of their affiliates as collateral.

An FMI is exposed to specific wrong-way risk when the collateral posted is highly likely to decrease in value following a participant default. It is highly likely that the value of debt and equity securities issued by companies in the financial sector would be adversely affected by the default of an FMI participant, introducing wrong-way risk. This is especially the case for interconnected FMI participants with activities that are concentrated in domestic financial markets. Implementing a limit on financial sector issuers mitigates potential risk exposures from specific wrong-way risk. More stringent limits should be implemented where appropriate.

3) In cases where only the highest-quality assets are accepted, an FMI is required to measure and monitor the collateral posted by participants during periodic evaluations of participant creditworthiness. The FMI should measure and monitor the correlation between a participant's creditworthiness and the collateral posted more frequently when a broader range of collateral is accepted. The FMI should have the ability to adjust the composition and to increase the collateral required from participants experiencing a reduction in creditworthiness.

When only the highest-quality assets are accepted as collateral, there is less risk associated with the composition of collateral posted by a participant; hence, such risk does not need to be monitored as closely. The FMI should monitor the composition of collateral pledged by participants more frequently when riskier assets are eligible, since such assets are more likely to be correlated with the participant's creditworthiness. FMIs should also consider the general credit risk of their participants when deciding how frequently monitoring should be conducted. In all circumstances, the FMI should have the contractual and legal ability to unilaterally require more collateral and to request higher-quality collateral from a participant that is judged to present a greater risk.

(iii) Haircuts

An FMI should establish stable and conservative haircuts that consider all aspects of the risks associated with the collateral. An FMI should evaluate the performance of haircuts by conducting backtesting and stress testing on a regular basis.[10]

The following points clarify regulators' expectations regarding the calculation and testing of haircuts by outlining:

[10] See PFMI Principle 5, key considerations 2 and 3.

1) requirements for calculating haircuts; and

2) requirements for testing the adequacy of haircuts and overall collateral accepted.

1) An FMI should apply stable and conservative haircuts that are calibrated against stressed market conditions. When the same haircut is applied to a group of securities, it should be sufficient to cover the riskiest security within the group. Haircuts should reflect both the specific risks of the collateral accepted and the general risks of an FMI's collateral policy.

Including periods of stressed market conditions in the calibration of haircuts should increase the haircut rate. In addition to representing a conservative approach, this helps to mitigate the risk of a procyclical increase in haircuts during a period of high volatility. Typically, FMIs group similar securities by shared characteristics for the purposes of calculating haircuts (e.g., Government of Canada bonds with similar maturities). An FMI should recognize the different risks associated with each individual security by ensuring that the haircut is sufficient to cover the security with the most risk within each group. Haircuts should always account for all of the specific risks associated with each asset accepted as collateral. However, the FMI should also consider the portfolio risk of the total collateral posted by a participant; the FMI may consider employing deeper haircuts for concentration and wrong-way risk above certain thresholds.

2) An FMI should perform backtesting of its collateral haircuts on at least a monthly basis, and conduct a more thorough review of haircuts quarterly. The FMI's stress tests should take into account the collateral posted by participants.

FMIs are expected to calculate stable and conservative haircuts by considering stressed market conditions. In general, including stressed market conditions in the calibration of haircuts should provide a high level of coverage that does not require continuous testing and verification. Nonetheless, backtesting on a monthly basis allow the adequacy of haircuts to be evaluated against observed outcomes. A quarterly review of haircuts balances the objective of stable haircuts with the need to adjust haircuts as required. Including changes to collateral values as part of stress testing provides a more accurate assessment of potential losses in a default scenario.

– PFMI Principle 7: Liquidity risk

Box 7.1:
Joint Supplementary Guidance – Liquidity Risk

Context

The PFMIs define liquidity risk as risk that arises when the FMI, its participants or other entities cannot settle their payment obligations when due as part of the clearing or settlement process. This note provides additional guidance for Canadian FMIs to meet the components of the liquidity risk principle related to: (i) maintaining sufficient liquid resources and (ii) qualifying liquid resources.

(i) Maintaining sufficient liquid resources

An FMI should maintain sufficient qualifying liquid resources to cover its liquidity exposures to participants with a high degree of confidence. An FMI should maintain additional liquid resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible conditions. Liquidity stress testing should be performed on a daily basis. An FMI should verify that its liquid resources are sufficient through comprehensive stress testing conducted at least monthly. [11]

The information provided in this section clarifies regulators' expectations of sufficient qualifying liquid resources by specifying:

1) the degree of confidence required to cover liquidity exposures;

2) the total liquid resources that should be maintained; and

[11] See PFMI Principle 7, key considerations 3, 5, 6 and 9.

3) how the FMI should verify that its liquid resources are sufficient and adjust liquid resources when necessary.

1) Qualifying liquid resources should meet an established single-tailed confidence level of at least 97 per cent with respect to the estimated distribution of potential liquidity exposures.[12] The FMI should have an appropriate method for estimating potential exposures that accounts for the design of the FMI and other relevant risk factors.

The guidance requires a high threshold for covering liquidity exposures with qualifying liquid resources, while also considering the expense associated with obtaining these resources. A 97 per cent degree of confidence is equivalent to less than one observation per month (on average) in which a liquidity exposure is greater than the FMI's qualifying liquid resources. However, if it is to meet the required threshold, the FMI should estimate its potential liquidity exposures accurately. The FMI should account for all relevant predictive factors when estimating potential exposures. While historical exposures are expected to form the basis of estimated potential exposures, the FMI should account for the impact of new products, additional participants, changes in the way transactions settle or other relevant market risk factors.

2a) An FMI should maintain additional liquid resources that are sufficient to cover a wide range of potential stress scenarios. Total liquid resources should cover the FMI's largest potential exposure under a variety of extreme but plausible conditions. The FMI should have a liquidity plan that justifies the use of other liquid resources and provides the supporting rationale for the total liquid resources that it maintains.

The guidance requires that total liquid resources be determined by the largest potential exposure in extreme but plausible conditions. This implies maintaining total liquid resources sufficient to cover at least the FMI's largest observed liquidity exposures, but the liquidity resources would likely be larger, based on an assessment of potential liquidity exposures in extreme but plausible conditions. The FMI's liquidity plan should explain why the FMI's estimated largest potential exposure is an accurate assessment of the FMI's liquidity needs in extreme but plausible conditions, thereby demonstrating the adequacy of the FMI's total liquid resources.

It is permissible for an FMI to manage this risk in part with other liquid resources because it may be prohibitively expensive, or even impossible, for the FMI to obtain sufficient qualifying liquid resources. FMIs face increased risk from liquid resources that do not meet the strict definition of "qualifying," and thus an FMI should include in its liquidity plan a clear explanation of how these resources could be used to satisfy a liquidity obligation. This additional explanation is warranted in all cases, even when the FMI's dependence on other liquid resources is minimal.

2b) When applicable, the possibility that a defaulting participant is also a liquidity provider should be taken into account.

Generally, the liquidity providers for Canadian FMIs are also participants in the FMI. When a defaulting participant is also a liquidity provider, it is important that the FMI's liquidity facilities are arranged in such a way that it has sufficient liquidity. To do so, the FMI should either have additional liquid resources or negotiate a backup liquidity provider, so that the FMI has sufficient liquidity (as specified in this guidance) in the event that one of its liquidity providers defaults.

3) FMIs should perform liquidity stress testing on a daily basis to assess their liquidity needs. At least monthly, FMIs should conduct comprehensive stress tests to verify the adequacy of their total liquid resources and to serve as a tool for informing risk management. Stress-testing results should be reviewed by the FMI's risk-management committee and reported to regulators on a regular basis.

FMIs should have clear procedures to determine whether their liquid resources are sufficient and to adjust their available liquid resources when necessary. A full review and potential resizing of liquid resources should be completed at least annually.

The annual validation of an FMI's model for managing liquidity risk should determine whether its stress testing follows best practices and captures the potential risks faced by the FMI.

FMIs should assess their liquidity needs through stress testing that includes the measurement of the largest daily liquidity exposure that they face. FMIs should also conduct stress testing to verify whether their liquid resources are sufficient to cover potential liquidity exposures under a wide range of stress scenarios. An

[12] A "potential liquidity exposure" is defined as the estimated maximum daily liquidity needs resulting from the market value of the FMI's payment obligations under normal business conditions. FMIs should consider potential liquidity exposures over a rolling one-year time frame.

annual full review and potential resizing of liquid resources provides adequate time to negotiate with liquidity providers. While it may be impractical for FMIs to frequently obtain additional liquid resources, it is important that FMIs clearly define the circumstances requiring prompt adjustment of their available liquid resources, and have a reliable plan for doing so. Establishing clear procedures provides transparency regarding an FMI's decision-making process and prevents the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable. The review of stress- testing results by the FMI's risk-management committee provides additional assurance that liquid resources are sufficient, and whether an interim resizing is necessary. Reporting results to regulators on a monthly basis allows for timely intervention if liquid resources have been deemed inadequate.

Comprehensive stress testing should also encompass a broad range of stress scenarios, not just to verify whether the FMI's liquid resources are sufficient, but also to identify potential risk factors. Reverse stress testing, more extreme stress scenarios, valuation of liquid assets and focusing on individual risk factors (e.g., available collateral) all help to inform the FMI of potential risks. The annual validation of the FMI's risk-management model enables it to fully assess the appropriateness of the stress scenarios conducted and the procedures for adjusting liquid resources.

(ii) Qualifying liquid resources

Qualifying liquid resources should be highly reliable and have same-day availability. Liquid resources are reliable when the FMI has near certainty that the resources it expects will be available when required. Qualifying liquid resources should be available on the same day that they are needed by the FMI to meet any immediate liquidity obligation (e.g., a participant's default). Qualifying liquid resources that are denominated in the same currency as the FMI's exposures count toward its minimum liquid resource requirement.[13]

The following section clarifies regulators' expectations as to what is considered a qualifying liquid resource by:

1) identifying the assets in the possession, custody or control of the FMI that are considered qualifying liquid resources; and

2) setting clear standards for liquidity facilities to be considered qualifying liquid resources, including more-stringent standards for uncommitted liquidity facilities.

1) Cash and treasury bills[14] in the possession, custody or control of an FMI are qualifying liquid resources for liquidity exposures denominated in the same currency.[15]

Cash held by an FMI does not fluctuate in value and can be used immediately to meet a liquidity obligation, thereby satisfying the criteria for liquid resources to be highly reliable and available on the same day.[16] Treasury bills issued by the Government of Canada or the U.S. Treasury also meet the definition of a qualifying liquid resource. By market convention, sales of treasury bills settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the date of the trade. Treasury bills can also be transacted in larger sizes with less market impact than most other bonds. In addition, the shorter term nature of treasury bills makes them more liquid than other securities during a crisis (i.e., they benefit from a "flight to liquidity"). Thus, there is a high degree of certainty that the FMI would obtain liquid resources in the amount expected following the sale of treasury bills.

2a) Committed liquidity facilities are qualifying liquid resources for liquidity exposures denominated in the same currency if the following criteria are met:

i) facilities are pre-arranged and fully collateralized;

ii) there is a minimum of three independent liquidity providers;[17] and

iii) the FMI conducts a level of due diligence that is as stringent as the risk assessment completed for FMI participants.

[13] See PFMI Principle 7, key considerations 4, 5 and 6

[14] "Treasury bills" refers to bonds issued by the Government of Canada and the U.S. Treasury with a maturity of one year or less.

[15] This section refers to unencumbered assets free of legal, regulatory, contractual or other restrictions on the ability of the FMI to liquidate, sell, transfer or assign the asset.

[16] "Cash" refers to currency deposits held at the issuing central bank and at creditworthy commercial banks. "Value" in this context refers to the nominal value of the currency.

[17] The Liquidity providers should not be affiliates to be considered independent.

For liquidity facilities to be considered reliable, an FMI should have near certainty that the liquidity provider will honour its obligation. Pre arranged liquidity facilities provide clarity on terms and conditions, allowing greater certainty regarding the obligations and risks of the liquidity providers. Pre- arranged facilities also reduce complications associated with obtaining liquidity, when required. Furthermore, a liquidity provider is most likely to honour its obligations when lending is fully collateralized. Therefore, only the amount that is collateralized will be considered a qualifying liquid resource. A liquidity facility is more reliable when the risk of non performance is not concentrated in a single institution. By having at least three independent liquidity providers, the FMI would continue to diversify its risks should even a single provider default. To monitor the continued reliability of a liquidity facility, the FMI should assess its liquidity providers on an ongoing basis. In this respect, an FMI's risk exposures to its liquidity providers are similar to the risks posed to it by its participants. Therefore, it is appropriate for the FMI to conduct comparable evaluations of the financial health of its liquidity providers to ensure that the providers have the capacity to perform as expected.

2b) Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposures in Canadian dollars if they meet the following additional criteria:

i) the liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);

ii) the facility is fully collateralized with SLF-eligible collateral; and

iii) the facility is denominated in Canadian dollars.

More stringent standards are warranted for uncommitted facilities because a liquidity provider's incentives to honour its obligations are weaker. However, the risk that the liquidity provider will be unwilling or unable to provide liquidity is reduced by the requirement that it needs to be a direct participant in the Large Value Transfer System and that the collateral be eligible for the Standing Liquidity Facility (SLF). This is because the collateral obtained from the FMI in exchange for liquidity can be pledged to the Bank of Canada under the SLF. This option significantly reduces the liquidity pressures faced by the liquidity provider that could interfere with its ability to perform on its obligations. A facility in a foreign currency would not qualify because the Bank does not lend in currencies other than the Canadian dollar. The increased reliability of liquidity providers with access to routine credit from the central bank is recognized explicitly within the PFMIs.

– PFMI Principle 15: General business risk

Box 15.1:
Joint Supplementary Guidance – General Business Risk

Context

The PFMIs define general business risk as any potential impairment of the financial condition (as a business concern) of an FMI owing to declines in its revenue or growth in its expenses, resulting in expenses exceeding revenues and a loss that must be charged against capital. These risks arise from an FMI's administration and operation as a business enterprise. They are not related to participant default and are not covered separately by financial resources under the Credit or Liquidity Risk Principles. To manage these risks, the PFMIs state that FMIs should identify, monitor and manage their general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses. This note provides additional guidance for Canadian FMIs to meet the components of the general business risk principle related to: (i) governing general business risk; (ii) determining sufficient liquid net assets; and (iii) identifying qualifying liquid net assets. It also establishes the associated timelines and disclosure requirements.

(i) Governance of general business risk

Principle 15, key consideration 1 of the PFMIs states:

> *An FMI should have robust management and control systems to identify, monitor, and manage general business risk.*

The following points clarify the authorities' expectations on how an FMI's governance arrangements should address general business risk.

An FMI's Board of Directors should be involved in the process of identifying and managing business risks.

Management of business risks should be integrated within an FMI's risk-management framework, and the Board of Directors should be responsible for determining risk tolerances related to business risk and for assigning responsibility for the identification and management of these risks. These risk tolerances and the process for the identification and management of business risk should be the foundation for the FMI's business risk management policy. Based on the PFMIs, the policies and procedures governing the identification and management of business risk should meet the standards outlined below.

- The FMI's business risk management policy should be approved by the Board of Directors and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and risk-management strategy.
- The Board's Risk Committee should have a role in advising the Board on whether the business risk-management policy is consistent with the FMI's general risk-management strategy and risk tolerance.
- The business risk-management policy should provide clear responsibilities for decision making by the Board, and assign responsibility for the identification, management and reporting of business risks to management.

(ii) Determining sufficient liquid net assets

Principle 15, key consideration 2 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity […] so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.*

Principle 15, key consideration 3 of the PFMIs states:

> *An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses.*

The following points clarify the authorities' expectations on how FMIs should calculate their sufficient liquid net assets:

Until guidance for recovery planning and for calculating the associated costs is completed, FMIs are required to hold liquid net assets to cover a minimum of six months of current operating expenses.

In calculating current operating expenses, FMIs will need to:

- **Assess and understand the various general business risks they face** to allow them to estimate as accurately as possible the required amount of liquid net assets. These estimates should be based on financial projections, which take into consideration, for example, past loss events, anticipated projects and increased operating expenses.
- **Restrict the calculation to ongoing expenses.** FMIs will need to adjust their operating costs such that any extraordinary expenses (i.e., unessential, infrequent or one-off costs) are excluded. Typically, operating costs include both fixed costs (e.g., premises, IT infrastructure, etc.) and variable costs (e.g., salaries, benefits, research and development, etc.).
- **Assess the portion of staff from each corporate department required to ensure the smooth functioning of the FMI during the six-month period.** The calculation of operating expenses would include some indirect costs. FMIs would require not only dedicated operational staff, but also various supporting staff. These could include (but are not limited to) staff from the FMI's Legal, IT and HR departments or staff required to ensure the continued functioning of other FMIs that could be necessary to support the FMI.

To fully observe Principle 15, FMIs must hold sufficient liquid assets to cover the greater of (i) funds required for FMIs to implement their recovery or wind-down; or (ii) six months of current operating expenses. In the interim, until recovery planning guidance is published, only the latter amount will apply.

The amount of liquid net assets required to implement an FMI's recovery or wind-down plans will depend on the scenarios or tools available to the FMI. The acceptable recovery and orderly wind-down plans for Canadian FMIs will be articulated by the authorities in forthcoming guidance. Once this guidance on recovery planning has been

developed, the guidance on general business risk will be updated to provide FMIs with additional clarity on how to calculate the costs associated with these plans and determine the amount of liquid net assets required.

(iii) Qualifying liquid net assets

Explanatory note 3.15.5 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. Equity allows an FMI to absorb losses on an ongoing basis and should be permanently available for this purpose.*

Principle 15, key consideration 4 of the PFMIs states:

> *Assets held to cover general business risk should be of high quality and sufficiently liquid to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.*

Principle 15, key consideration 3 of the PFMIs states:

> *These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles.*

The following points clarify the authorities' expectations on which assets qualify to be held against general business risk, and how these assets should be held to ensure that they are permanently available to absorb general business losses.

Assets held against general business risk should be of high quality and sufficiently liquid, such as cash, cash equivalents and liquid securities.

Authorities have developed regulatory guidance related to managing liquidity and investment risks, which provides additional clarity on the definition of cash equivalents and liquid securities, respectively.

- **Cash equivalents** – are considered to be treasury bills[18] issued by either the Canadian or U.S. federal governments. As noted in the liquidity guidance, by market convention, sales of treasuries settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the trade date.

- **Liquid securities** – for the purposes of general business risk, liquid securities are defined by the financial instruments criteria listed in the guidance on the Investment Risk Principle. These criteria outline financial instruments considered to have minimal credit, market, and liquidity risk.

Liquid net assets must be held at the level of the FMI legal entity to ensure that they are unencumbered and can be accessed quickly. Liquid net assets may be pooled with assets held for other purposes, but must be clearly identified as held against general business risk.

FMIs may need to accumulate liquid net assets for purposes other than to meet the General Business Risk Principle. However, assets held against general business risk cannot be used to cover participant default risk or any other risks covered by the financial resources principles.

Liquid net assets can be pooled with assets held for other purposes, but must be clearly identified as held against general business risk in the FMI's reports to its regulators.

(iv) Timelines for assessing and reporting the level of liquid net assets

Explanatory note 3.15.8 of the PFMIs states:

> *To ensure the adequacy of its own resources, an FMI should regularly assess and report its liquid net assets funded by equity relative to its potential business risks to its regulators.*

The following clarifies the authorities' expectations of the frequency with which FMIs should assess and report their required level of liquid net assets.

[18] Treasury bills refer to short-term (i.e. maturity of one year or less) debt instruments issued by the Canadian or U.S. federal government.

FMIs should report to authorities the amount of liquid net assets held against business risk annually, at a minimum.

An FMI should report to the authorities the amount of liquid net assets funded by equity held exclusively against business risk and quantify its business risks as major developments arise, or at least on an annual basis. This report should include an explanation of the methodology used to assess the FMI's business risks and to calculate its requirements for liquid net assets.

FMIs should recalculate the required amount of liquid net assets annually, at a minimum.

Once FMI operators have established the amount of liquid net assets required to cover six months of operating expenses, FMIs should recalculate the required amount of liquid net assets as major developments occur, or annually, at a minimum. Once the authorities have provided further guidance on recovery and FMIs have developed recovery plans, FMIs should also evaluate the need to increase the amount of liquid net assets they should hold to meet the General Business Risk Principle.

To establish clear procedures that improve transparency regarding an FMI's decision making process and to prevent the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable, FMIs should maintain a viable capital plan for raising additional acceptable resources should these resources fall close to or below the amount needed. This plan should be approved by the Board of Directors and updated annually, or as major developments occur.

FMIs should review their methodology for calculating the required level of liquid net assets at least once every five years, or as major developments occur.[19]

The methodology for calculating the amount of required liquid net assets should be reviewed at least every five years to ensure that the calculation remains relevant over time.

– PFMI Principle 16: Custody and investment risks

Box 16.1:
Joint Supplementary Guidance –
Custody and Investment Risks

Context

The PFMIs define investment risk as the risk faced by an FMI when it invests its own assets or those of its participants.

- An FMI holds assets for a variety of purposes, some of which are referred to specifically in the PFMIs: to cover its business risk (Principle 15), to cover credit losses (Principle 4) and to cover credit exposures (Principle 6) using the collateral pledged by participants.
- An FMI may also hold financial assets for purposes not directly related to the risk management issues addressed within the PFMIs (e.g., employee pensions, general investment assets).

An FMI's strategy for investing assets should be consistent with its overall risk-management strategy (Principle 16). The purpose of this note is to provide further guidance on regulators' expectations regarding the management of investment risk. This guidance helps to ensure that an FMI's investments are managed in a way that protects the financial soundness of the FMI and its participants.[20]

(i) Governance

The PFMIs state that the Board of Directors is responsible for overseeing the risk-management function and approving material risk decisions. An FMI should develop an investment policy to manage the risk arising from the investment of its own assets and those of its participants.

[19] In the context of this specific guidance item, "major developments" refers to the major changes to operations, product and service offerings, or classes of participation.

[20] This guidance on investment risk is based on aspects of Principle 2 – Governance, Principle 3 – Comprehensive Framework for the Management of Risk, and Principle 16 – Custody and Investment Risk.

- The FMI's investment policy should be approved by the Board and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and considered part of the FMI's risk-management framework.
- The Risk Committee should advise the Board on whether the investment policy is consistent with the FMI's general risk-management strategy and risk tolerance.
- The Board should assess the advantages and disadvantages of managing assets internally or outsourcing them to an external manager. The FMI retains full responsibility for any actions taken by its external manager.
- The FMI should establish criteria for the selection of an external manager.[21]

The FMI's investment policy should clearly identify those who are accountable for investment performance. The investment policy should also:

- Provide a clear explanation of the Board's delegated responsibility for investment decision making.
- Specify clear responsibilities for monitoring investment performance (against established benchmarks) and risk exposures (against limits or constraints). Procedures should be established to ensure that appropriate actions are taken when breaches occur, including possible reporting to the Board.
- Investment performance and key risk metrics should be reported to the Board at least quarterly.[22]

(ii) Investment strategy

The investment strategy chosen by an FMI should not allow the pursuit of profit to compromise its financial soundness. As outlined below, additional consideration should be given to the investment strategy governing assets held specifically for risk-management purposes (i.e. Principle 4-7 and Principle 15).

Investment objectives

The investment policy should include appropriate investment objectives for the various assets held for risk-management purposes. The stated expected return and risk tolerance of the investment objectives should reflect the:

- specific purpose of the assets;
- relative importance of the assets in the overall risk management of the FMI; and
- requirement within the PFMIs for FMIs to invest in instruments with minimal credit, market and liquidity risk (see the Appendix for the minimum standards of acceptable instruments).

The investment objectives should also help to determine the appropriate benchmarks for measuring investment performance.

Investment constraints

The importance of assets held for risk-management purposes warrants the use of investment constraints. It is paramount that an FMI have prompt access to these assets with minimal price impact to avoid interference with their primary use for risk management. Investment of these assets should, at a minimum, observe the following:

- To reduce concentration risk, no more than 20 per cent of total investments should be invested in municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5 per cent of total investments.
- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10 per cent of total investments. An FMI should not invest assets in the securities of its own affiliates. An FMI is not permitted to reinvest participant assets in a participant's own securities or those of its affiliates, as specified in Principle 16.

[21] At a minimum, external managers should have demonstrated past performance and expertise, as well as strong risk-management practices such as an internal audit function and processes to protect and segregate the FMI's assets.

[22] Investment performance may also be reported to a Board committee with special expertise to which the Board has delegated the authority to review investment performance (e.g., an Investment Committee).

- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

The investment constraints should be clearly stated in the investment policy in order to provide clear guidance for those responsible for investment decision making.[23]

Link to risk management

FMIs should account for the implications of investing assets on their broader risk-management practices. The following issues should be considered when investing assets held for risk management purposes:

- An FMI's process for determining whether sufficient assets are available for risk management should account for potential investment losses. For example, investing the assets available to a CCP to cover losses from a participant default could lose value in a default scenario, resulting in less credit-risk protection. An FMI should hold additional assets to cover potential losses from its investments held for risk-management purposes.

- An FMI should account for the implications of investing assets on its ability to effectively manage liquidity risk. In particular, identification of the FMI's available liquid resources should account for the investment of its own and participants' assets. For example, cash held at a creditworthy commercial bank would no longer be considered a qualifying liquid resource under Principle 7 if it were invested in the debt instrument of a private sector issuer.

- The investment of an FMI's own assets and those of its participants should not circumvent related risk management requirements. For example, the reinvestment of participants' collateral should still respect the FMI's collateral concentration limits applicable to those assets.

Appendix

For the purposes of Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they meet *each* of the following conditions:

1. Investments are debt instruments that are:

   a. securities issued by the Government of Canada;

   b. securities guaranteed by the Government of Canada;

   c. marketable securities issued by the United States Treasury;

   d. securities issued or guaranteed by a provincial government;

   e. securities issued by a municipal government;

   f. bankers' acceptances;
   g. commercial paper;

   h. corporate bonds; and

   i. asset backed securities that meet the following criteria: (1) sponsored by a deposit taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility, and (3) backed by assets of an acceptable credit quality.

2. The FMI employs a defined methodology to demonstrate that debt instruments have low credit risk. This methodology should involve more than just mechanistic reliance on credit risk assessments by an external party.

3. The FMI employs limits on the average time-to-maturity of the portfolio based on relevant stress scenarios in order to mitigate interest rate risk exposures.

4. Instruments have an active market for outright sales or repurchase agreements, including in stressed conditions.

[23] The use of investment vehicles where investments are held indirectly (e.g. mutual funds and exchange-traded funds) should not result in breaches to the investment constraints listed.

5. Reliable price data on debt instruments are available on a regular basis.

6. Instruments are freely transferable and settled over a securities settlement system compliant with the PFMIs.

– PFMI Principle 23: Disclosure of rules, key procedures, and market data

Box 23.1:
Joint Supplementary Guidance –
Disclosure of Rules, Key Procedures and Market Data

Context

The PFMIs state that FMIs should provide sufficient information to their participants and prospective participants to enable them to clearly understand the risks and responsibilities of participating in the system. This note provides additional guidance for Canadian FMIs to meet the components of the disclosure principle related to: (i) public qualitative disclosure and (ii) public quantitative disclosure.

Requirements included in the PFMIs

Principle 23 outlines requirements for disclosure to participants as well as the general public. In addition, specific disclosure requirements are listed in the principles to which they pertain.

The following text has been extracted directly from the PFMIs, Principle 23, key consideration 5:

> *An FMI should complete regularly and disclose publicly responses to the CPMI-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.*

To supplement key consideration 5, CPMI-IOSCO published two documents: the Disclosure framework for financial market infrastructures (the Disclosure Framework),[24] and the Public quantitative disclosure standards for central counterparties (the Quantitative Disclosure Standards).[25] This note will refer to the disclosures that result from completing the templates provided in these documents as the Qualitative Disclosure and the Quantitative Disclosure, respectively.

Supplementary guidance for Canadian FMIs designated by the Bank of Canada

On its public website, an FMI should publish its Qualitative Disclosure and Quantitative Disclosure, as well as any other public disclosure requirements specified in Principle 23 or in other principles. Any public disclosure should be written for an audience with general knowledge of the financial sector.

(a) Qualitative disclosure (*Applies to all types of FMIs*)

A Qualitative Disclosure should provide the public with a high-level understanding of an FMI's governance, operation and risk-management framework.

Summary narrative disclosure

In part four of the Disclosure Framework, FMIs are required to provide a summary narrative of their observance of the Principles. FMIs should provide these narratives at the principle level, and are not required to address key considerations or to provide answers to the detailed questions listed in Section 5 of the Disclosure Framework report. Instead, the narrative disclosure should focus on providing a broad audience with an understanding of how each Principle applies to the FMI, and what the FMI has done or plans to do to ensure its observance.

Timing

FMIs should update and publish their Qualitative Disclosures following significant changes[26] to the system or its environment, or at least every two years. Only the most current Qualitative Disclosure needs to be maintained on the FMI's website.

[24] The Disclosure Framework is part of a document published in December 2012, titled "Principles for financial market infrastructures: Disclosure framework and Assessment methodology", and is available at http://www.bis.org/press/p121214.htm.

[25] This document is available at http://www.bis.org/cpmi/publ/d125.pdf.

[26] Updated Qualitative Disclosures should be published subsequent to regulatory approval, and prior to the effective date of the significant

(b) Quantitative disclosure (*Applies only to CCPs*)

Quantitative Disclosures specify the set of key quantitative information required in the Disclosure Framework. They should follow the format provided by CPMI-IOSCO, allowing stakeholders, including the general public, to easily evaluate and compare FMIs.

Currently, CPMI-IOSCO has developed public quantitative disclosure standards only for CCPs. The following guidance applies only to CCPs; Canadian authorities will provide further guidance on the quantitative disclosure requirements of FMIs other than CCPs when such standards have been developed.

Context

Where a general audience may need additional context to properly interpret the data, it should be provided in explanatory notes or addressed in the CCP's Qualitative Disclosure. CCPs are encouraged to provide charts, background information and additional documentation where it may aid the reader's understanding.

Comparability

Regulators recognize that, given the different structures and arrangements among CCPs, an overly homogenized presentation format could lead to inaccurate comparability. Subject to regulatory approval, a CCP may provide analogous data in place of a disclosure requirement that is not applicable to its business or representative of the risks it faces. The CCP must justify to authorities the necessity and selection of the alternative metric.[27] If granted approval, the CCP must provide the original data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain in each public disclosure why an alternative metric was chosen.

Confidentiality

A CCP's public disclosure obligation does not release it from its confidentiality duties. Where a required disclosure item could reveal (or allow knowledgeable parties to deduce) commercially sensitive information about individual clearing members, clients, third-party contractors or other relevant stakeholders, or where disclosure may amount to a breach of laws or regulations for maintaining market integrity, the data must be omitted. In this case, the CCP must justify the omission to authorities.[28] If granted approval, the CCP must provide the confidential data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain the reason for the omission in each public disclosure.

Timing

Quantitative Disclosures should be reported quarterly, and updated with the frequency specified in the Quantitative Disclosure Standards.[29] Even though some required data may already be publicly disclosed in other reports, or may not have changed from the previous quarter, the data should still be included in the disclosure matrix for completeness and consistency. Data should be publicly disclosed no later than 60 days after the end of each fiscal quarter, and should remain available on its website for at least three years so that trends can be examined.

change. Significant changes can include, but are not limited to: (i) any changes to the FMI's constating documents, bylaws, corporate governance or corporate structure; (ii) any material change to an agreement between the FMI and its participants or to the FMI's rules, operating procedures, user guides, or manuals or the design, operation or functionality of its operations and services; and (iii) the establishment of, or removal or material change to, a link, or commencing or ceasing to engage in a business activity.

[27] If the authorities are satisfied with the justification, the CCP need not resubmit the substitution unless the CCP's structure or arrangements change the applicability of the original disclosure requirement, or the CCP wishes to change its substituted metric. CCPs are responsible for informing authorities of any changes that could affect the applicability of the originally required or substituted data.

[28] If the authorities are satisfied with the justification, the CCP need not resubmit the omission unless the circumstances change the confidentiality of the disclosure. CCPs are responsible for informing the authorities of any changes that could affect the confidentiality of such data.

[29] According to the Quantitative Disclosure Standards, items under general business risk should be updated annually, and all other items should be updated on a quarterly basis.

ANNEX E
LOCAL MATTERS

1. Authority for Instrument

The proposed amendments to the Instrument would be made pursuant to the rule-making authority in the following provisions of the *Securities Act* (Ontario) (Act): (i) paragraph 11 of subsection 143(1) of the Act allows the OSC to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives, including rules relating to clearing and settling trades; and (ii) paragraph 12 of subsection 143(1) of the Act allows the OSC to make rules regulating recognized clearing agencies, including prescribing requirements in respect of the review or approval by the OSC of any by-law, rule, procedure, interpretation or practice and prescribing restrictions on its ownership, control and direction.

2. Alternatives considered

The alternative to the Proposed Amendments would be not to proceed with making the amendments to the Instrument or changes to the Companion Policy. We do not believe the Proposed Amendments would impose any additional burden on clearing agencies, or to market participants more broadly. Overall, the Proposed Amendments are relatively minor.

3. Unpublished materials

In proposing amendments to the Instrument and changes to the Companion Policy, the CSA did not rely on any significant unpublished study, report, or other material.

4. Anticipated costs and benefits

Given the nature of the Proposed Amendments, we do not believe there will be any meaningful costs to clearing agencies or market participants. Implementing the Proposed Amendments, will, on the other hand, better align NI 24-102 with international standards, as well as improve its clarity and readability.

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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:
IA Clarington Money Market Fund
IA Clarington Bond Fund
IA Clarington Core Plus Bond Fund
IA Clarington Emerging Markets Bond Fund
IA Clarington Global Bond Fund
IA Clarington Inhance Bond SRI Fund
IA Clarington Real Return Bond Fund
IA Clarington Short-Term Bond Fund
IA Clarington Short-Term Income Class
IA Clarington Strategic Corporate Bond Fund
IA Clarington Strategic Corporate Bond Class
IA Clarington Tactical Bond Fund
IA Clarington Tactical Bond Class
IA Clarington Floating Rate Income Fund
IA Clarington U.S. Dollar Floating Rate Income Fund
IA Clarington Global Yield Opportunities Fund
IA Clarington Inhance Monthly Income SRI Fund
IA Clarington Monthly Income Balanced Fund
IA Clarington Strategic Income Fund
IA Clarington Strategic Income Class
IA Clarington Tactical Income Fund
IA Clarington Tactical Income Class
IA Clarington Yield Opportunities Fund
IA Clarington Canadian Balanced Fund
IA Clarington Canadian Balanced Class
IA Clarington Focused Balanced Fund
IA Clarington Focused Balanced Class
IA Clarington Growth & Income Fund
IA Clarington Inhance Balanced SRI Portfolio
IA Clarington Inhance Conservative SRI Portfolio
IA Clarington Inhance Growth SRI Portfolio
IA Clarington Canadian Conservative Equity Fund
IA Clarington Canadian Conservative Equity Class
IA Clarington Canadian Dividend Fund
IA Clarington Canadian Growth Class
IA Clarington Canadian Leaders Class
IA Clarington Canadian Small Cap Fund
IA Clarington Canadian Small Cap Class
IA Clarington Dividend Growth Class
IA Clarington Focused Canadian Equity Class
IA Clarington Inhance Canadian Equity SRI Class
IA Clarington North American Opportunities Class
IA Clarington Strategic Equity Income Fund
IA Clarington Strategic Equity Income Class
IA Clarington Global Multi-Asset Fund (formerly IA Clarington Global Growth & Income Fund)
IA Clarington Global Allocation Fund (formerly IA Clarington Global Tactical Income Fund)
IA Clarington Global Allocation Class (formerly IA Clarington Global Tactical Income Class)
IA Clarington Strategic U.S. Growth & Income Fund
IA Clarington Global Equity Fund
IA Clarington Global Opportunities Fund
IA Clarington Global Opportunities Class
IA Clarington Global Value Fund
IA Clarington Inhance Global Equity SRI Class
IA Clarington Focused U.S. Equity Class
IA Clarington Sarbit Activist Opportunities Class
IA Clarington Sarbit U.S. Equity Fund
IA Clarington Sarbit U.S. Equity Class (Unhedged)
IA Clarington U.S. Dividend Growth Fund
IA Clarington U.S. Dividend Growth Registered Fund
Distinction Balanced Class
Distinction Bold Class
Distinction Conservative Class
Distinction Growth Class
Distinction Prudent Class
IA Clarington Balanced Portfolio
IA Clarington Conservative Portfolio
IA Clarington Growth Portfolio
IA Clarington Maximum Growth Portfolio
IA Clarington Moderate Portfolio
Forstrong Global Strategist Balanced Fund
Forstrong Global Strategist Growth Fund
Forstrong Global Strategist Income Fund
Principal Regulator – Quebec
Type and Date:
Amended and Restated to Final Simplified Prospectus dated October 11, 2018
Received on October 11, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
IA Clarington Investments Inc
Project #2766675

Issuer Name:
Evolve Active Global Fixed Income ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 11, 2018
NP 11-202 Preliminary Receipt dated October 12, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Evolve Funds Group Inc.
Project #2830246

Issuer Name:
Franklin Bissett Canadian Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to Annual Information Form dated October 15, 2018
Received on October 15, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Franklin Templeton Investments Corp.
Promoter(s):
N/A
Project #2758148

Issuer Name:
Mackenzie Maximum Diversification Canada Index ETF
Mackenzie Maximum Diversification US Index ETF
Mackenzie Maximum Diversification Developed Europe Index ETF
Mackenzie Maximum Diversification All World Developed Index ETF
Mackenzie Maximum Diversification Emerging Markets Index ETF
Mackenzie Maximum Diversification All World Developed ex North America Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 10, 2018
Received on October 10, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2756525

Issuer Name:
Mackenzie Canadian Short Term Fixed Income ETF
Mackenzie Core Plus Canadian Fixed Income ETF
Mackenzie Floating Rate Income ETF
Mackenzie Global High Yield Fixed Income ETF
Mackenzie Unconstrained Bond ETF
Mackenzie Global Leadership Impact ETF
Mackenzie Ivy Global Equity ETF
Mackenzie Portfolio Completion ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 10, 2018
Received on October 10, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2730192

Issuer Name:
Ninepoint Core Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 10, 2018
Received on October 10, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners L.P.
Project #2793186

Issuer Name:
Russell Investments Multi-Factor Global Balanced
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 9, 2018
NP 11-202 Preliminary Receipt dated October 12, 2018
Offering Price and Description:
Series B, B-5, F, F-5, O and O-5 Units
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #2830077

Issuer Name:
1832 AM Investment Grade U.S. Corporate Bond Pool
Scotia Aria Equity Build Portfolio
Scotia Aria Equity Defend Portfolio
Scotia Aria Equity Pay Portfolio
Scotia Private Diversified International Equity Pool
Scotia Private International Growth Equity Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 9, 2018
NP 11-202 Receipt dated October 11, 2018
Offering Price and Description:
Series I, Premium Series, Premium TL Series, Premium T Series and Premium TH Series units
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Promoter(s):
1832 Asset Management G.P. Inc.
Project #2812894

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
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
Series A, Series B, Series JDSC, Series JNL, Series TDSC, Series TNL, Series TJDSC, Series TJNL, Series TU and Series U Shares
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. Investment Management, Ltd.
Project #2776337

Issuer Name:
Investors Canadian Money Market Fund
Investors U.S. Money Market Fund
Investors Mortgage and Short Term Income Fund
Investors Canadian Bond Fund
Investors Canadian Corporate Bond Fund
Investors Global Bond Fund
Investors Canadian High Yield Income Fund
IG Mackenzie Income Fund
IG Mackenzie Floating Rate Income Fund
IG Putnam U.S. High Yield Income Fund
IG Putnam Emerging Markets Income Fund
Investors Mutual of Canada
Investors Dividend Fund
Investors U.S. Dividend Registered Fund
Investors Global Dividend Fund
IG Beutel Goodman Canadian Balance Fund
IG CI Canadian Balanced Fund
IG Mackenzie Ivy Canadian Balanced Fund
IG Mackenzie Strategic Income Fund
Investors Fixed Income Flex Portfolio (to be known as IG Core Portfolio – Income)
Investors Global Fixed Income Flex Portfolio (to be known as IG Core Portfolio – Global Income)
Investors Canadian Large Cap Value Fund
Investors Canadian Equity Fund
Investors Canadian Growth Fund
Investors Canadian Small Cap Fund
Investors Canadian Small Cap Growth Fund
Investors Quebec Enterprise Fund
IG Fiera Canadian Small Cap Fund
IG Beutel Goodman Canadian Equity Fund
IG Beutel Goodman Canadian Small Cap Fund
Investors Summa SRI™ Fund
IG FI Canadian Equity Fund
IG Mackenzie Dividend Growth Fund
IG Mackenzie Canadian Equity Growth Fund
IG Franklin Bissett Canadian Equity Fund
Investors Canadian Natural Resource Fund
Investors Canadian Equity Income Fund
Investors Low Volatility Canadian Equity Fund
Investors Core U.S. Equity Fund
Investors U.S. Large Cap Value Fund
Investors U.S. Dividend Growth Fund
Investors U.S. Opportunities Fund
IG AGF U.S. Growth Fund
Investors Global Fund
Investors North American Equity Fund
Investors European Equity Fund
Investors European Mid-Cap Equity Fund
Investors Pacific International Fund
Investors Pan Asian Equity Fund
IG Mackenzie Ivy European Fund
IG Mackenzie Cundill Global Value Fund
IG AGF Global Equity Fund
Investors Low Volatility Global Equity Fund
Investors Global Science & Technology Fund
Investors Global Financial Services Fund
Investors Global Real Estate Fund
Allegro Income Portfolio (to be known as IG Core Portfolio –Income Focus)
Allegro Income Balanced Portfolio (to be known as IG Core Portfolio –Income Balanced)
Allegro Balanced Portfolio (to be known as IG Core Portfolio – Balanced)
Allegro Balanced Growth Portfolio (to be known as IG Core Portfolio – Balanced Growth)
Allegro Growth Portfolio (to be known as IG Core Portfolio –Growth)
Maestro Income Balanced Portfolio (to be known as IG Managed Risk Portfolio
Maestro Balanced Portfolio (to be known as IG Managed Risk Portfolio – Balanced)
Investors Growth Portfolio
Investors Income Plus Portfolio
Investors Growth Plus Portfolio
Investors Retirement Growth Portfolio
Investors Retirement Plus Portfolio
Investors Cornerstone Portfolio (formerly known as Investors Cornerstone II Portfolio)
IG T. Rowe Price U.S. Large Cap Equity Fund (formerly known as IG FI U.S. Large Cap Equity Fund)
IG Putnam U.S. Growth Fund
IG Putnam Low Volatility U.S. Equity Fund
Alto Monthly Income Portfolio (to be known as IG Managed Payout Portfolio)*
Alto Monthly Income and Growth Portfolio (to be known as IG Managed Payout Portfolio with Growth)
Alto Monthly Income and Enhanced Growth Portfolio (to be known as IG Managed Payout Portfolio with Enhanced Growth)
Alto Monthly Income and Global Growth Portfolio
Maestro Growth Focused Portfolio (to be known as IG Managed Risk Portfolio – Growth Focus)
Principal Regulator – Manitoba
Type and Date:
Amended and Restated to Final Simplified Prospectus dated September 20, 2018
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
Series A, Series B, Series C, Series TNL, Series TDSC, Series TC, Series JDSC, Series JNL, Series TJDSC, Series TJNL, Series U, Series Tu, Series A-RDSP, Series B-RDSP, Series JDSC-RDSP, and Series JNL-RDSP Units
Underwriter(s) or Distributor(s):
Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. Investment Management, Ltd.
Project #2776318

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
NP 11-202 Receipt dated October 12, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
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.
Project #2774740

Issuer Name:
Brompton Flaherty & Crumrine Investment Grade Preferred ETF
Brompton Global Dividend Growth ETF
Brompton North American Financials Dividend ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 5, 2018
NP 11-202 Receipt dated October 10, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Brompton Funds Limited
Project #2809968

Issuer Name:
Cambridge Canadian Long-Term Bond Pool
Signature Systematic Yield Pool (formerly Signature Option Income Pool)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 11, 2018
Offering Price and Description:
Class I units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
CI Investments Inc.
Project #2818804

Issuer Name:
CIBC Multi-Asset Absolute Return Strategy
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 11, 2018
Offering Price and Description:
Series A, Series F, Series S and Series O Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
CIBC Asset Management Inc.
Project #2786166

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
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2743212

Issuer Name:
Hamilton Capital Canadian Bank Variable-Weight ETF (formerly Hamilton Capital Canadian Bank Dynamic-Weight ETF)
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 4, 2018
NP 11-202 Receipt dated October 11, 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
NP 11-202 Receipt dated October 10, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2799066

Issuer Name:
iProfile Canadian Equity Pool
iProfile U.S. Equity Pool
iProfile International Equity Pool
iProfile Emerging Markets Pool
iProfile Fixed Income Pool
iProfile Canadian Equity Class
iProfile U.S. Equity Class
iProfile International Equity Class
iProfile Emerging Markets Class
Investors Canadian Money Market Class
Principal Regulator – Manitoba
Type and Date:
Amended and Restated to Final Simplified Prospectus dated September 20, 2018
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
Series I and Series TI Units and Series I and Series TI Shares
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. Investment Management, Ltd.
Project #2776406

Issuer Name:
Manulife Global Thematic Opportunities Class
Manulife Global Thematic Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 12, 2018
NP 11-202 Receipt dated October 15, 2018
Offering Price and Description:
Advisor Series, Series F, Series FT6 and Series T6 Securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Manulife Asset Management Limited
Project #2810200

Issuer Name:
Ninepoint Diversified Bond Fund (formerly, Sprott Diversified Bond Fund)
Ninepoint Energy Fund (formerly, Sprott Energy Fund)
Ninepoint Global Infrastructure Fund (formerly, Sprott Global Infrastructure Fund)
Ninepoint Global Real Estate Fund (formerly, Sprott Global Real Estate Fund)
Ninepoint Gold and Precious Minerals Fund (formerly, Sprott Gold and Precious Minerals Fund
Ninepoint Short-Term Bond Fund (formerly, Sprott Short-Term Bond Fund)
Ninepoint UIT Alternative Health Fund (formerly UIT Alternative Health Fund)
Ninepoint International Small Cap Fund (formerly, Sprott International Small Cap Fund)
Ninepoint Concentrated Canadian Equity Fund (formerly, Sprott Concentrated Canadian Equity Fund)
Ninepoint Diversified Bond Class (formerly, Sprott Diversified Bond Class)
Ninepoint Real Asset Class (formerly, Sprott Real Asset Class)
Ninepoint Resource Class (formerly, Sprott Resource Class)
Ninepoint Short-Term Bond Class (formerly, Sprott Short-Term Bond Class)
Ninepoint Silver Equities Class (formerly, Sprott Silver Equities Class)
Ninepoint Enhanced Balanced Class (formerly, Sprott Enhanced Balanced Class)
Ninepoint Enhanced Balanced Fund (formerly, Sprott Enhanced Balanced Fund)
Ninepoint Enhanced Equity Class (formerly, Sprott Enhanced Equity Class)
Ninepoint Enhanced U.S. Equity Class (formerly, Sprott Enhanced U.S. Equity Class)
Ninepoint Focused Global Dividend Class (formerly, Sprott Focused Global Dividend Class)
Ninepoint Focused U.S. Dividend Class (formerly, Sprott Focused U.S. Dividend Class)
Principal Regulator – Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated October 1, 2018
NP 11-202 Receipt dated October 10, 2018
Offering Price and Description:
offering new series PTF Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners LP
Project #2745066

Issuer Name:
Scotia Conservative Income Fund
Scotia Private Global High Yield Pool
Scotia Diversified Monthly Income Fund
Scotia Private Emerging Markets Pool
Scotia Private Global Equity Pool
Scotia Private Global Infrastructure Pool
Scotia Selected Income Portfolio
Scotia Selected Balanced Income Portfolio
Scotia Selected Balanced Growth Portfolio
Scotia Selected Growth Portfolio
Scotia Selected Maximum Growth Portfolio
Pinnacle Balanced Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated September 27, 2018
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Scotia Securities Inc.
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2680356

NON-INVESTMENT FUNDS

Issuer Name:
Ag Growth International Inc.
Principal Regulator – Manitoba
Type and Date:
Preliminary Short Form Prospectus dated October 10, 2018
NP 11-202 Preliminary Receipt dated October 10, 2018
Offering Price and Description:
$100,245,000.00 – 1,630,000 Common Shares
Price: $61.50 per Common Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
HSBC SECURITIES (CANADA) INC.
CORMARK SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
–
Project #2828352

Issuer Name:
CannBioRex Pharmaceuticals Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 9, 2018
NP 11-202 Preliminary Receipt dated October 10, 2018
Offering Price and Description:
Up to $7,000,000.00 – Up to * Common Shares
Price: $* per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2829461

Issuer Name:
FireFox Gold Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 10, 2018
NP 11-202 Preliminary Receipt dated October 11, 2018
Offering Price and Description:
Minimum Offering: $3,000,000.00 (6,000,000 Offered Units)
Maximum Offering: $5,000,000.00 (10,000,000 Offered Units)
Price: $0.50 per Offered Unit
Underwriter(s) or Distributor(s):
PI Financial Corp.
Canaccord Genuity Corp.
M Partners Inc.
Promoter(s):
Carl Lofberg
Patrick Highsmith
Project #2829969

Issuer Name:
Maricann Group Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 15, 2018
NP 11-202 Preliminary Receipt dated October 15, 2018
Offering Price and Description:
$50,077,500.00 – 30,350,000 Units
Price: $1.65 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Haywood Securities Inc.
Altacorp Capital Inc.
GMP Securities L.P.
Promoter(s):
–
Project #2830024

Issuer Name:
MLI Marble Lending Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 4, 2018
NP 11-202 Preliminary Receipt dated October 9, 2018
Offering Price and Description:
Offering of a Minimum of 13,333,334 Units ($4,000,000.00) up to a
Maximum of 20,000,000 Units ($6,000,000.00)
Price: $0.30 per Unit
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Michele Marrandino
Project #2828969

Issuer Name:
NorthWest Healthcare Properties Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 11, 2018
NP 11-202 Preliminary Receipt dated October 11, 2018
Offering Price and Description:
C$1,000,000,000.00 – Units, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2830090

Issuer Name:
Pascal Biosciences Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 10, 2018
NP 11-202 Preliminary Receipt dated October 11, 2018
Offering Price and Description:
$30,000,000.00 – Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2829967

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:
Pinehurst Capital II 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 #2828356

Issuer Name:
PLB CAPITAL CORP.
Principal Regulator – British Columbia
Type and Date:
Preliminary CPC Prospectus dated October 15, 2018
NP 11-202 Receipt dated October 15, 2018
Offering Price and Description:
$200,000.00 – 2,000,000 Common Shares (the "Common Share")
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Giuseppe Perone
David Loretto
Michael Butler
Project #2830837

Issuer Name:
Pulse Oil Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 15, 2018
NP 11-202 Receipt dated October 15, 2018
Offering Price and Description:
$* – * Flow-Through Shares and $* – * Units
Price: $* per Flow-Through Share and $* per Unit
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
–
Project #2830836

Issuer Name:
Tower One Wireless Corp
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 10, 2018
NP 11-202 Preliminary Receipt dated October 11, 2018
Offering Price and Description:
Up to $30,000,000.00 – Price: $* per Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
–
Project #2829881

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:
Xebec Adsorption Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated October 11, 2018
NP 11-202 Preliminary Receipt dated October 12, 2018
Offering Price and Description:
Up to $10,000,000.00 – Up to 13,333,333 Units
Price: $0.75 per Unit
Underwriter(s) or Distributor(s):
Beacon Securities Limited
Promoter(s):
–
Project #2830279

Issuer Name:
APPx Crypto Technologies Inc. (Formerly Appature Mobile Applications Inc.)
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 12, 2018
Offering Price and Description:
26,811,000 Common Shares on Exercise or Deemed Exercise of
26,811,000 Outstanding Special Warrants
Price Per Special Warrant: $0.10
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
Rahim Mohamed
Project #2782922

Issuer Name:
Automotive Properties Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 9, 2018
NP 11-202 Receipt dated October 9, 2018
Offering Price and Description:
$55,080,000.00 – 5,100,000 Units
Price: $10.80 per Offered Unit
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
893353 ALBERTA INC.
Project #2825129

Issuer Name:
BB1 Acquisition Corp.
Principal Regulator – Ontario
Type and Date:
Final CPC Prospectus dated October 5, 2018
NP 11-202 Receipt dated October 11, 2018
Offering Price and Description:
Offering: $500,000.00 or 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Stephen Shefsky
Project #2808419

Issuer Name:
Green Thumb Industries Inc. (formerly Bayswater Uranium Corporation)
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 10, 2018
Offering Price and Description:
$88,400,000.00
4,420,000 Subordinate Voting Shares
Price: $20.00 per Subordinate Voting Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Beacon Securities Limited
Cormark Securities Inc.
Echelon Wealth Partners Inc.
Eight Capital
Promoter(s):
–
Project #2825148

Issuer Name:
TFI International Inc.
Principal Regulator – Quebec
Type and Date:
Final Shelf Prospectus dated October 12, 2018
NP 11-202 Receipt dated October 12, 2018
Offering Price and Description:
$500,000,000.00 – Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities, Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2828913

Issuer Name:
The Supreme Cannabis Company, Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 11, 2018
NP 11-202 Receipt dated October 12, 2018
Offering Price and Description:
$90,000,000.00 – $90,000,000 aggregate principal amount of 6.0% Senior Unsecured Convertible Debentures
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:
VersaPay Corporation
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 10, 2018
Offering Price and Description:
$8,001,000.00 – 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

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Treegrove Investment Management Inc.	Portfolio Manager	October 11, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Alpha Exchange Inc. – Introduction of Alpha Liquidity Provider Program – Notice of Commission Approval

ALPHA EXCHANGE INC.

NOTICE OF APPROVAL

INTRODUCTION OF ALPHA LIQUIDITY PROVIDER PROGRAM

In accordance with the *Process for the Review and Approval of the Information Contained in Form 21-101F1 and the Exhibits Thereto* (Protocol), on October 12, 2018, the Commission approved significant changes to Form 21-101F1 for Alpha Exchange Inc. (TSX Alpha) reflecting the introduction of the Alpha Liquidity Provider Program.

TSX Alpha's Notice and Request for Comment on the proposed program was published on the Commission's website and in the Commission's Bulletin on August 30, 2018, at (2018), 41 OSCB 6957. No comment letters were received.

The proposed program is expected to take effect on November 1, 2018.

13.3 Clearing Agencies

13.3.1 CDS – Material Amendments to CDS Rules Related to the Introduction of the China Bond Link Service – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES RELATED TO THE INTRODUCTION OF THE CHINA BOND LINK SERVICE

The Ontario Securities Commission is publishing for 30 day public comment material amendments to the CDS Rules relating to the introduction of a new service called China Bond Link (CBL).

The purpose of the proposed rule amendments is to allow for the set up of a unilateral fixed income clearing and settlement link (the CBL) with the Shanghai Clearing House (SHCH).

The comment period ends on November 16, 2018.

A copy of the CDS Notice is published on our website at http://www.osc.gov.on.ca.

Index

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