The Ontario Securities Commission

OSC Bulletin

January 24, 2019

Volume 42, Issue 4

(2019), 42 OSCB

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

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Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

Fax: 416-593-2318

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

ISSN 0226-9325

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2075 Kennedy Road
Toronto, Ontario
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Customer Support
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Notices

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1.4.1 Katanga Mining Limited

FOR IMMEDIATE RELEASE
January 16, 2019

KATANGA MINING LIMITED

TORONTO – The Commission issued Confidential Decisions in the above named matter. Pursuant to the Confidential Order dated August 9, 2018, the Confidential Decisions are being published today.

A copy of the Confidential Order dated August 9, 2017, Confidential Order dated October 18, 2017, Confidential Reasons for Decision dated October 18, 2017 and Confidential Order dated August 9, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.2 Larry Keith Davis

FOR IMMEDIATE RELEASE
January 16, 2019

LARRY KEITH DAVIS,
File No. 2017-6

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

A copy of the Reasons and Decision and the Order dated January 15, 2019 are available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.3 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
January 17, 2019

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

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on January 18, 2019 at 10:00 a.m. will not proceed as scheduled.

The hearing will continue on February 25, 2019 at 10:00 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1-877-785-1555 (Toll Free)

1.4.4 Donna Hutchinson et al.

FOR IMMEDIATE RELEASE
January 17, 2019

DONNA HUTCHINSON,
CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDERS and
PATRICK JELF CARUSO,
File No. 2017-54

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on January 18, 2019 at 8:30 a.m. will not proceed as scheduled.

The Motion Hearing will proceed on January 22, 2019 at 10:00 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Mackenzie Financial Corporation and Mackenzie Credit Absolute Return Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from issuer concentration restrictions in subsection 2.1(1.1) of National Instrument 81-102 Investment Funds to permit a global fixed income fund that is an alternative mutual fund to invest more than 20% of its net asset in securities issued or guaranteed by a foreign government of supranational agency – relief subject the usual conditions

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1.1), 19.1.

January 8, 2019

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

AND

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

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
MACKENZIE CREDIT ABSOLUTE RETURN FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), for an exemp-tion pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), from section 2.1 of NI 81-102 (the **Concentration Restriction**), to permit the Fund to invest up to 35% of its net assets, taken at market value at the time of purchase, in evidences of indebtedness of any one issuer (such evidences of indebtedness are collectively referred to as **Foreign Government Securities**) if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments other than the government of Canada, or the government of a jurisdiction in Canada and are rated "AAA" by Standard & Poor's or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

Background Facts

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office on Toronto, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in all other Canadian provinces and territories and as an investment fund manager in Newfoundland and Labrador and Québec.

3. The Filer is the manager, trustee and portfolio manager of the Fund.

4. The Fund will be an open-ended mutual fund trust established under the laws of Ontario. The Fund will be an alternative mutual fund under NI 81-102.

5. Securities of the Fund will be offered by simplified prospectus (a **Simplified Prospectus**) filed in all the provinces and territories in Canada and, accordingly the Fund will be a reporting issuer in each province and territory of Canada. A preliminary Simplified Prospectus was filed for the Fund via SEDAR in all the provinces and territories on November 30, 2018.

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

7. The Fund's investment objective will be to seek to provide a positive total return over a market cycle, regardless of market conditions or general direction. The Fund will seek to add value through investments across multiple geographic sectors, and parts of the corporate capital structure.

8. To achieve the investment objective of the Fund, it is expected that the investment team will employ a variety of fundamentally-driven and systematically-driven investment strategies. The Fund will invest in long and short positions in corporate and government fixed-income securities and instruments of issuers anywhere in the world.

9. Although the Fund aims to invest primarily in a diversified portfolio of fixed-income securities, the Fund's portfolio managers seek the discretion to gain exposure to any one issuer of Foreign Government Securities more than the Concentration Restriction.

10. The portfolio managers of the Fund will employ fundamental credit analysis in selecting fund's holdings with the flexibility to take advantage of relative value opportunities that exist in the global fixed income space. This flexibility extends across structures, sectors, currencies and countries. In following this style, in conjunction with fundamental investment analysis, there may be periods where the portfolio managers believe that Foreign Government Securities are better suited to the Fund's investment objectives.

11. Allowing the Fund to hold highly rated fixed-income securities issued by governments will enable the Fund to preserve capital in foreign markets during adverse market conditions, to have access to assets with minimal credit risk and will enable the portfolio manager to assess its views on interest rates and duration.

12. The increased flexibility to hold Foreign Government Securities may also yield higher returns than Canadian shorter-term government fixed-income alternatives.

13. Subsection 2.1(1.1) of NI 81-102 prohibits the Fund from purchasing a security of an issuer, other than a "government security" as defined in NI 81-102, if immediately after the purchase more than 20% of the net asset value of the fund, taken at market value at the time of the purchase, would be invested in securities of the issuer.

14. The Foreign Government Securities are not "government securities" as such term is defined in NI 81-102.

15. The Filer believes that the ability to purchase Foreign Government Securities more than the limit in subsection 2.1(1.1) of NI 81-102 will better enable the Fund to achieve its fundamental investment objectives, thereby benefitting the Fund's investors.

16. The Fund will only purchase Foreign Government Securities if the purchase is consistent with the Fund's fundamental investment objectives.

17. The Simplified Prospectus for the Fund will disclose the risks associated with concentration of net assets of the Fund in securities of a limited number of issuers.

18. The Fund seeks the Requested Relief to enhance its ability to pursue and achieve its investment objectives.

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:

1. any security that may be purchased under the Requested Relief is traded on a mature and liquid market;

2. the acquisition of the securities purchased pursuant to this decision is consistent with the fundamental investment objectives of the Fund;

3. the Simplified Prospectus of the Fund discloses the additional risk associated with the concen-tration of the net asset value of the Fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the Fund has so invested and the risks, including foreign exchange risks, of investing in the country in which the issuer is located; and

4. the Simplified Prospectus of the Fund discloses, in the investment strategies section, a summary of the nature and terms of the Requested Relief, along with the conditions imposed and the type of securities covered by this decision.

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

2.1.2 Scotia Capital Inc. et al.

Headnote

Under paragraph 4.1(1)(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual acts as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned firm. The Filers have sought relief from that prohibition. The firm employing the individual as a registered representative is an owner of the second registered firm and entitled to appoint a director to its board. The individual will have sufficient time to adequately serve both firms. The potential for conflicts of interest is significantly reduced compared to other similar arrangements because of the firms' business models; the first firm is a traditional investment dealer and the second firm operates as an alternative trading system under National Instrument 21-101 Marketplace Operation. The firms have policies in place to handle potential conflicts of interest. Relief from the prohibition has been granted.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 13.4, 15.1.

January 15, 2019

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
SCOTIA CAPITAL INC.
(SCI)

AND

CANDEAL.CA INC.
(CanDeal)

AND

OLA FREDRIK NILSSON

DECISION

Background

The principal regulator in the Jurisdiction has received an application from SCI and CanDeal (together, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restrictions in paragraph 4.1(1)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), pursuant to section 15.1 of NI 31-103, to permit Ola Fredrik Nilsson (the **Representative**) to be registered as a dealing representative of SCI while also acting as a director of CanDeal (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. SCI is a wholly-owned subsidiary of The Bank of Nova Scotia.

2. SCI is a corporation incorporated under the laws of Ontario and is registered under the Legislation as an investment dealer and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The principal regulator of SCI is the Ontario Securities Commission (**OSC**) because SCI's head office is located in Toronto, Ontario.

4. CanDeal is an Ontario corporation and is registered under the Legislation as an investment dealer and is a member of IIROC. CanDeal is regulated as an alternative trading system under National Instrument 21-101 *Marketplace Operation* (**NI 21-101**). The principal regulator of Can-Deal is the OSC because CanDeal's head office is located in Toronto, Ontario.

5. CanDeal operates an institutional multi-dealer to customer electronic trading platform and market data communications network (the **CanDeal System**). The CanDeal System is a vehicle through which institutional clients (**Clients**) access information, request bids and offers, and effect transactions with liquidity providing dealers (**Dealers**). CanDeal also offers market data, post-trade straight-through processing, trade reporting, and other support to its Dealers and Clients.

6. CanDeal Dealers and Clients currently effect transactions using the CanDeal System in Canadian fixed-income securities and interest rate swaps.

7. The CanDeal System employs request-for-quote (**RFQ**) electronic trading functionality for the execution of trades. The CanDeal System displays indicative quotes on fixed-income products that are made available on the CanDeal System. Transactions on the CanDeal System are initiated by an RFQ disseminated by a Client to between one and four Dealers. A Dealer to whom an RFQ is disseminated knows the number but not the identity of the Dealers to whom the RFQ is disseminated.

8. The CanDeal System permits a Dealer to view data relating to its own executed trades and certain aggregate data relating to all trades executed on the CanDeal System.

9. The aggregate data available to a Dealer permits the Dealer to know its share of total volume executed on the platform and its rank in terms of total volume executed by Dealers, but does not permit the Dealer to know the rank of or the volume executed by another Dealer on the platform. A Dealer may also access data as to the total volume inquired of by Clients in the aggregate under the RFQs and executed by Clients in the aggregate, in each case by each category of product made available on the CanDeal System.

10. The data that a Dealer may view relating to its own executed trades includes the total volume inquired of by the Dealer under RFQs received by it, the total and percentage of inquired volume represented by executed trades by that Dealer, the volume inquired of that was not quoted and the average time to respond to a quote. The Dealer may view such data for each Client with whom it has executed trades and may view the volume executed with each Client by product category and maturity range.

11. CanDeal is owned by TSX Inc. and six bank-owned investment dealers (each, a **Shareholder-Dealer**), which include SCI, RBC Dominion Securities Inc., CIBC World Markets Inc., TD Securities Inc., National Bank Financial Inc., and BMO Nesbitt Burns Inc.

12. Each Shareholder-Dealer is also a Dealer.

13. No functionality exists on the CanDeal System that could enable a Shareholder-Dealer to influence the actions of a Client to the benefit of that Shareholder-Dealer in relation to a trade.

14. No shareholder of CanDeal controls (as such term is interpreted in subsection 1.3(2) of NI 21-101) CanDeal.

15. CanDeal has no affiliates and, accordingly, is not affiliated with SCI, nor is SCI a related company of CanDeal within the meaning of the IIROC Dealer Member Rules.

16. CanDeal is governed by an executive management team, and a board of directors (**Board**) consisting of representatives from TSX Inc., each Shareholder-Dealer, CanDeal's Chief Executive Officer, and one independent member. The Board meets on a quarterly basis.

17. The Representative is registered as a dealing representative of SCI. The Representative is Managing Director & Global Head, Fixed Income Trading & Latin American Foreign Exchange, with responsibility for Global Fixed Income Trading, Latin American foreign exchange trading, derivatives valuation adjustments, government finance, securitization and fixed income sales in Europe and Asia. He has responsibility for the trading and market risk for all fixed income products globally and all fixed income, commodities and currency products in Latin America for SCI, The Bank of Nova Scotia and their foreign trading affiliates.

18. As a dealing representative of SCI, the Representative may access the data referred to in paragraphs 8 to 10 above, as well as data pertaining to those of SCI's trades or pending trades on the CanDeal System for which the Representative is responsible.

19. Neither a Dealer, nor a dealing representative, has access to any data relating to (i) the activity of any other identifiable Dealer on the CanDeal System or (ii) any identifiable Client other than in respect of the Dealer's or dealing representative's own trading activity with such Client.

20. In his role as dealing representative, the Representative has acquired comprehensive knowledge of the fixed-income trading environment and business, and, as such, is qualified to provide competent business counsel on issues relating to the institutional trading of fixed-income products and the institutional fixed-income markets generally.

21. The Representative has been nominated as a director of CanDeal.

22. It is anticipated that the Representative will spend four to six hours per quarter on CanDeal directorship duties. Accordingly, the Representative will have sufficient time and resources to adequately meet his obligations to both SCI and CanDeal. The Chief Compliance Officer and Ultimate Designated Person of each Filer will ensure that the Representative has sufficient time and resources to adequately serve each Filer and the clients of SCI.

23. Due to the Representative's fixed-income markets experience, there is no more suitable individual at SCI than the Representative to serve as SCI's representative on the CanDeal Board.

24. The day-to-day operations of CanDeal are carried out by the executive management and employees of CanDeal. The Representative will not have any role in the day-to-day operations of CanDeal.

25. The directors of CanDeal are subject to a comprehensive policy governing conflicts of interest (the **Policy**). The Policy specifically addresses the situation where a "nominee director", that is a director appointed by a Shareholder-Dealer, has a conflict of interest or duty arising from the concurrent fiduciary duties he or she owes to CanDeal and to the Shareholder-Dealer.

26. The Policy proceeds from the principle that a nominee director of CanDeal owes an unqualified fiduciary duty to CanDeal. The Policy enforces the principle by providing that, where the Board determines that a director has a conflict of duty, the Board will adopt a protocol for managing the conflict which must include provisions relating to:

    (a) whether the conflicted director must withdraw from Board meetings for the duration of any discussion on a relevant matter, and whether the Board may waive such a requirement;

    (b) whether, in light of applicable law or other relevant circumstances, the conflicted director may vote in connection with any Board decision on that matter; and

    (c) whether, subject to such restrictions as the Board may impose, the conflicted director may receive Board papers or other information which relates in any way to the subject-matter that gives rise to the conflict (**Information**). Where the Board decides under the protocol that the director may not receive Information, and the Board further decides that the conflict of duty is of such nature or sensitivity that it is not appropriate for the conflicted director to be made aware of the nature of the Information, the director will not be notified of the nature of the Information.

27. To further protect CanDeal, the Policy requires that clear guidelines be established relating to:

    (a) the circumstances in which Information may be passed on by a director to the Shareholder-Dealer who nominated him or her;

    (b) the right of CanDeal to place an embargo on Information which must not be passed on because of its sensitivity; and

    (c) acceptance by each Shareholder-Dealer of obligations of confidentiality in relation to any Information received.

28. SCI has appropriate compliance and supervisory policies and procedures to deal with any conflicts of interest that may arise as a result of the Representative being a director of CanDeal. The Representative is subject to these policies and procedures.

29. The Filers will be able to deal with any conflicts of interest that arise out of the Representative being a dealing representative of one firm and a director of the other firm, including supervising how the Representative will deal with these conflicts.

30. The potential for conflicts of interest or client confusion is mitigated by the following:

    (a) None of the Shareholder-Dealers, including SCI, is a competitor of CanDeal;

    (b) Members of the Board serve without remuneration;

    (c) The Representative will not be involved in the day-to-day operations of CanDeal;

    (d) No functionality exists on the CanDeal System that could enable a Shareholder-Dealer to influence the actions of a Client to the benefit of that Shareholder-Dealer in relation to a trade; and

    (e) At no time will CanDeal favour the interest of SCI as a result of the Representative being a member of its Board.

31. Neither SCI nor CanDeal is in default of securities, commodities or derivatives legislation in any Jurisdiction.

32. In the absence of the Exemption Sought, SCI would be prohibited under paragraph 4.1(1)(a) of NI 31-103 from permitting the Representative to act as a dealing representative of SCI and be a director of CanDeal.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the circumstances described above remain in place.

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

2.1.3 BMO Nesbitt Burns Inc. and BMO InvestorLine Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions. Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for their representatives, within a designated class, to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition. Due to the broader scope of this relief, the decision subject to a sunset clause to permit evaluation of the implementation of the dual registration of individuals.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

January 15, 2019

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

AND

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

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.
(BMO NB)

AND

BMO INVESTORLINE INC.
(BMO IL, and together with BMO NB, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), pursuant to section 15.1 of NI 31-103, to permit, for a period of seven years from the date of this decision, the Online Program Representatives (defined below) to each be registered as both a dealing representative of BMO NB and a dealing representative of BMO IL in order to allow those Online Program Representatives to service clients of either Filer who set up, or are considering setting up, an account with one or both of the online programs known as BMO SmartFolio™ and BMO InvestorLine adviceDirect™ (referred to collectively as the **Programs**) (the **Relief Sought**).

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

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

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

Interpretation

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

Representations

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

1. Each of the Filers is a corporation incorporated under the laws of Canada and has its head office located in Toronto, Ontario.

2. Each of the Filers is registered as an investment dealer in each of the Jurisdictions and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Filers are affiliates, as Bank of Montreal is the current indirect and ultimate beneficial owner of all of the outstanding voting securities of each Filer.

4. The Filers are not in default of any requirement of securities legislation in any Jurisdiction.

BMO Nesbitt Burns Inc. and BMO SmartFolio™

5. BMO NB is a full service investment dealer that is divided into two lines of business:

   a. Capital markets

   b. Retail

6. Within its retail business, BMO NB operates managed account programs pursuant to IIROC Rule 1300. Its most recent managed account program is known as BMO SmartFolio™, which was launched in early 2016 after BMO NB submitted the necessary business model change notice to IIROC. BMO SmartFolio™ is an online managed account program, sub-advised by BMO Asset Management Inc. (a registered investment fund manager and portfolio manager, and an affiliate of BMO NB) (**BMO AM**).

7. BMO SmartFolio™:

   (a) Offers five risk-based model portfolios, which are each actively managed by BMO AM: capital preservation, income, balanced, long term growth and equity growth.

   (b) Uses a computer-based analysis engine to determine, based on an applicant's New Account Application Form (the **NAAF**) which includes the online investor risk questionnaire, whether and which model portfolio is suitable.

   (c) Based on the discretion of BMO AM, and subject to BMO AM's standard of care as a portfolio manager, invests in exchange traded funds or mutual funds. Presently, BMO AM causes accounts of BMO SmartFolio™ to be invested in exchange traded funds that are managed by an affiliate of BMO NB – the BMO ETFs.

   (d) Allows applicants and clients to set up accounts entirely online, with certain dedicated BMO NB registered representatives available from 8:00 a.m. EST to 8:00 p.m. EST, Monday – Friday, by way of either online live-chat, telephone or email to review the clients' portfolio and answer questions during onboarding and thereafter for ongoing client service.

8. Presently certain BMO NB registered representatives, registered as dealing representatives, assist with onboarding and ongoing client service for BMO SmartFolio™, most of these representatives are located at a dedicated BMO NB branch and the others, who are designated as "Supervisors" (an approval category and not a category of registration) for the purposes of the account reviews required by IIROC rules (the **Program Supervisors**), are located at the BMO IL dedicated branch as set out in paragraph 15 (the **BMO NB Call Centre Representatives**). The Program Supervisors are also designated as "Supervisors" with IIROC for BMO IL accounts as described below.

9. The account opening process and supervision processes for BMO SmartFolio™ leverages off the existing processes of BMO NB. These processes will continue to be followed by BMO NB once the Relief Sought is granted, and will be unaffected by this decision, except that the BMO NB Call Centre Representatives, including the Program Supervisors, will also be registered, as applicable, with BMO IL (the Program Supervisors will continue to be designated as "Supervisors" with IIROC in respect of both Programs).

10. BMO NB has specific compliance policies and procedures that apply to BMO SmartFolio™.

BMO InvestorLine Inc. and BMO InvestorLine adviceDirect™

11. BMO IL is an investment dealer that operates two online client services:

    (a) BMO InvestorLine, which is an online self-directed investing platform that operates as a discount broker (order execution only) pursuant to applicable IIROC rules (**BMO IL Self-Directed**).

    (b) BMO InvestorLine adviceDirect™, which is a fee-based full service brokerage service that offers "advisory" (trading) accounts for clients and provides suitability recommendations through an online platform with the involvement of certain registered representatives of BMO IL. BMO InvestorLine adviceDirect™ is not a managed account program.

12. BMO InvestorLine adviceDirect™ was launched in 2012 by BMO IL after obtaining required technical exemptions from IIROC and from the OSC (as principal regulator). The decisions granting the relief to BMO IL to allow BMO InvestorLine adviceDirect™ to operate are:

    (a) *In the matter of BMO InvestorLine Inc.* Application concerning the proposed offering of adviceDirect – Exemption Order and Decision of the IIROC Board dated August 7, 2012; and

    (b) *In the matter of BMO InvestorLine Inc.* Decision of the OSC (as principal regulator) dated August 1, 2012.

    Based on BMO IL's self-assessment, BMO IL is in full compliance with the conditions to these decisions in respect of the operation of BMO InvestorLine adviceDirect™.

13. BMO InvestorLine adviceDirect™:

    (a) Offers four investor profiles: income profile, balanced profile, growth profile and an aggressive profile, each of which is described to an applicant during the application process. Each description includes a statement about time horizon and risk tolerance.

    (b) Uses a computer-based analysis engine of BMO InvestorLine adviceDirect™ to evaluate a client's portfolio holdings against his or her recommended investor profile and then provides securities recommendations (e.g. buy, hold or sell) directly to the client. A client's portfolio is analysed on four elements – ratings, asset allocation, risk and diversification.

    (c) Allows applicants and clients to set up accounts entirely online, with dedicated BMO IL registered representatives available from 8:00 a.m. EST to 8:00 p.m. EST, Monday – Friday, by way of either online live-chat or telephone to review the clients' portfolio and answer questions during onboarding and thereafter for ongoing client service.

14. BMO IL continues to follow the onboarding process and compliance procedures in respect of BMO InvestorLine adviceDirect™ as set out in the above-noted 2012 decisions.

15. Presently BMO IL registered representatives, registered as dealing representatives with BMO IL, are located in a dedicated BMO IL branch to assist with onboarding and ongoing client service for BMO InvestorLine adviceDirect™ (the **BMO IL Call Centre Representatives**). In addition, the Program Supervisors referred to in paragraph 8 are located at this branch and are designated as "Supervisors" with IIROC (an approval category and not a category of registration) for the purposes of the BMO InvestorLine adviceDirect™ account reviews required by IIROC rules.

16. There are other individuals who are also registered representatives (dealing representatives) with BMO IL, whose duties include general education and marketing of BMO IL services, as well as, with respect to BMO InvestorLine adviceDirect™ only, assisting with client inquiries, assisting with client onboarding and other registrable activities (the **BMO IL Marketing Representatives**). Certain of the BMO IL Marketing Representatives are designated as "Supervisors" with IIROC for BMO IL for the purposes of compliance with IIROC rules.

17. The Filers seek to have:

    (a) the BMO IL Call Centre Representatives also be registered as registered representatives (dealing representatives) of BMO NB for the purpose of acting as BMO NB Call Centre Representatives;

(b) the BMO IL Marketing Representatives, including the "Supervisors" referred to in paragraph 16, also be registered as registered representatives (dealing representatives) of BMO NB for the purpose of carrying out similar registrable services in respect of BMO SmartFolio™, as they do for BMO InvestorLine adviceDirect™; and

(c) the Program Supervisors, who are currently registered with BMO NB as registered representatives (dealing representatives), also be registered as registered representatives (dealing representatives) with BMO IL for the purpose of acting as BMO IL Call Centre Representatives.

18. The BMO IL dedicated branch is located adjacent to, and at the same address as, the BMO NB dedicated branch which services BMO SmartFolio™. BMO NB and BMO IL operate these branches as separate branches and they are separate business locations for the two entities. There is no public access to these branches and all communications with clients and prospective clients from these branches is exclusively conducted by telephone and electronic communications.

19. The account opening process and supervision for BMO InvestorLine adviceDirect™ (described in the 2012 decisions in paragraph 12 above) will continue to be followed by BMO IL and will be unaffected by the decision granting the Relief Sought.

20. BMO IL has specific compliance policies and procedures that apply to BMO InvestorLine adviceDirect™, which are in compliance with the conditions to the 2012 relief.

The Online Program Representatives

21. The BMO NB Call Centre Representatives and the BMO IL Call Centre Representatives (together the **Call Centre Representatives**, and individually, a **Call Centre Representative**) will have the following primary responsibilities, among other related duties, when dually registered with BMO NB and BMO IL (the **Call Centre Responsibilities**):

(a) provide Program information to clients and prospective clients, upon request;

(b) provide client and prospective client onboarding assistance, upon request;

(c) review know-your-client (**KYC**) information provided by clients and prospective clients in online NAAFs, including carrying out any required discussions with clients and prospective clients;

(d) conduct suitability assessments of the trading recommendations and suggested investor profiles generated by the Programs' respective computer-based analysis engines;

(e) approve all of the following: new client accounts based on the NAAF, any client discussions and the above-noted suitability assessments.

22. The BMO IL Marketing Representatives will have the following primary responsibilities, among other related duties, in respect of the Programs when dually registered with BMO NB and BMO IL (the **Marketing Responsibilities**):

(a) provide educational, non-client specific information about the Programs, primarily through seminars, in-person branch visits, and small group sessions, to ensure clients or prospective clients, and other employees of Bank of Montreal, have appropriate awareness and understanding regarding these Programs and how they can be used to meet investors' needs; all such educational information about the Programs will be consistent with the public information available on-line about the Programs;

(b) provide Program information and assistance to clients and prospective clients in respect of locating on-line information about, and signing up for the Programs, this will include, upon request, assisting with a client's online NAAF completion to allow the client to enrol in one of the Programs; and

(c) answer questions from clients or prospective clients, as well as the other employees of Bank of Montreal, about Program services, including information regarding what each Program can do for an investor and specific questions from clients about existing accounts with the Programs.

23. To the extent permitted by IIROC, the BMO IL Marketing Representatives also provide educational, non-client specific information about BMO IL Self-Directed to ensure clients or prospective clients, and other employees of Bank of Montreal, have appropriate awareness and understanding regarding how this service can be used to meet an investor's needs, so as to provide a complete description of all BMO on-line platforms, which consist of the Programs and BMO IL Self-Directed. No BMO IL Marketing Representative will provide services in respect of BMO IL Self-Directed which would require that representative to be registered as a dealing representative of BMO IL in respect of BMO IL Self-Directed. All

such educational information about BMO IL Self-Directed is consistent with the public information available on-line about BMO IL Self-Directed.

24. Pursuant to this decision, the dual registration of any current or future dealing representative of each Filer, which is only being requested for the purpose of providing registrable services in respect of the Programs, will permit any individual to be registered as both a dealing representative of BMO NB and a dealing representative of BMO IL provided that the individual meets all of the criteria set out below for a Call Centre Representative, a Marketing Representative or both (the **Online Program Representatives**):

    (a) Each Call Centre Representative:

        (i) is dedicated solely to the Programs, and accordingly has no other responsibilities and does not provide any services in respect of other products or services of BMO NB, BMO IL (including BMO IL Self-Directed) or any other BMO affiliate;

        (ii) cannot provide trading recommendations to clients or potential clients outside of any computer-generated recommendations made by a Program;

        (iii) cannot suggest alternatives to the output of the computer-generated recommendations made through the Programs;

        (iv) only conducts the Call Centre Responsibilities; and

    (b) Each Marketing Representative:

        (i) is dedicated solely to the Programs, and accordingly has no other responsibilities and does not provide any services in respect of other products or services of BMO NB, BMO IL or any other BMO affiliate, other than as described in paragraph 22 above in respect of BMO IL Self-Directed;

        (ii) only conducts the Marketing Responsibilities; and

        (iii) will not provide securities recommendations, trading recommendations or any form of suitability analysis tailored to a specific client; and

    (c) if applicable, any Call Centre Representative or any Marketing Representative that has terms and conditions on their dealing representative registration with one Filer will also have the same terms and conditions under his or her dealing representative registration with the other Filer.

25. As of the date of this decision, there are approximately 15 individuals that are anticipated to be Call Centre Representatives (currently eight from BMO InvestorLine adviceDirect™ and seven from BMO SmartFolio™), and 27 individuals that are anticipated to be Marketing Representatives (currently from BMO IL only).

Other Representations

26. The Filers have determined that there are sufficient similarities between the Programs that it would be beneficial for clients to be serviced by Online Program Representatives who are familiar with, and knowledgeable about, both Programs and who can assist clients to onboard either Program and to carry out ongoing client service, as required, for both Programs. The Relief Sought will allow Online Program Representatives to discuss both Programs with clients with a view to ensuring that clients have knowledge about, have access to, and sign up for the Program that will best suit their needs. The Relief Sought will also allow for seamless client service for both Programs since, per Program, there will be a larger population of Online Program Representatives available to assist clients with inquiries and client on-boarding.

27. The Filers consider that the Programs have the following similarities that would allow for the Online Program Representatives to be able to efficiently and knowledgeably service clients in both Programs:

    (a) Both Programs are available solely through online channels and, generally, would be of interest to a similar client segment; that is, investors who are interested in online investing platforms.

    (b) The Filers are aware that certain clients have accounts in both Programs and expect that this will continue to be the case for those and other clients.

    (c) They require the same proficiency and registration of Online Program Representatives.

(d) Both Programs have non-complex fee structures that are clearly described to clients on the online platforms and associated onboarding documentation.

(e) Both Programs are designed to allow clients to easily navigate through the onboarding process and to continue to monitor and access their accounts.

(f) Both Programs are not permitted to trade in new issues, options or structured products – the investments recommended through both Programs are non-complex.

(g) No Online Program Representative in respect of either Program provides trading recommendations and no Online Program Representative has the ability or authority to suggest alternatives to the recommendations made through the Programs.

(h) The Online Program Representatives for both Programs currently generally have the same duties with respect to client service and are trained on the specific Program, making the additional training that would be required for the other Program, supplementary rather than completely new.

28. The Filers do not expect that the dual registration of the Online Program Representatives will create significant additional work for the Online Program Representatives and each Filer is confident that the Online Program Representatives will have sufficient time and resources to adequately serve each Filer and clients in each Program. The Relief Sought is designed to ensure that each Program will have sufficient human resources to allow for exceptional client service by trained and proficient Online Program Representatives who are knowledgeable about both Programs. For example, per Program, there will be more Online Program Representatives available to clients in the Programs, such that better client service can be provided.

29. The chief compliance officer and ultimate designated person of each Filer will ensure, and the Filers' respective chief compliance officers will monitor and assess, that the Online Program Representatives each have sufficient time and resources to adequately serve each Filer and the clients and potential clients of the Programs.

30. The relationship between the Filers and the dual registration of each Online Program Representative will be fully disclosed in writing to clients of each Program and the clients will receive clear information about which Filer operates the specific Program they sign up for or are interested in learning about. Each Filer will maintain separate telephone numbers and lines for its specific Program and Online Program Representatives will answer the telephone using the correct name of the respective Filer.

31. There will be no changes to the supervisory and other compliance regimes around each Program – that is, BMO NB compliance personnel (including the BMO NB chief compliance officer and ultimate designated person and the BMO IL compliance personnel (including the BMO IL chief compliance officer and ultimate designated person) will continue to be responsible for their own applicable Program and its operation.

32. In the absence of the Relief Sought, the Filers are prohibited by the restriction in paragraph 4.1(1)(b) of NI 31-103 from permitting the Online Program Representatives to be registered as dealing representatives of both Filers, and accordingly, engage in registrable activities with clients of the Program offered by a Filer with whom they are not so registered, even though the Filers are affiliates and have controls and compliance procedures in place to deal with their specific Programs and each Online Program Representative's dealing activities. The Filers consider that the concept of the Online Program Representatives being able to provide registrable services to clients and prospective clients of both Filers in respect of the Programs to be in the best interests of those clients and prospective clients.

33. The Filers are affiliates and both are indirectly owned by Bank of Montreal. Accordingly, the dual registration of the Online Program Representatives will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned in conjunction with the Programs and therefore the potential for conflicts of interest arising from the dual registration is mitigated. The role of the Online Program Representatives will be to support the business activities and interests of both Filers in connection with the Programs, as well as the clients who participate in the Programs. Further, if the Relief Sought is granted, the risks of potential conflicts of interest arising from the Online Program Representatives' dual registrations are expected to be mitigated because:

(a) Online Program Representatives' activities are limited to the terms of the definition of "Online Program Representatives" in this decision;

(b) Compensation of the Online Program Representatives is structured to be Program neutral such that:

(i) Call Centre Representatives are not incented to recommend one Program over another, and

(ii) Marketing Representatives are incented to market the Programs equally to prospective clients so that compensation bias is not a factor in their activities;

(c) Although the office locations for both Programs may be located at the same address, there is no public access to these office locations. All interaction with clients and prospective clients will continue to be handled by telephone or other electronic communication; and

(d) Clients generally self-select the Program they want to use, consequently, the Online Program Representatives' roles will be limited to confirming Program suitability in those cases.

34. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Online Program Representatives and will be able to deal appropriately with any such conflicts, should they arise. The Online Program Representatives are subject to, and aware of, these policies and procedures.

35. The Online Program Representatives are subject to supervision by, and the applicable compliance requirements of, each of the Filers.

36. The policies and procedures of the Filers include policies and procedures for the following:

(a) mitigating or eliminating any client confusion that may result from the dual registration of the Online Program Representatives;

(b) ensuring that Online Program Representatives know which Program's clients or prospective clients they are dealing with, and which Filer they are acting on behalf of, when interacting with each client or prospective client;

(c) ascertaining the responsible Filer in respect of the supervision of each Online Program Representative;

(d) ascertaining the responsible Filer in respect of any complaints from current or prospective clients;

(e) handling and tracking Program records for each Filer, including ensuring that the appropriate records are kept for each Filer by the Online Program Representatives; and

(f) ensuring necessary and timely interaction between the compliance personnel of each Filer to resolve any matters in respect of the dual registration of the Online Program Representatives (including having shared supervisors and branch managers, if appropriate).

37. The compliance teams of the Filers are equipped to:

(a) manage and address the complexity and size of the Filers and the Programs;

(b) adequately communicate amongst each other, or share compliance staff, in respect of the Programs;

(c) access the necessary books and records of each Filer;

(d) manage conflicts of interest specific to large affiliated registered firms and organizations;

(e) mitigate any confusion, or potential confusion, that may arise for Online Program Representatives regarding which firms they are servicing and in what capacity;

(f) mitigate client confusion stemming from the dual registration of the Online Program Representatives within a large affiliated organization;

(g) supervise a large number of registered individuals across affiliated registrants; and

(h) provide adequate compliance for distinct business lines.

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 Relief Sought is granted, for a period of seven years from the date of this decision, on the following conditions:

i. Each Online Program Representative is subject to supervision by, and the applicable compliance requirements of, both Filers;

ii. The chief compliance officer and ultimate designated person of each Filer ensures that each Online Program Representative has sufficient time and resources to adequately serve each Filer and the clients in, and the prospective clients of, the Programs;

iii. The Filers each have adequate policies and procedures in place to address any conflicts of interest that may arise as a result of the dual registration of the Online Program Representatives, and to deal appropriately with any such conflicts; and

iv. The relationship between the Filers, and the fact that the Online Program Representatives are dually registered with each Filer, is fully disclosed in writing to clients or potential clients of each Filer that deal with an Online Program Representative.

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

2.1.4 CMC Markets Canada Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by Filer for relief from prospectus requirement in connection with distribution by Filer of "contracts for difference" (CFDs), over-the-counter (OTC) foreign exchange (FX) contracts and other similar OTC contracts (collectively, OTC Contracts) to investors resident in Applicable Jurisdictions, subject to terms and conditions – Filer is registered in Ontario as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Applicant seeking relief to permit Applicant to offer OTC Contracts to investors in Applicable Jurisdictions, including relief permitting Applicants to distribute OTC Contracts on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options and the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702Offerings of contracts for difference and foreign exchange contracts to investors in Ontario (OSC SN 91-702) – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
OSC Rule 91-502 Trades in Recognized Options.
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario.
Proposed OSC Rule 91-504 OTC Derivatives (not adopted).

December 21, 2018

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

AND

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

AND

IN THE MATTER OF
CMC MARKETS CANADA INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference (**CFDs**), over-the-counter (**OTC**) foreign exchange (**FX**) contracts and other similar OTC contracts (collectively, **OTC Contracts**) to investors resident in the Applicable Jurisdictions (as defined below) subject to the terms and conditions below (the **Requested Relief)**.

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this application (the **Principal Regulator**); and

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

Interpretation

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

Representations

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

The Filer

1 The Filer is a corporation amalgamated under the laws of Canada with its principal office in Toronto, Ontario.

2 CMC Markets Plc, the ultimate parent company of the Filer, is listed on the London Stock Exchange.

3 The Filer is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

4 The Filer is registered as a derivatives dealer under the *Derivatives Act* (Quebec) (the **QDA**) in Quebec.

5 The Filer is not in default of applicable securities legislation in any province or territory of Canada, or IIROC Rules or IIROC Acceptable Practices (as defined below).

6 The Filer and its affiliate, CMC Markets UK Plc (**CMC UK**), previously received exemptive relief to offer OTC Contracts to investors in each Applicable Jurisdiction in accordance with terms and conditions set out in *In the Matter of CMC Markets UK Plc and CMC Markets Canada Inc.* dated January 30, 2018 (the **Existing Relief**).

7 The Filer wishes to offer OTC Contracts to investors in the Applicable Jurisdictions on the terms and conditions described in this Decision. For the Interim Period (as defined below), the Filer is seeking the Requested Relief in connection with the proposed offering of the OTC Contracts in Ontario and intends to rely on this Decision and the "Passport System" described in MI 11-102 to offer OTC Contracts in the Non-Principal Jurisdictions.

8 In Quebec, the Filer intends to apply for a qualification and authorization to market a derivative (the **AMF Order**) from the Autorite des Marches Financiers (the **AMF**) to offer OTC Contracts to retail investors pursuant to the provisions of the QDA. The final AMF Order will, if granted, allow the Filer to offer specified OTC Contracts to investors in Quebec on similar terms and conditions as are contained in this decision.

9 The Filer understands that staff of the Alberta Securities Commission have public interest concerns with CFD trading by retail clients and, accordingly, the Filer will not offer OTC Contracts to retail investors in Alberta. The Filer undertakes not to give notice that subsection 4.7(1) of MI 11-102 is intended to be relied upon in Alberta.

10 The Filer is seeking relief from the prospectus requirement because it is restructuring its business in order to simplify its Canadian structure and align the Canadian structure with the structure being used in most other non-UK jurisdictions in which affiliates of the Filer offer similar products. In most other non-UK jurisdictions, the local dealer is the counterparty to trades by its clients in OTC Transactions and the local dealer manages the risk in its client positions by simultaneously placing the identical OTC Transaction on a back-to back basis with CMC UK. In the UK, CMC UK acts as the counterparty to trades by its clients in OTC Transactions.

IIROC Rules and Acceptable Practices

11 As a member of IIROC, the Filer is only permitted to enter into OTC Contracts pursuant to the rules and regulations of IIROC (the **IIROC Rules**).

12 In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC Acceptable Practices**) as articulated in IIROC's paper "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007 and as amended on September 12, 2007, for any IIROC member proposing to offer OTC foreign exchange contracts or other types of CFDs to investors. The Filer is in compliance with IIROC Acceptable Practices in offering OTC Contracts. The Filer will offer OTC Contracts in accordance with IIROC Acceptable Practices as may be established from time to time, and will not offer CFDs linked to bitcoin, cryptocurrencies or other novel or emerging asset classes to investors in the Applicable Jurisdictions without the prior written consent of IIROC.

13 The Filer is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Form 1 and the Monthly Financial Reports

to IIROC) is based predominantly on the generation of financial statements and calculations so as to ensure capital adequacy. The Filer, as an IIROC member, is required to have a specified minimum capital which includes any additional capital required in respect of margin requirements and other risks. This risk adjusted capital is summarized as a risk adjusted capital calculation which is submitted in the Filer's Form 1 and required to be kept positive at all times.

Online Trading Platform

14 The Filer's NextGeneration platform (the **Platform**) is a proprietary and fully automated internet-based trading platform which allows clients to trade OTC Contracts on an execution-only basis.

15 The Platform is a key component in a comprehensive risk management strategy which helps the Filer's clients and the Filer to manage the risks associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in particular, clients). The attributes and services of the Platform are described in more detail below:

(a) *Real-time account status and client reporting.* Clients are provided with a real-time view of their account status. This includes how tick-by-tick price movements affect their account balances and required margins. Clients can view this information at any time by logging into their account.

(b) *Fully automated risk management system.* Clients are instructed that they must maintain the required margin against their position(s). The risk management functionality of the Platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, thereby limiting the chances of a client's account value being negative and the Filer has a manual process in place designed to limit losses to a stated amount. This functionality also ensures that the Filer will not incur any credit risk vis-à-vis its customers in respect of transactions in OTC Contracts.

(c) *Wide range of order types.* The Platform also provides risk management tools such as stop loss orders and contingent orders. These tools are designed to help clients reduce the risk of loss.

16 The Platform is similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer. The Platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner.

17 In the future, the Filer may provide clients with the option to use other additional and/or third party trading platforms (**Additional Platforms**) when clients enter into OTC Transactions for which the Filer acts as the counterparty. Any such Additional Platform will work in conjunction with, and have substantially similar attributes and services as, the Platform as described in paragraph 14.

18 The Filer will be the counterparty to trades by its clients in OTC Contracts (**OTC Transactions**). It will not act as an intermediary, broker or trustee in respect to the OTC Transactions. The Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding OTC Transactions.

19 The Filer manages the risk in its client positions by simultaneously placing the identical OTC Transaction on a back-to-back basis with CMC UK, an "acceptable counterparty" (as the term is defined in the Form 1). CMC UK, in turn, determines on a daily basis which of its positions it needs to hedge. By virtue of this risk management functionality inherent in the Platform, the Filer eliminates both market risk and counterparty risk. This also means that the Filer does not have an inherent conflict of interest with its clients, since it does not profit on a position if the client losses on that position, and vice versa. The Filer is currently compensated on a "cost plus" model by CMC UK. The Filer also charges clients a commission on OTC Transactions.

20 The OTC Contracts offered by the Filer are not transferable or fungible with other contracts or financial instruments.

21 The ability to lever an investment is one of the principal features of OTC Contracts. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency, instrument, asset or sector.

22 IIROC Rules and the IIROC Acceptable Practices set out detailed requirements and expectations relating to leverage and margin for offerings of CFDs and other OTC Contracts. The degree of leverage may be amended in accordance with IIROC Rules and IIROC Acceptable Practices as may be established from time to time.

23 Pursuant to Section 13.12 [Restriction on lending to clients] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

Structure of CFDs

24 A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, asset, or sector, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument or asset. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the client or principal counterparty nor any agent of the principal counterparty to deliver the underlying instrument or asset.

25 The CFDs and OTC Contracts to be offered by the Filer will not confer the right or obligation to acquire or deliver the underlying security or instrument itself, and do not confer any other rights of holders of the underlying security, instrument, or asset, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a client and a counterparty to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument or asset is traded at the time of opening and closing the position in the CFD.

26 CFDs allow clients to take a long or short position on an underlying instrument, asset, or sector but, unlike futures contracts, they have no fixed expiry date, standard contract size, or an obligation for physical delivery of the underlying instrument or asset.

27 CFDs allow clients to obtain exposure to markets, instruments, and assets that may not be available directly, or may not be available in a cost-effective manner.

OTC Contracts Distributed in the Applicable Jurisdictions

28 Certain types of OTC Contracts may be considered to be "securities" under the securities legislation of the Applicable Jurisdictions.

29 Investors wishing to enter into an OTC Contract with the Filer must first open an account with the Filer.

30 Prior to a client's first OTC Transaction, and as part of the account opening process, the Filer will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the **Risk Disclosure Document**). The Risk Disclosure Document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under the IIROC Rules. The Risk Disclosure Document also contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides for both registration and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**) and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). Prior to a client's first OTC Transaction, the Filer will ensure a complete copy of the Risk Disclosure Document will be delivered to the client through the online account application and will be delivered, or has previously been delivered, to the Principal Regulator.

31 As part of the account opening process and prior to the client's first OTC Transaction, the Filer will also obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the Risk Disclosure Document. Such acknowledgment will be separate from and prominent among other acknowledgements provided by the client as part of the account opening process.

32 As is customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Filer (such as changes in the IIROC Rules), information such as the underlying instrument listing and associated margin rates will not be disclosed in the Risk Disclosure Document. Instead, such information will be part of a client's account opening package and will be available on both the Filer's website and the Platform.

Satisfaction of the Registration Requirement

33 The role of the Filer as it relates to the offering of OTC Contracts (other than it being the principal under the OTC Contracts) will be limited to acting as an execution-only dealer. The Filer will be, among other things, responsible for approving all marketing, for holding of all client funds and for client approval (including the review of know-your client (**KYC**) due diligence and account opening suitability assessments pursuant to NI 31-103).

34 IIROC Rules exempt member firms that provide execution-only services (such as discount brokerages) from the obligation to determine whether each trade is suitable for a client. However, IIROC has exercised its discretion to impose additional requirements on IIROC members proposing to trade in CFDs and OTC Contracts which requires, among other things, that:

(a) applicable risk disclosure documents and client suitability waivers be provided in a form acceptable to IIROC;

(b) the firm's policies and procedures, amongst other things, require the Filer to assess whether trading in OTC Contracts is appropriate for a client before an account is approved to be opened. This account opening suitability process includes an assessment of the client's investment knowledge and trading experience, client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;

(c) the Filer's registered dealing representatives, as well as their registered supervisors who oversee the KYC and initial product suitability analysis, will meet, or be exempt from, proficiency requirements for futures trading and will be registered with IIROC as Investment Representatives for retail customers in the product categories of Future Contracts and Futures Contract Options. In addition, the Filer must have a fully qualified Supervisor for such products; and

(d) cumulative loss limits for each client's account be established (this is a measure normally used by IIROC in connection with futures trading accounts).

35 The OTC Contracts will be offered in compliance with the applicable IIROC Rules and other IIROC Acceptable Practices.

36 IIROC limits the underlying instruments in respect of which a member firm may offer OTC Contracts since only certain securities are eligible for reduced margin rates. For example, underlying equity securities must be listed or quoted on certain "recognized exchanges" (as that term is defined in the IIROC Rules) such as the Toronto Stock Exchange or the New York Stock Exchange. The purpose of these limits is to ensure that OTC Contracts offered in Canada will only be available in respect of underlying instruments that are traded in well-regulated markets, in significant enough volumes and with adequate publicly available information, so that clients can form a sufficient understanding of the exposure represented by a given OTC Contract.

37 The IIROC Rules prohibit the margining of OTC Contracts where the underlying instrument is a synthetic product (single U.S. sector or "mini-indices"). For example, Sector CFDs (i.e., basket of equities for the financial institutions industry) may be offered to non-Canadian clients; however, this is not permissible under the IIROC Rules.

38 IIROC members seeking to trade OTC Contracts are generally precluded, by virtue of the nature of the contracts, from distributing CFDs that confer the right or obligation to acquire or deliver the underlying security, instrument, or asset itself (convertible CFDs), or that confer any other rights of shareholders of the underlying security, instrument or asset, such as voting rights.

39 The Requested Relief, if granted, would (and the Existing Relief does) substantially harmonize the position of the regulators in the Applicable Jurisdictions on the offering of OTC Contracts to investors in the Applicable Jurisdictions with how those products are offered to investors in Quebec under the QDA. The QDA provides a legislative framework to govern derivatives activities within Quebec. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute such contracts to investors resident in Quebec.

40 The Requested Relief, if granted, would be (and the Existing Relief is) consistent with the guidelines articulated by staff of the Principal Regulator in OSC SN 91-702. OSC SN 91-702 provides guidance with regard to distributions of CFDs, foreign exchange contracts and similar OTC derivative products to investors in the Jurisdiction.

41 The Principal Regulator has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in the Jurisdiction, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives.

42 In Ontario, both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situated Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for trading derivative products to clients. The Requested Relief would be consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

43 The Filer has also submitted that the Requested Relief, if granted, would (and the Existing Relief does) harmonize the Principal Regulator's position on the offering of CFDs with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

44 The Filer is of the view that requiring compliance with the prospectus requirement in order to enter into OTC Contracts with retail clients would not be appropriate since the disclosure of a great deal of the information required under a prospectus and under the reporting issuer regime is not material to a client seeking to enter into an OTC Transaction. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most OTC Contracts are of short duration (positions are generally opened and closed on the same day and are settled when positions are closed).

45 The Filer is regulated by IIROC, which has a robust compliance regime including specific requirements to address market, capital and operational risks.

46 The Filer submits that the regulatory regimes developed by the AMF and IIROC for OTC Contracts adequately address issues relating to the potential risk to the clients of the Filer acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Filer to also comply with the prospectus requirement.

47 The Requested Relief in respect of each Applicable Jurisdiction is conditional on the Filer being registered as an investment dealer with the Commission in such Applicable Jurisdiction and maintaining its membership with IIROC and that all OTC Transactions be conducted pursuant to IIROC Rules and in accordance with IIROC Acceptable Practices.

Decision

The Principal Regulator is satisfied that the test set out in the Legislation to make the Decision is met.

The Decision of the Principal Regulator is that the Requested Relief is granted provided that:

(a) all OTC Contracts traded with residents in the Applicable Jurisdictions shall be executed through the Filer;

(b) with respect to residents of an Applicable Jurisdiction, the Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and each securities regulatory authority in such Applicable Jurisdiction and a member of IIROC;

(c) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions shall be conducted pursuant to the IIROC Rules imposed on IIROC members seeking to trade in OTC Contracts and in accordance with IIROC Acceptable Practices, as amended from time to time;

(d) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between (i) the rules and regulations of the QDA and the AMF, and (ii) the requirements of the securities laws of the Applicable Jurisdictions, the IIROC Rules and the IIROC Acceptable Practices, in which case the latter shall prevail;

(e) prior to a client first entering into a transaction in an OTC Contract, the Filer has provided to the client the Risk Disclosure Document and has delivered, or has previously delivered, a copy of the Risk Disclosure Document provided to that client to the Principal Regulator;

(f) prior to the client's first transaction in an OTC Contract and as part of the account opening process, the Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 30, confirming that the client has received, read and understood the Risk Disclosure Document;

(g) the Filer has furnished to the Principal Regulator the name and principal occupation of its officers and directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information* completed by any officer or director;

(h) the Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Filer, being any change in the business, activities, operations or financial results or condition of Filer that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Filer concerning the conduct of activities with respect to OTC Contracts;

(j) within 90 days following the end of its financial year, the Filer shall submit to IIROC, and to the Principal Regulator upon request, the audited annual financial statements of the Filer; and

(k) the Requested Relief shall immediately expire upon the earliest of

(i) four years from the date that this Decision is issued;

(ii) in respect of a subject Applicable Jurisdiction or Quebec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF (in respect of Quebec) or other similar regulatory body that suspends or terminates the ability of the Filer to offer CFDs or other OTC Contracts to clients in such Applicable Jurisdiction or Quebec; and

(iii) with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by any Commission regarding the distribution of OTC derivatives to investors in such Applicable Jurisdiction,

(the **Interim Period**).

It is further the Decision of the Principal Regulator that the Existing Relief is hereby revoked.

"Deborah Leckman"
Ontario Securities Commission

"Robert P. Hutchison"
Ontario Securities Commission

2.1.5 Marquest Asset Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of mutual fund — change of manager is not detrimental to securityholders or the public interest – change of manager to be approved by the funds' securityholders at a special meeting of securityholders.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a), 5.5(3), 5.7.

December 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
MARQUEST ASSET MANAGEMENT INC.
(Marquest or the Current Manager)

AND

IN THE MATTER OF
LORICA INVESTMENT COUNSEL INC.
(Lorica or the Proposed Manager)
(Marquest and Lorica, collectively, the Filers)

AND

MARQUEST CANADIAN FIXED INCOME FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of a change of manager of the Fund from the Current Manager to the Proposed Manager (the **Change of Manager**), in accordance with paragraph 5.5(1)(a) of National Instrument 81-102 – *Investment Funds* (**NI 81-102**) (the **Requested Approval**).

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 (the **Principal Regulator**); and

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

Interpretation

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

Representations

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

The Current Manager

1. Marquest is a privately-owned corporation existing under the OBCA and based in Toronto.

2. Marquest is the manager and trustee of the Fund. Marquest is registered as portfolio manager, investment fund manager and as an exempt market dealer in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick and Newfoundland and Labrador.

3. Marquest's head office is located at 161 Bay Street, 27th Floor, Toronto, Ontario M5J 2S1.

4. Marquest is not in default of any requirements under applicable securities legislation.

The Fund

5. The Fund is an open-ended mutual fund established under the laws of the Province of Ontario by a declaration of trust, as amended.

6. Units of the Fund have been distributed in each of the Jurisdictions under a simplified prospectus, annual information form and fund facts each dated July 10, 2018 prepared in accordance with the requirements of National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*.

7. The Fund is a reporting issuer under the applicable securities legislation of the Jurisdictions.

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

9. The Fund will not bear any of the costs and expenses associated with the Proposed Transaction (as defined below).

Details of the Proposed Transaction

10. On October 24, 2018, Marquest announced that it and Lorica Investment Counsel Inc. (**Lorica**) entered into a definitive purchase agreement (the **Purchase Agreement**) pursuant to which Lorica will acquire the rights of Marquest to manage the Fund (the **Proposed Transaction**). Under the terms of the Purchase Agreement, the Proposed Transaction will be completed on or about December 31, 2018, subject to receipt of unit-holder approvals and all necessary approvals of applicable securities regulatory authorities or such other date as Marquest and Lorica agree to, but in any event no later than March 31, 2019 (the **Closing**).

11. Pursuant to paragraph 5.1(1)(b) of NI 81-102, a special meeting of the unitholders of the Fund was held on December 12, 2018 for the purpose of seeking approval of the Proposed Transaction (the **Meeting**). The notice of Meeting and the management information circular in respect of the Meeting (the **Circular**), has been mailed to unitholders of the Fund and copies thereof filed on SEDAR in accordance with applicable securities legislation. The Circular contains suffi-cient information regarding the business, management and operations of Lorica, including details of its officers and directors, and all information necessary to allow unitholders to make an informed decision about the Proposed Transaction. All other information and documents necessary to comply with applicable proxy solicitation requirements of securities legislation for the Meeting have been mailed to unitholders of the Fund. At the Meeting of the unitholders of the Fund, a quorum of unitholders approved the Proposed Transaction by the requisite majority.

12. In accordance with National Instrument 81-106 – *Investment Fund Continuous Disclosure*, a press release announcing the Proposed Transaction was issued on October 24, 2018 and subse-quently the press release and material change report were filed on SEDAR. No amendment to the simplified prospectus and the annual infor-mation form of the Fund describing the Proposed Transaction were filed as the distribution of the units of the Fund was suspended pending the Closing.

13. It is intended that the Proposed Transaction will result in (i) the Change of Manager, (ii) a change of trustee of the Fund from Marquest to Lorica, and (iii) a change in the name of the Fund to reflect the Lorica brand.

14. The Current Manager has determined that the Proposed Transaction is not a conflict of interest matter pursuant to section 5.1 of National Instru-ment 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) and that, as a result, the Proposed Transaction will not require the approval or recommendation of the Indepen-dent Review Committee (**IRC**) of the Fund. The Manager has, however, provided information relating to the Proposed Transaction and the Change of Manager to the IRC. The IRC has determined after reasonable enquiry that the action achieves a fair and reasonable result for the Fund.

15. Upon the Closing, the members of the Current Manager's IRC will cease to be members of the IRC of the Funds by operation of section 3.10 (1)(b) of NI 81-107. Immediately following the Closing, the IRC of the Funds will be reconstituted

The Change of Manager

16. Lorica is a private corporation formed under the laws of the Province of Ontario.

17. Lorica is registered in the categories of PM, IFM and exempt market dealer with the securities regulatory authorities of the province of Ontario.

18. Lorica's head office is located at 130 Spadina Avenue, Suite 801, Toronto, Ontario, M5V 2L4.

19. Upon the completion of the Proposed Transaction, Lorica will be the IFM of the Fund and will replace Marquest as the trustee and manager of the Fund.

20. Lorica is not in default of any requirements under applicable securities legislation.

21. Lorica and Marquest are not related parties. However, Lorica is the sub-advisor of the Fund as per the sub-advisory agreement between Lorica and Marquest dated December 1, 2014.

22. Lorica has no intention to change the investment objectives and strategies or increase the fees and expenses of the Fund.

Impact of Change of Manager on the Fund

23. It is submitted that the Requested Approval would not be prejudicial to the public interest or the interests of the unitholders of the Fund for the following reasons:

    a. Lorica is currently the sub-advisor of the Fund and is responsible for all invest-ment decisions regarding the investment portfolio of the Fund. Therefore, Lorica is very knowledgeable concerning the port-folio of the Fund and is in the best position to act as the Manager of the Fund;

    b. the experience and integrity of each of the members of the Lorica management team

is apparent by their education and years of experience in the investment industry. Such experience and integrity has been established and accepted by the Commission through the granting of registration to such individuals;

c. the Closing is not expected to have any material impact on the business, operations or affairs of the Fund or the unitholders of the Fund; and

d. the Circular provides unitholders of the Fund with sufficient information to permit them to make an informed decision whether to approve the Change of Manager, which approval is required before the Change of Manager can be completed.

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 Approval is granted.

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

2.1.6 SmartBe Wealth Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraph 2.6(a) of National Instrument 81-102 Investment Funds to allow an exchange-traded mutual fund to borrow from its custodian and, if necessary, provide a security interest to the custodian to fund the portion of any distributions payable under the fund's distribution policy that represents, in the aggregate, amounts that are owing to, but not yet been received by, the fund – Relief subject to terms and conditions as set out in the decision document.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6(a), 19.1.

Citation: *Re SmartBe Wealth Inc.*, 2019 ABASC 7

January 11, 2019

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
SMARTBE WEALTH INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer on behalf of the SmartBe Global Value Momentum Trend Index ETF (the **Proposed ETF**) and such other exchange-traded mutual funds as may be managed by the Filer, or an affiliate of the Filer, in the future (the **Future ETFs**, and together with the Proposed ETF, the **ETFs** and each an **ETF**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that permits each ETF to borrow cash from the custodian of the ETF (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the ETF (the **Exemption Sought**).

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

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

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

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

Interpretation

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

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

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

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

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

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

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

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

NEO Exchange means Aequitas NEO Exchange Inc.

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

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.

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.

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

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

Representations

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

The Filer

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

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

3. The Filer will be the investment fund manager of the ETFs and will be the trustee of the ETFs where the ETF is a trust.

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

The ETFs

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

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 Listed Securities and Unlisted Securities.

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

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

10. The Listed Securities will be listed on the NEO Exchange or another Marketplace.

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

12. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling 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.

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

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

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

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

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

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

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

Borrowing Requirement

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

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

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

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

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

Decision

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

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

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

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

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

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

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

"Tom Graham"
Director, Corporate Finance
Alberta Securities Commission

2.1.7 SmartBe Wealth Inc.

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 granted 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, 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.

Citation: *Re SmartBe Wealth Inc.*, 2019 ABASC 5

January 9, 2019

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
SMARTBE WEALTH INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer on behalf of the SmartBe Global Value Momentum Trend Index ETF (the **Proposed ETF**) and such other exchange-traded mutual funds as may be managed by the Filer or an affiliate of the Filer in the future (the **Future ETFs**, and together with the Proposed ETF, the **ETFs** and each an **ETF**) 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 the Aequitas NEO Exchange Inc. (**NEO Exchange**) or another Marketplace (as defined below) from the Take-over Bid Requirements (as defined below)

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

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

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

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

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

Interpretation

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

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

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

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

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

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

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

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

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

NI 62-104 means National Instrument 62-104 *Take-Over Bids and Issuer Bids.*

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.

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.

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 NI 62-104 relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each Jurisdiction.

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

Representations

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

The Filer

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

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

3. The Filer will be the investment fund manager of the ETFs and will be the trustee of the ETFs where the ETF is a trust.

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

The ETFs

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

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 Security-holders 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 Listed Securities and Unlisted Securities.

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

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

10. The Listed Securities will be listed on the NEO Exchange or another Marketplace.

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

12. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling 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.

13. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of Listed Securities to be issued, payment consisting of,

depending on the terms of the agreement with the Designated Broker or Authorized Dealer or at the Filer's discretion, a Basket of Securities and cash, cash only or a combination of securities and cash, in each case in an amount sufficient so that the value of the Basket of Securities and cash, cash or securities and cash delivered is equal to the net asset value of the Listed Securities subscribed for next determined following the receipt of the subscription order.

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

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

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

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

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

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

Underwriter's Certificate Requirement

20. 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.

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

22. 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 an ETF 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.

Take-over Bid Requirements

23. As equity securities that will trade on the NEO Exchange or another Marketplace, it is possible for a person or company to acquire a percentage of the outstanding Listed Securities that will trigger the Take-over Bid Requirements. However:

    (a) it will not be possible for one or more Securityholders to exercise control or direction over an ETF, as the constating documents of each ETF will provide that only the Filer may call a meeting of the Securityholders;

    (b) it will be difficult for 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.

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

Decision

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

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

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.1.8 Evolve Funds Group Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to exchange-traded mutual funds for extensions of lapse dates of their prospectuses – Filer will incorporate offering of the ETFs under the same offering documents as related family of funds when they are renewed – Extensions of lapse dates will not affect the currency or accuracy of the information contained in the current prospectuses.

Applicable Legislative Provisions

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

December 27, 2018

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

AND

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

AND

IN THE MATTER OF
EVOLVE FUNDS GROUP INC.
(the Filer)

AND

EVOLVE MARIJUANA ETF,
EVOLVE BLOCKCHAIN ETF AND
EVOLVE ACTIVE CORE FIXED INCOME ETF
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the respective time limits for the renewal of the long form prospectus of the Evolve Marijuana ETF dated February 5, 2018 (the **Evolve Marijuana Prospectus**), long form prospectus of the Evolve Blockchain ETF dated February 26, 2018 (the **Evolve Blockchain Prospectus**), and long form pros-pectus of the Evolve Active Core Fixed Income ETF dated March 21, 2018 (the **Evolve Active Prospectus** and, together with the Evolve Marijuana Prospectus and Evolve Blockchain Prospectus, the **Prospectuses**) be extended to those time limits that would apply if the lapse date of each Prospectus were April 6, 2019 (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Ontario. The Filer's head office is located in Toronto, Ontario.

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

3. The Filer is the investment fund manager of the Funds.

4. Each of the Funds is an exchange-traded mutual fund (an **ETF**) established under the laws of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Canadian Jurisdictions.

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

6. The Funds currently distribute securities in the Canadian Jurisdictions under the Prospectuses.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the respective lapse dates of the Evolve Marijuana Prospectus, Evolve Blockchain Prospectus, and Evolve Active Prospectus are February 5, 2019, February 26, 2019, and March 21, 2019 (each a **Lapse Date**, and collectively, the **Lapse Dates**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the Funds would have to cease on the applicable Lapse Date unless: (i) each of the Funds files a *pro forma* prospectus at least 30 days prior to the applicable Lapse Date; (ii) the final prospectus is filed no later than 10 days after the applicable Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the applicable Lapse Date.

8. The Filer is the investment fund manager of four other ETFs (the **Other Funds**) that currently distribute their securities to the public under two prospectuses: the prospectus of Sphere FTSE Canada Sustainable Yield Index ETF, Sphere FTSE Europe Sustainable Yield Index ETF, and Sphere FTSE Emerging Markets Sustainable Yield Index ETF, which has a lapse date of April 6, 2019, and the prospectus of Evolve Innovation Index ETF, which has a lapse date of April 20, 2019 (collectively, the **Other Funds Prospec-tuses**).

9. The Filer wishes to combine the Prospectuses and Other Funds Prospectuses into a prospectus dated on or about April 6, 2019 in order to reduce renewal, printing and related costs. Offering the Funds and the Other Funds under one prospectus would facilitate the distribution of the Funds in the Canadian Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As the Funds and the Other Funds are managed by the Filer, offering them under the same prospectus will allow investors to more easily compare their features.

10. It would be unreasonable to incur the costs and expenses associated with preparing five separate renewal prospectuses given how close in proxi-mity the Lapse Dates are to one another and to the lapse dates of the Other Funds Prospectuses.

11. The process being undertaken by the Filer to combine the Prospectuses and Other Funds Prospectuses into one prospectus will require additional time in order to properly update and streamline the disclosure of the Funds and the Other Funds. The ETF facts documents for the Funds and the Other Funds will also need to be updated. Given the time required to perform these tasks accurately, the Filer would not have sufficient time to finalize and file the *pro forma* prospectus combining the Funds and the Other Funds as well as prepare and update the ETF facts documents by at least 30 days prior to the earliest of the Lapse Dates.

12. There have been no material changes in the affairs of each of the Funds since the date of the applicable Prospectus. Accordingly, the Prospectus and current ETF facts document(s) of each of the Funds represent current information regarding such Fund.

13. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the Prospectus and current ETF facts document(s) of the applicable Fund(s) will be amended as required under the Legislation.

14. New investors in the Funds will receive the most recently filed ETF facts document(s) of the applicable Fund(s). The Prospectuses will still be available upon request.

15. The Exemption Sought will not affect the accuracy of the information contained in the Prospectuses and will therefore 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 Exemption Sought is granted.

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

2.2 Order

2.2.1 Katanga Mining Limited – s. 17

This decision was originally issued on a confidential basis and later published pursuant to the terms of the Order issued in the same proceeding on August 9, 2018.

IN THE MATTER OF
KATANGA MINING LIMITED

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Mark J. Sandler, Commissioner

August 9, 2018

CONFIDENTIAL ORDER
Section 17 of the
Securities Act, RSO 1990, c S.5

WHEREAS the Ontario Securities Commission held a hearing in writing to consider a request by Staff for continued confidentiality over decisions regarding an application made by Katanga Mining Limited ("**Katanga**") pursuant to section 17 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), which written submissions address the issue of the continued confidentiality of the Order issued August 9, 2017, the Reasons for Decision issued October 18, 2017 and the Order issued October 18, 2017;

ON READING Staff's written submissions dated July 20, 2018, there being no submissions filed on behalf of Katanga;

IT IS ORDERED THAT:

1. Pursuant to Rule 17.2(2) of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 (the "**Rules of Procedure**"), the Order issued August 9, 2017, the related Reasons for Decision issued October 18, 2017, the Order issued October 18, 2017 and this Order (collectively, the "**Confidential Decisions**") shall be kept confidential until the earlier of:

   a. January 25, 2019; and

   b. if Staff files a Statement of Allegations naming Katanga as a Respondent, and/or other Respondents in a pro-ceeding involving Katanga's financial statements, 30 days after the Notice of Hearing is issued to commence that enforcement proceeding,

   and thereupon, subject to sections 2 and 3 of this Order, shall be published in the same manner as Commission decisions for which confidentiality has not been ordered.

2. If Staff files a Statement of Allegations naming Katanga as a Respondent, and/or other

Respondents in a proceeding involving Katanga's financial statements, on or before December 24, 2018, then:

a. by no later than 10 days after the Notice of Hearing is issued, Staff shall file with the Registrar, and serve on Katanga and each Respondent named in the Statement of Allegations, written submissions regarding the publication of the Confidential Decisions, including details of any proposed redactions and submissions on whether publication would cause any person prejudice or otherwise not be in the public interest; and

b. by no later than 7 days after delivery of Staff's written submissions pursuant to subsection 2.a of this Order, Katanga and any other Respondent named in the Statement of Allegations shall deliver responding written submissions, if any, regarding the publication of the Confidential Decisions.

3. If no Statement of Allegations against Katanga is filed by Staff by December 24, 2018, then:

a. by no later than January 7, 2019, Staff shall file with the Registrar, and serve on Katanga, written submissions regarding the publication of the Confidential Decisions, including details of any proposed redactions and submissions on whether publication would cause any person prejudice or otherwise not be in the public interest; and

b. by no later than 7 days after delivery of Staff's written submissions pursuant to subsection 3.a of this Order, Katanga shall deliver its responding written submissions, if any, regarding the publication of the Confidential Decisions.

4. Pursuant to subsection 9(1.1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 5.2 of the Rules of Procedure, the materials filed with the Commission by Staff in connection with Katanga's application and this Order shall be kept confidential.

"D. Grant Vingoe"

"Deborah Leckman"

"Mark J. Sandler"

2.2.2 Katanga Mining Limited – s. 17

This decision was originally issued on a confidential basis and later published pursuant to the terms of the Order issued in the same proceeding on August 9, 2018.

IN THE MATTER OF
KATANGA MINING LIMITED

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Mark J. Sandler, Commissioner

October 18, 2017

CONFIDENTIAL ORDER
Section 17 of the
Securities Act, RSO 1990, c S.5

WHEREAS on October 18, 2017, the Ontario Securities Commission held a hearing in writing to consider written submissions following upon an application made by Katanga Mining Limited ("**Katanga**") for an order authorizing Katanga to disclose certain information pursuant to section 17 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), which written submissions address the issue of the confidentiality of the Order issued August 9, 2017, the Reasons for Decision issued October 18, 2017 and this Order;

ON READING Staff's written submissions dated September 8, 2017 and Staff's Book of Authorities, and considering Staff's advice that Katanga is agreeable to the approach proposed in Staff's written submissions;

IT IS ORDERED THAT:

1. Pursuant to Rule 17.2(2) of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 (the "**Rules of Procedure**"), the Order issued August 9, 2017 (the "**August Order**"), the related Reasons for Decision issued October 18, 2017 and this Order (collectively, the August Order, the related Reasons and this Order are the "**Confidential Decisions**") shall be kept confidential until the earlier of:

a. August 10, 2018; and

b. if Staff files a Statement of Allegations naming Katanga as a Respondent, and/or other Respondents in a proceeding involving Katanga's financial statements, 30 days after the Notice of Hearing is issued to commence that enforcement proceeding,

and thereupon, subject to sections 2 and 3 of this Order, shall be published in the same manner as Commission decisions for which confidentiality has not been ordered.

2. If Staff files a Statement of Allegations naming Katanga as a Respondent, and/or other

Respondents in a proceeding involving Katanga's financial statements, on or before July 10, 2018, then:

a. by no later than 10 days after the Notice of Hearing is issued, Staff shall file with the Registrar, and serve on Katanga and each Respondent named in the Statement of Allegations, written submissions regarding the publication of the Confidential Decisions, including details of any proposed redactions and submissions on whether publication would cause any person prejudice or otherwise not be in the public interest; and

b. by no later than 7 days after delivery of Staff's written submissions pursuant to subsection 2.a of this Order, Katanga and any other Respondent named in the Statement of Allegations shall deliver responding written submissions, if any, regarding the publication of the Confidential Decisions.

3. If no Statement of Allegations against Katanga is filed by Staff by July 10, 2018, then:

a. by no later than July 20, 2018, Staff shall file with the Registrar, and serve on Katanga, written submissions regarding the publication of the Confidential Decisions, including details of any proposed redactions and submissions on whether publication would cause any person prejudice or otherwise not be in the public interest; and

b. by no later than 7 days after delivery of Staff's written submissions pursuant to subsection 3.a of this Order, Katanga shall deliver its responding written submissions, if any, regarding the publication of the Confidential Decisions.

4. Pursuant to subsection 9(1.1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 5.2 of the Rules of Procedure, the materials filed with the Commission by Staff in connection with Katanga's application and this Order shall be kept confidential.

"D. Grant Vingoe"

"Deborah Leckman"

"Mark J. Sandler"

2.2.3 Katanga Mining Limited – s. 17

This decision was originally issued on a confidential basis and later published pursuant to the terms of the Order issued in the same proceeding on August 9, 2018.

IN THE MATTER OF
KATANGA MINING LIMITED

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Mark J. Sandler, Commissioner

August 9, 2017

CONFIDENTIAL ORDER
Section 17 of the
Securities Act, RSO 1990, c S.5

WHEREAS on August 8, 2017, the Ontario Securities 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 by Katanga Mining Limited (**Katanga**) for an order authorizing Katanga to disclose certain information pursuant to section 17 of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the confidential application record of Katanga dated August 4, 2017, the Factum and Book of Authorities of Staff of the Commission and on hearing the submissions of the representatives for Katanga and for Staff of the Commission;

IT IS ORDERED THAT:

1. Katanga's application to disclose the contents of the summons issued by Staff of the Commission to Katanga on April 19, 2017 (the **Summons**) to Deloitte AG, Deloitte LLP, and Deloitte Canada is dismissed, without prejudice to Katanga to refile its application with additional evidence;

2. pursuant to subsection 17(1) of the Act, Katanga is authorized to disclose the contents of the Summons to: Leon Taljaard, Wayne Megaw, George Tweedy and Murray Dicks, of Deloitte South Africa (each a **Permitted Individual**);

3. pursuant to subsection 17(4) of the Act, Katanga is authorized to disclose the letter attached to this Order as "Schedule A" to:

a. Leon Taljaard, Wayne Megaw, George Tweedy and Murray Dicks, of Deloitte South Africa;

b. Matthew Sheerin and Makhan Chahal, of Deloitte AG;

c. Jack Kelly, Steve Ward and Ian Joslin, of Deloitte LLP; and

d. Andrew Macartney, of Deloitte Canada

(also each a **Permitted Individual**);

4. pursuant to subsection 17(4) of the Act, it is a condition of this Order that, before disclosure of the Summons or of Schedule "A" is made to any Permitted Individual as permitted by this Order, Katanga shall obtain a written confirmation from the Permitted Individual that the Permitted Indivi-dual is bound by the confidentiality provisions of subsection 16(2) of the Act;

5. pursuant to subsection 17(4) of the Act, it is a condition of this Order that Schedule "A" is confidential and may not be disclosed to any person or company except to the Permitted Individuals;

6. pursuant to subsection 9(1.1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (SPPA) and Rule 5.2 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 (the **Rules of Procedure**), the material filed with the Commission in connection with this application shall be kept confidential;

7. pursuant to Rule 8.2 of the Rules of Procedure and subsection 9(1.1) of the SPPA, the hearing of this matter shall be held *in camera* and any transcript of the hearing shall remain confidential; and

8. pursuant to Rule 17.2(2) of the Rules of Procedure, this Order and any written reasons associated with this Order shall remain confiden-tial unless and until the Panel issues an additional Order regarding the continuing confidentiality, which issue shall be the subject of written submissions to be delivered by the parties no later than September 8, 2017.

"D. Grant Vingoe"

"Deborah Leckman"

"Mark J. Sandler"

Schedule "A"

Letter to counsel

Alan Gardner
Amanda McLachlan
Bennett Jones
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4

Dear Counsel:

Re: Confidential investigation into Katanga Mining Limited

Staff of the Ontario Securities Commission ("Staff") are conducting a confidential investigation into Katanga Mining Limited ("Katanga").

This investigation is subject to strict legal requirements for confidentiality. In particular, section 16 of the Ontario *Securities Act* prohibits disclosure, except in accordance with section 17 of the Act, by any person or company of, among other things, the following categories of information:

- the nature or content of an investigative order issued by the Commission;
- the name of any person examined or sought to be examined under section 13 of the Act;
- any testimony given under section 13;
- any information obtained under section 13;
- the nature or content of any questions asked under section 13;
- the nature or content of any demands for the production of any document or other thing under section 13; or
- the fact that any document or other thing was produced under section 13.

Nonetheless, section 16 of the Act does not restrict Katanga from answering questions or providing documents to its auditor on the basis that the same answers or documents may have also been produced to Staff.

By order of the Ontario Securities Commission, this letter is confidential and may not be disclosed to any person or company except as expressly ordered by the Ontario Securities Commission.

Regards,

STAFF OF THE ONTARIO SECURITIES COMMISSION

Carlo Rossi
Litigation Counsel
Enforcement Branch

2.2.4 Larry Keith Davis – ss. 127(1), 127(10)

FILE NO.: 2017-6

IN THE MATTER OF
LARRY KEITH DAVIS

Lawrence P. Haber, Commissioner and Chair of the Panel

January 15, 2019

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

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing, in writing, to consider a request by Staff of the Commission (**Staff**) for an order imposing sanctions against Larry Keith Davis (**Davis**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the decision of the British Columbia Securities Commission (the **BCSC**) dated September 19, 2018 (the **BCSC Order**) and on reading the materials filed by Staff, Davis not having filed any materials, although properly served;

IT IS ORDERED THAT:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Davis cease permanently, except that he may trade securities or derivatives for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;

2. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davis cease permanently, except that he may purchase securities for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;

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

4. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Davis resign any positions that he holds as a director or officer of any issuer or registrant;

5. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

6. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a registrant or promoter.

“Lawrence P. Haber”

2.2.5 Authorization Order – s. 3.5(3)

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

AND

IN THE MATTER OF
AN AUTHORIZATION PURSUANT TO
SUBSECTION 3.5(3) OF THE ACT

AUTHORIZATION ORDER
(Subsection 3.5(3))

WHEREAS a quorum of the Ontario Securities Commission (the "Commission") may, pursuant to subsection 3.5(3) of the Act, in writing authorize any member of the Commission to exercise any of the powers and perform any of the duties of the Commission, including the power to conduct contested hearings on the merits.

AND WHEREAS, by an authorization order made on November 16, 2018, pursuant to subsection 3.5(3) of the Act ("Authorization"), the Commission authorized each of MAUREEN JENSEN, D. GRANT VINGOE, TIMOTHY MOSELEY, LAWRENCE P. HABER, ROBERT P. HUTCHISON, JANET LEIPER, POONAM PURI, MARK J. SANDLER, and M. CECILIA WILLIAMS acting alone, to exercise, subject to subsection 3.5(4) of the Act, the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, and to make and give any orders, directions, appointments, applications and consents under sections 5, 11, 12, 17, 19, 20, 122, 126, 127, 128, 129, 140, 144, 146, and 152 of the Act that the Commission is authorized to make and give, including the power to conduct contested hearings on the merits.

IT IS ORDERED that the Authorization is hereby revoked;

THE COMMISSION HEREBY AUTHORIZES, pursuant to subsection 3.5(3) of the Act, each of MAUREEN JENSEN, D. GRANT VINGOE, TIMOTHY MOSELEY, GARNET W. FENN, WILLIAM J. FURLONG, LAWRENCE P. HABER, ROBERT P. HUTCHISON, DEBORAH LECKMAN, JANET LEIPER, POONAM PURI, ANNEMARIE RYAN, MARK J. SANDLER, and M. CECILIA WILLIAMS acting alone, to exercise, subject to subsection 3.5(4) of the Act, the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, and to make and give any orders, directions, appointments, applications and consents under sections 5, 11, 12, 17, 19, 20, 122, 126, 127, 128, 129, 140, 144, 146, and 152 of the Act that the Commission is authorized to make and give, including the power to conduct contested hearings on the merits; and

THE COMMISSION FURTHER ORDERS that this Authorization Order shall have full force and effect until revoked or such further amendment may be made.

DATED at Toronto, this 16th day of January, 2019.

"D. Grant Vingoe"
Vice-Chair

"Timothy Moseley"
Vice-Chair

2.2.6 BlackPearl Resources Inc.

Headnote

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

Applicable Legislative Provisions

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

Citation: Re BlackPearl Resources Inc., 2019 ABASC 6

January 10, 2019

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

AND

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

AND

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

ORDER

Background

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

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

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

(b) the Filer has provided notice that sub-section 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan and Manitoba; and

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.2.7 Enbridge Income Fund

Headnote

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

Applicable Legislative Provisions

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

Citation: *Re Enbridge Income Fund*, 2019 ABASC 11

January 16, 2019

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

AND

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

AND

IN THE MATTER OF
ENBRIDGE INCOME FUND
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.4 Rulings

2.4.1 CCM FS, LLC – s. 38 of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement set out in section 22 of the CFA and the trading restrictions in section 33 of the CFA in connection with certain trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Filer is acting as principal or agent in such trades to, from or on behalf of Permitted Clients – relief subject to sunset clause.

Statutes Cited

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

January 18, 2019

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

AND

IN THE MATTER OF
CCM FS, LLC

RULING
(Section 38 of the CFA)

UPON the application (the **Application**) of CCM FS, LLC (the **Filer**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Filer is not subject to the dealer registration requirement in the CFA (as defined below) or the trading restrictions in the CFA (as defined below) in connection with trades in Exchange-Traded Futures (as defined below) on exchanges located outside of Canada (**Non-Canadian Exchanges**) where the Filer is acting as principal or agent in such trades to, from or on behalf of Permitted Clients (as defined below); and

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges, where the Filer acts in respect of trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling;

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

(a) the following terms shall have the following meanings:

"CFTC" means the United States Commodity Futures Trading Commission;

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

"Exchange-Traded Futures" means commodity futures contracts or commodity futures options that trade on one or more organized exchanges located outside of Canada and that are cleared through one or more clearing corporations located outside of Canada;

"IB" means an Introducing Broker registered with the CFTC;

"NFA" means the National Futures Association in the United States;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"Permitted Client" means a client in Ontario that is a "permitted client" as that term is defined in section 1.1 of NI 31-103;

"SEC" means the United States Securities and Exchange Commission;

"specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*; and

"trading restrictions in the CFA" means the provisions of section 33 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 33 of the CFA; and

(b) terms used in the Decision that are defined in the *Securities Act* (Ontario) (**OSA**), and not otherwise defined in the Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

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

1. The Filer is a company formed under the laws of the state of Illinois of the United States of America. The head office of the Filer is located in Chicago, Illinois, United States of America.

2. The Filer is a privately held entity owned directly and indirectly by Bluefin Agency Holdings LP and by its principals, Michael Goodwin, Arthur Duquette, Bertrand Chan and Gennady Zavilevich.

3. The Filer is not a reporting issuer in any jurisdiction in Canada.

4. The Filer is not registered in any capacity under the CFA or the OSA and does not rely on any exemption from registration in Canada.

5. The Filer is registered as an IB with the CFTC and is a member of the NFA.

6. The Filer is not a broker-dealer registered with the SEC and does not conduct a securities business in the United States.

7. The Filer is an IB for CME Group (CME, CBOT, NYMEX, COMEX) and ICE (ICE Futures US and ICE Futures Europe).

8. Subject to the matter to which this Decision relates, the Filer is not in default of securities or commodity futures legislation in any jurisdiction in Canada. The Filer is in compliance in all material respects with United States commodity futures laws.

Activities

9. The Filer solicits and accepts orders for trades in Exchange-Traded Futures and either: (a) introduces them to another broker for execution and clearing or (b) executes (under a sponsored access arrangement) and submits for clearing trades in Exchange-Traded Futures for customers on exchanges globally through affiliated or unaffiliated member firms on other exchanges.

10. Pursuant to its registrations and memberships, the Filer is authorized to solicit, accept, and execute customer orders, and otherwise act as a futures execution-only broker, in the United States. The Filer is also authorized to solicit and accept customer orders and introduce them to an executing broker registered as a futures commission merchant in the United States. Rules of the CFTC and NFA require the Filer to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions including confirmations and statements, and comply with other forms of customer protection rules including rules respecting: know-your-customer obligations, account opening requirements, suitability requirements, anti-money laundering checks and best execution. These rules do not permit the Filer to treat Permitted Clients materially differently from the Filer's United States customers. In respect of Exchange-Traded Futures, the Filer does not provide clearing services nor is it authorised to receive or hold client money in any jurisdiction.

11. The Filer proposes to offer Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures through the Filer, in its role as introducing broker.

12. The Filer will solicit and accept orders for trades in Exchange-Traded Futures on behalf of Permitted Clients in Ontario in the same manner that it solicits and accepts orders for Exchange-Traded Futures on behalf of its United States clients, all of which are "Eligible Contract Participants" as defined in the United States *Commodity Exchange Act*. The Filer will follow the same know-your-customer procedures and order handling that it follows in respect of its United States clients. Permitted Clients will be afforded the benefits of compliance by the Filer with the statutory and other requirements of applicable securities and commodity futures regulators, self-regulatory organizations and exchanges located in the United States. Permitted Clients in Ontario will have the same contractual rights against the Filer as United States clients of the Filer.

13. The Filer will not maintain an office, sales force or physical place of business in Ontario.

14. The Filer will solicit and accept orders for trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

15. The Filer will offer Permitted Clients in Ontario the ability to effect trades in Exchange-Traded Futures only on Non-Canadian Exchanges.

16. The Exchange-Traded Futures to be traded by Permitted Clients will include, but will not be limited to, Exchange-Traded Futures for interest rate, energy, currency, agricultural and other commodity products.

17. Permitted Clients of the Filer in Ontario will be able to trade Exchange-Traded Futures through the Filer by communicating with the Filer's authorized representatives or via the Filer's proprietary electronic order routing system. Permitted Clients may also be able self-execute trades in Exchange-Traded Futures electronically via an independent service vendor and/or other electronic trading order routing systems.

18. The Filer may execute a customer's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage an executing broker registered as a futures commission merchant to assist in the execution of orders. The Filer will remain responsible for all executions. As the Filer will only perform the execution of a Permitted Client's contract order and "give-up" the transaction for clearance to the Permitted Client's carrying broker or clearing broker (each, a **Clearing Broker**), such broker will also be required to comply with any relevant regulatory requirements, including requirements under the CFA as applicable. Each Clearing Broker will represent to the Filer in an industry standard give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's orders will be executed and/or cleared. The Filer will not enter into a give-up agreement with any carrying broker or clearing broker located in the United States unless such broker is registered with the CFTC and SEC.

19. As is customary for all trades in Exchange-Traded Futures, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders submitted to the exchange in the name of the Clearing Broker or the Filer or, on exchanges where the Filer is not a member, in the name of another carrying broker. The Permitted Client of the Filer is responsible to the Clearing Broker for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Clearing Broker is in turn responsible to the clearing corporation/division for payment.

20. Permitted Clients will pay commissions for trades to the Filer for its role as introducing broker and Permitted Clients shall be responsible to pay any commissions to their Clearing Broker directly, if applicable.

21. Absent this Decision, the trading restrictions in the CFA apply unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

22. If the Filer were registered under the CFA as a "futures commission merchant", it could rely upon certain exemptions from the trading restrictions in the CFA to effect trades in Exchange-Traded Futures to be entered into on certain Non-Canadian Exchanges.

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

IT IS RULED, pursuant to section 38 of the CFA, that the Filer is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Filer is acting as principal or agent in such trades to, from or on behalf of Permitted Clients provided that:

(a) each customer effecting trades of Exchange-Traded Futures is a Permitted Client;

(b) the executing broker and the clearing broker have each represented and covenanted to the Filer, and the Filer has taken reasonable steps to verify, that the broker is or will be appropriately registered under the CFA, or has been granted exemptive relief from registration under the CFA, in connection with the Permitted Client effecting trades in Exchange-Traded Futures;

(c) the Filer introduces and/or executes trades in Exchange-Traded Futures for Permitted Clients only on Non-Canadian Exchanges;

(d) at the time trading activity is engaged, the Filer:

(i) has its head office or principal place of business in the United States;

(ii) is registered as an IB with the CFTC;

(iii) is a member of the NFA; and

(iv) engages in the business of an IB in Exchange-Traded Futures in the United States;

(e) the Filer has provided to the Permitted Client the following disclosure in writing:

(i) a statement that the Filer is not registered in Ontario to trade in Exchange-Traded Futures as principal or agent;

(ii) a statement specifying the location of the Filer's head office or principal place of business;

(iii) a statement that all or substantially all of the Filer's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Filer because of the above; and

(v) the name and address of the Filer's agent for service of process in Ontario;

(f) the Filer has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix A;

(g) the Filer notifies the Commission of any regulatory action initiated after the date of this ruling in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the Commission Appendix B hereto within ten days of the commencement of any such action; provided that, the Filer may satisfy this condition by filing with the Commission (A) a copy of any notice filed by the Filer pursuant to CFTC Regulation 1.12(k), (l) or (m) at the same time such notice is filed with the CFTC and the NFA, and (B) on a quarterly basis, (1) a copy of the regulatory actions appearing on the Filer's NFA Background Affiliation Status Information Center (BASIC) page and (2) a copy of any disclosures that would be required to be reported by the Filer in the Regulatory Disclosures section of the Filer's Annual Registration Update to the NFA;

(h) if the Filer does not rely on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**), by December 31st of each year, the Filer pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the Filer relied on the IDE;

(i) by December 1st of each year, the Filer notifies the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision; and

(j) this Decision shall terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Filer acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling.

January 18, 2019

”Lawrence Haber”
Vice-Chair or Commissioner
Ontario Securities Commission

“Janet Leiper”
Vice-Chair or Commissioner
Ontario Securities Commission

Appendix A

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

**INTERNATIONAL DEALER OR INTERNATIONAL ADVISER
EXEMPTED FROM REGISTRATION UNDER THE
COMMODITY FUTURES ACT, ONTARIO**

1. Name of person or company ("**International Firm**"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "**Relief Order**"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "**Agent for Service**"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above 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 or other proceeding (a "**Proceeding**") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    (a) a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    (b) an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and

    (c) a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

Appendix B

NOTICE OF REGULATORY ACTION[1]

1. Has the firm, or any predecessors or specified affiliates of the firm, entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes ____ No ____

   If yes, provide the following information for each settlement agreement:

   Name of entity

   Regulator/organization

   Date of settlement (yyyy/mm/dd)

   Details of settlement

   Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
(a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	_____	_____
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	_____	_____
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	_____	_____
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	_____	_____
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	_____	_____

   If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

[1] Terms defined for the purposes of Form 33-506F6 *Firm Registration* to Ontario Securities Commission Rule 33-506 *(Commodity Futures Act) Registration Information* have the same meaning if used in this Appendix except that any reference to "firm" means the person or company relying on relief from the requirement to register as an adviser or dealer under the *Commodity Futures Act* (Ontario).

Yes ____ No ____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date of investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Katanga Mining Limited – s. 17

This decision was originally issued on a confidential basis and later published pursuant to the terms of the Order issued in the same proceeding on August 9, 2018.

IN THE MATTER OF
KATANGA MINING LIMITED

CONFIDENTIAL REASONS FOR DECISION
(Section 17 of the *Securities Act*, RSO 1990, c S.5)

Citation: *Katanga Mining Limited (Re)*, 2019 ONSEC 4
Date: 2019-01-16

Hearing:	August 8, 2017	
Decision:	October 18, 2017	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
	Deborah Leckman	Commissioner
	Mark J. Sandler	Commissioner
Appearances:	Carlo Rossi Alvin Qian	For Staff of the Commission
	Alan Gardner Amanda McLachlan	For the Applicant, Katanga Mining Limited

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REASONS FOR DECISION

I. OVERVIEW

[1] The Applicant, Katanga Mining Limited ("**Katanga**"), filed a confidential application seeking an order from the Ontario Securities Commission to authorize the disclosure of a summons to individuals employed by four separate audit firms. When the Commission considers it to be in the public interest, the requested relief may be granted under subsection 17(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**").

[2] Staff of the Commission consented to the relief sought with respect to Katanga's current auditor, but opposed the relief sought for disclosures to the other three audit firms. In relation to the other three audit firms, Staff proposed that Katanga be authorized to disclose only a letter from Staff (the "S**taff Letter**"). The Staff Letter would be addressed to Katanga's counsel and would indicate that Staff is conducting a confidential investigation into Katanga. But the Staff Letter would not disclose the existence, content or nature of any summons issued in the Katanga investigation.

[3] On August 8, 2017, the Commission held an *in camera* oral hearing. Katanga's financial statements were due to be filed the following week. As a result, there was a desire on Katanga's part for a timely disposition of its application. In the circumstances, the Panel orally advised the parties of its decision shortly after the completion of oral argument. Katanga would be authorized to disclose both the summons and the Staff Letter to its current auditor, but would be authorized to disclose only the Staff Letter to the other three audit firms. The application was otherwise to be dismissed without prejudice to Katanga's right to re-apply based on new evidence.

[4] On August 9, 2017, the Commission issued a confidential Order in substantially the form proposed by Staff (the "**August Order**"), attaching the Staff Letter as a Schedule, with Reasons to follow.

[5] In light of the contested nature of the application, and the potential precedential value of the decision made, the Panel also requested that the parties deliver additional written submissions on the issue of whether the August Order and these subsequent Reasons for Decision should ultimately be published, whether in an anonymized form or otherwise and if so, when.

[6] In early September 2017, Staff filed written submissions on the publication issue, along with a Book of Authorities. Staff also advised that Katanga did not intend to file written submissions, but was "agreeable to the approach proposed by Staff in Staff's submissions".

[7] These are the Reasons for Decision relating both to Katanga's application, and to the publication status of our August Order and these Reasons.

II. ISSUES

[8] There are two issues to address in these Reasons:

a. Is it in the public interest for the Commission to authorize Katanga's requested disclosure of the summons to individuals employed at each of the four audit firms?

b. Should the August Order and these Reasons for Decision remain confidential indefinitely or should they be published, in some form, at a later date?

III. ANALYSIS

A. Is it in the Public Interest to Authorize Katanga's Requested Disclosures of the Summons?

1. Background

[9] Katanga is the holding company of a group of companies that produce copper and cobalt metal at mining assets located in the Democratic Republic of Congo. Katanga's sole customer is Glencore International AG ("**Glencore**"), which, along with Glencore's subsidiaries, owns the majority of Katanga's issued and outstanding shares.

[10] On March 22, 2017, the Commission issued an Order pursuant to paragraph 11(1)(a) of the Act authorizing a confidential investigation relating to Katanga. On April 19, 2017, in connection with that investigation, the Commission issued a summons to Katanga pursuant to section 13 of the Act (the "**Katanga Summons**"). The Katanga Summons requires that Katanga produce certain documents and information to Staff. On April 19, 2017 and May 18, 2017, the Commission also issued summonses to a Katanga director and to Katanga's Chief Executive Officer (collectively, with the Katanga Summons, the "**Summonses**").

[11] There have been two previous section 17 applications related to the Katanga investigation and the Summonses. In both cases, Staff consented to the relief sought and the proceedings were heard in writing. Two confidential Orders resulted:

a. The Commission's May 24, 2017 Order permitted Katanga to disclose the contents of the Katanga Summons to the General Counsel of Glencore, the Chief Executive Officer of Glencore and the Chief Financial Officer of Glencore for the purpose of facilitating Katanga's ability to respond to the requests for information and documentation contained in the Katanga Summons; and

b. The Commission's June 14, 2017 Order permitted Katanga to disclose the contents of the Summonses to representatives of Glencore's insurers, Glencore's insurance broker, and executives of Glencore (UK) Ltd. with responsibility for liaising with Glencore's insurers.

[12] In July 2017, Katanga issued a press release announcing that the independent directors of Katanga's Board of Directors were conducting a review of certain of Katanga's past accounting practices (the "**Past Accounting Review**"). The independent directors had concluded that certain of Katanga's historical financial statements and related management's discussion and analysis would likely require restatement. The press release stated that Katanga's independent directors were working with, among others, "Katanga's external auditors, Deloitte & Touche".

[13] On August 4, 2017, Katanga filed the application that is the subject of these Reasons for Decision. Specifically, Katanga sought authorization to disclose the existence and contents of the Katanga Summons to the auditors responsible for auditing Katanga's financial statements, reviewing Katanga's unaudited interim financial statements and for overseeing aspects of the Past Accounting Review. Disclosures were sought for specific individuals employed by four separate audit firms: Deloitte South Africa ("**Deloitte SA**"), Deloitte AG, Deloitte LLP and Deloitte Canada.

2. Test for Authorizing Disclosures

[14] Confidentiality is central to preserving the integrity of investigations conducted by Staff of the Commission. The Act creates a regime in which the Commission controls the flow of information in connection with its investigations, which are presumptively confidential. This regime protects Staff's investigations, as well as the privacy interests of the individuals compelled to provide testimony under the Act and of the market participants being investigated. The disclosure of the existence, nature or content of a summons is prohibited unless specifically authorized by the Commission pursuant to section 17 of the Act.

[15] Subsection 17(1) of the Act provides that the Commission may make an order authorizing the disclosure of certain confidential information, provided that the Commission considers that it would be in the public interest to do so:

> 17 (1) If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (a) the nature or content of an order under section 11 or 12;
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
>
> (c) all or part of a report provided under section 15.

[16] When considering whether disclosure is warranted under subsection 17(1), the Commission must:

a. consider the purpose for which the disclosure is sought and the specific circumstances of the case; and

b. balance the continued requirement for confidentiality with the Commission's assessment of the public interest at stake.[1]

[1] *Re Coughlan*, [2000] OJ No 5109 (Div Ct) at para 38; *Deloitte & Touche LLP v Ontario (Securities Commission)*, [2002] OJ No 2350 (CA) at para 15; *Re Black* (2007), 31 OSCB 10397 at para 82.

[17] Applicants bear the heavy burden of demonstrating that a requested disclosure is in the public interest.[2] Moreover, even when disclosure is warranted, the Commission is only to order disclosure to the extent necessary in the public interest.[3]

3. Application of the Test

(a) Deloitte SA

[18] Katanga's current external auditor is Deloitte SA, which is responsible for reviewing Katanga's unaudited interim financial statements. Deloitte SA was also Katanga's auditor for the year 2016. The Past Accounting Review includes a possible restatement of Katanga's 2016 financial statements.

[19] Staff consented to Katanga's request for authorization to disclose the Katanga Summons to Deloitte SA. Though Staff did not necessarily agree that it is necessary for Deloitte SA to review the Katanga Summons, it is Staff's view that there is minimal potential prejudice to Staff's investigation if the Katanga Summons is disclosed to Deloitte SA.

[20] We found that it was in the public interest to grant this request. Accordingly, we authorized Katanga to disclose the existence and contents of the Katanga Summons and the Staff Letter to four identified individuals employed at Deloitte SA. Disclosure may facilitate their participation in the Past Accounting Review without any appreciable risk of interfering with Staff's investigation. In this regard, we understand that Deloitte SA, and these individuals were uninvolved in the 2014 financial statements, which are presently the focus of the investigation.

(b) Deloitte AG

[21] Employees at Deloitte AG served as the signing audit partners for Katanga from 2012 to 2015. Deloitte AG is based in Switzerland. It is also Glencore's auditor, along with Deloitte LLP. In 2016, Katanga apparently moved its headquarters from Switzerland to South Africa, at which time Deloitte SA took over the auditor role from Deloitte AG. Katanga identified two fundamental purposes for the requested disclosure of the Katanga Summons to Deloitte AG: 1) to enable Katanga to comply with its disclosure obligations to its auditors, and 2) to help facilitate or focus Deloitte AG's participation in the ongoing Past Accounting Review, which includes a possible restatement of Katanga's 2015 financial statements. Deloitte AG employed the audit partners responsible for Katanga's 2015 financial statements.

[22] Katanga's only evidence in support of its application was an affidavit sworn by an associate at the law firm representing Katanga. In her affidavit, the associate swore that the National Professional Practice Director at Deloitte Canada advised her that "Deloitte & Touche, Katanga's external auditors, require Katanga to disclose the contents of the [Katanga] Summons" to, among others, two individuals at Deloitte AG "in the event that a restatement of Katanga's 2015 and 2016 Consolidated Financial Statements is required".

[23] Apart from this bald assertion that disclosure was required, no evidence was provided, either directly by the affiant or indirectly by the source of her information, the Deloitte Canada Practice Director, to explain specifically why the Katanga Summons was necessary for Deloitte AG's purposes or how the Katanga Summons would be used by Deloitte AG for the possible restatement. Nor was there evidence to indicate that, without the Katanga Summons, the Past Accounting Review could not be conducted. Rather, at the hearing, Katanga's counsel suggested that the disclosure might be required to complete the restatement "in a reasonable amount of time", rather than being required to complete the restatement at all. Again, there was no evidence that receiving the Katanga Summons would abbreviate Deloitte AG's work and no evidence about the potential time differential. In fairness, Katanga's counsel candidly acknowledged certain shortcomings in the evidence presented, which arose from the short time frame in which the application had been brought.

[24] Katanga submitted that disclosure to Deloitte AG posed no threat to Staff's investigation. It relied heavily on Staff's consent to disclosure to Katanga's current auditor, contending that, if it was in the public interest to allow the disclosure to Deloitte SA, then it must also be in the public interest to allow the disclosure to Deloitte AG, since there was no qualitative distinction between the two companies. Finally, Katanga submitted that the Staff Letter did not meet its needs since it disclosed no more than what Katanga was already permitted to disclose to Deloitte AG – namely, the existence of the investigation.

[25] In opposing disclosure of the Katanga Summons to Deloitte AG, Staff submitted that individuals from Deloitte AG have relevant evidence that may form part of Staff's investigation into Katanga. As earlier indicated, Staff's investigation of Katanga is presently focused primarily on the 2014 fiscal year. Deloitte AG was Katanga's auditor at that time, and would itself have a hypothetical exposure in the investigation. Deloitte SA was uninvolved during that time frame. Its employees would be much less likely to have relevant evidence about the circumstances leading to the historical disclosure that is

2 *Re Black* (2007), 31 OSCB 10397 at para 78.

3 *Deloitte and Touche LLP v Ontario (Securities Commission)*, 2003 SCC 61 at para 29.

presently the subject matter of Staff's investigation. Accordingly, there is a qualitative difference between the positions of Deloitte AG and Deloitte SA.

[26] Staff also objected to the use of the Katanga Summons as a tool for Deloitte AG to set the scope for the Past Accounting Review. Whether or not Deloitte AG has access to the Katanga Summons, Deloitte AG will have its own obligations and will have to comply with relevant auditing standards as part of the Past Accounting Review. In particular, the auditors will have to satisfy themselves that they have full and frank information from their client, Katanga. Staff argued that the present scope of Staff's investigation should be irrelevant for that work and, in any event, the scope of its investigation cannot be defined by a single summons.

[27] Staff also contended that it is possible that Deloitte AG may not be satisfied with the disclosure of the Katanga Summons and may seek additional and ongoing disclosure of Staff's investigation, since the investigation is continuing and may go in new directions, further engaging Staff's and the Commission's resources. We need not place reliance on this contention at this point since it does invite speculation. However, it does highlight the need to remain mindful of the ongoing and changing nature of a typical investigation as the Commission contemplates how the integrity of the investigation is best protected.

[28] Finally, Staff submitted that the proposed Staff Letter is designed to resolve any potential concern on the auditors' part that Katanga's management is being uncooperative in Staff's investigation. The Staff Letter also signals to the auditors that they ought not to be inhibited in asking questions that they are expected to ask as auditors, simply because of Staff's investigation.

[29] We agreed with Staff's submissions that, based on the existing record, Deloitte AG is differently situated than Deloitte SA, and that the potential risk to Staff's investigation significantly outweighs any purported need for disclosure. The bald assertion contained in the affidavit relied upon by Katanga was insufficient to discharge its heavy burden of demonstrating that the disclosure was required for Deloitte AG to fulfill its obligations. Indeed, the available evidence suggests that such disclosure was not required.

[30] We accept that, generally, "the nature of the audit process is such that sharing of information between auditor and client is essential to the performance of the auditor's task."[4] However, for the reasons already given, we were unconvinced, based on the existing record, that disclosure of the Katanga Summons would advance Deloitte AG's audit responsibilities in a significant manner, particularly when weighed against the public interest in protecting the integrity of Staff's investigation. Accordingly, Katanga's application to disclose the contents of the Katanga Summons to Deloitte AG was dismissed. Katanga was authorized to disclose only the Staff Letter to two identified individuals employed at Deloitte AG.

(c) Deloitte LLP

[31] Katanga submitted that coordination between Deloitte AG and Deloitte LLP is necessary in the event of a restatement of Katanga's 2015 and 2016 financial statements. Several employees of Deloitte LLP are members of a committee responsible for oversight of the work performed by Deloitte AG. Deloitte LLP is also Glencore's auditor, along with Deloitte AG. Though they are separate legal entities, Deloitte LLP and Deloitte AG operate as a combined firm, with Deloitte LLP performing quality and risk functions and oversight in support of Deloitte AG. In the ordinary course, Deloitte LLP provides oversight in cases involving the restatement of financial statements.

[32] Katanga argued that disclosure of the Katanga Summons was required for the performance of Deloitte LLP's oversight role in support of Deloitte AG. It also argued that there was no principled difference between Deloitte AG and Deloitte LLP.

[33] Given our conclusion that the Katanga Summons should not be disclosed to Deloitte AG, it should not be disclosed to Deloitte LLP either. Simply put, since the evidence did not demonstrate that the Katanga Summons was required for Deloitte AG to perform its work, the evidence did not demonstrate that such disclosure was required to oversee Deloitte AG's work. Accordingly, Katanga's application to disclose the Katanga Summons to Deloitte LLP was dismissed. Katanga was authorized to disclose only the Staff Letter to three identified individuals employed at Deloitte LLP.

(d) Deloitte Canada

[34] Katanga's application materials indicate that Deloitte Canada's National Professional Practice Director is supporting the work conducted by the employees of the other audit firms and is supporting the Past Accounting Review. Therefore, Katanga contended that disclosure of the Katanga Summons to Deloitte Canada was arguably required.

[4] *Deloitte & Touche LLP v Ontario (Securities Commission)*, [2005] OJ No 1510 (Div Ct) at para 60.

[35] At the hearing, Katanga conceded that the requested disclosure to Deloitte Canada was more for convenience than for necessity. The main focus of Katanga's application was to obtain disclosures for Deloitte SA and Deloitte AG. Nonetheless, Katanga argued that disclosure to Deloitte Canada was in the public interest and would cause no harm to the integrity of Staff's investigation.

[36] Counsel for Katanga was candid and fair in his presentation. He was unable to support, on the evidentiary record before us, the need for Deloitte Canada to be apprised of the Katanga Summons. Katanga's application to disclose the contents of the Katanga Summons to Deloitte Canada was dismissed. Katanga was authorized to disclose only the Staff Letter to Deloitte Canada's National Professional Practice Director.

(e) Renewal of the Application

[37] In our August Order, we dismissed Katanga's application for authorization to disclose the Katanga Summons to Deloitte AG, Deloitte LLP, Deloitte Canada and the named individuals at those firms, without prejudice to a renewed application based on new evidence. While we questioned whether Katanga could ever discharge its heavy burden in relation to Deloitte LLP or Deloitte Canada, we recognized that there was a possibility that additional evidence could be placed before us to invite reconsideration. Ordinarily, an application stands or falls on the adequacy of the evidentiary record placed before the Commission when the application is heard. However, we did appreciate that time constraints prevented Katanga from providing a more robust evidentiary record -- hence, we decided to dismiss the application, in part, without prejudice to its renewal.

[38] Katanga has not sought to revisit the Commission's decision.

B. Should the August Order and these Reasons for Decision Remain Confidential?

[39] We ordered that the hearing of Katanga's application would be held *in camera* and that any transcript of the hearing would be confidential. To have decided otherwise would, of course, have undermined the entire rationale for these types of applications. However, we also recognized that there is an important public interest in the transparency of our processes and decision-making, and precedential value in how the Commission addresses these applications. That is why we invited written submissions on whether our August Order and these Reasons for Decision must remain confidential for all time.

[40] Having read Staff's written submissions on point, we are satisfied that our August Order and these Reasons for Decision should remain confidential at this time. In our view, this is necessary to maintain the integrity of Staff's investigation. However, we are also satisfied that there is scope for the future publication of our Order and Reasons for Decision. The balance of these Reasons for Decision addresses this issue.

1. Law on Confidentiality

[41] There is a presumption that Commission hearings will be open to the public. It is well established that "covertness is the exception and openness the rule", which fosters the necessary public confidence in the integrity of the Commission's processes and an understanding of the administration of justice.[5] Openness is particularly important for the Commission because it is charged with the responsibility of helping to ensure the integrity of the capital markets in Ontario. Disclosure and openness are hallmarks of Ontario securities regulation and are demanded by the Commission of those it regulates. It follows that the Commission's own disclosure practices set an important example.

[42] Investors, those being regulated, and the general public all have a strong interest in knowing what decisions the Commission makes and why. This promotes our accountability, as well as confidence in our processes.

[43] However, under section 9 of the *Statutory Powers Procedure Act*, RSO 1990 c S.22 (the "**SPPA**"), the openness presumption may be overridden in limited circumstances. Hearings may be conducted in the absence of the public where the Commission is of the opinion that the desirability of avoiding disclosure in the public interest outweighs the desirability of adhering to the principle of open proceedings.

[44] Subsection 9(1) of the SPPA provides:

> 9(1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,
>
> (a) matters involving public security may be disclosed; or

[5] *Re Standard Trustco* (1992), 15 OSCB 143, quoting *MacIntyre v Nova Scotia (Attorney General)*, [1982] 1 SCR 175 at para 59.

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public.

[45] In addition, Rule 5.2 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168, permits application records to be ordered confidential if a Panel is of the opinion that there are valid reasons for restricting public access. Rule 17.2(2) adds that a Panel's decision shall be published, unless a Panel orders that it shall remain confidential.

[46] The Commission does not publish Orders made under section 17 of the Act in circumstances that will unfairly prejudice Staff's investigation or the subjects of Staff's investigation. Such confidential Orders, often issued on consent of all parties, are consistent with the scheme set out under sections 16 and 17 of the Act. However, the Commission has permitted the publication of Orders and Reasons in section 17 applications in a variety of circumstances: for example, where the Commission has resolved conflicting submissions on the scope of appropriate confidentiality after a hearing, where relief from the confidentiality requirements was denied or where it has decided matters that may provide guidance to others. The nature and scope of publication in these cases have been dictated by a number of factors, including the continued need, if any, of confidentiality in the public interest.

[47] There are several examples of anonymized published section 17 decisions, issued by the Commission both before and after enforcement proceedings are commenced. For instance:

a. In *Re Mr. X* (2003), 27 OSCB 49, the Commission dismissed an application to amend a section 17 Order to authorize disclosure of prohibited information in a civil action. The hearing was held *in camera* and anonymized Reasons were published.

b. In *Re X* (2007), 30 OSCB 327, the Commission dismissed an application for a section 17 Order. The hearing was held *in camera* and anonymized Reasons were published.

c. In *Re X and Y* (2007), 30 OSCB 3513, after granting an application for a section 17 Order to permit the applicant to defend criminal charges in the United States, the Commission published an Order granting the publication of a synopsis of the Panel's Reasons in the form appended to the Order. The Panel ordered: 1) immediate publication of a summary of the anonymized Reasons using monikers and 2) publication of the full Reasons after the completion of the criminal proceedings (subject to further submissions regarding publication in the interim). A year and a half later, the full Reasons were published without the use of monikers.[6]

d. In *Re Y* (2009), 32 OSCB 7182 and 32 OSCB 7188, both Staff and the applicants consented to publication of several Orders and Reasons with the use of monikers. The Panel concluded that publication, while retaining the use of monikers rather than names, was consistent with the open courts principle and with the confidentiality and disclosure provisions of the Act. The Orders[7] and Reasons were published in anonymized form, without awaiting the completion of related criminal proceedings.

[48] In cases where enforcement proceedings are already commenced before the Commission, and are either ongoing or have been completed, Panels have published unredacted Reasons in section 17 applications, without anonymizing the parties. See, for instance, *Re Coughlan* (2000), 23 OSCB 3687, *Re Boock* (2010), 33 OSCB 1589, *Re Inspektor* (2014), 37 OSCB 11271, *Re Amato* (2015), 38 OSCB 5111 and *Re Welcome Place Inc.* (2016), 39 OSCB 10501.

[49] In all cases, given the importance of the openness principle, confidentiality should not be granted for longer than is absolutely necessary.

2. Positions of the Parties

[50] In this case, Staff's confidential investigation into Katanga is ongoing and no Statement of Allegations has been filed. Staff submitted that the Commission should only publish the August Order and these Reasons when the need to preserve the confidentiality of the investigation is no longer present. Therefore, Staff submitted that the Commission should maintain the confidentiality of the August Order and these Reasons until the earlier of:

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6 See *Re Black* (2008), 31 OSCB 10397.

7 The Orders are published at: *Re Y* (2009), 32 OSCB 7151, *Re Y* (2009), 32 OSCB 7153, *Re Y* (2009), 32 OSCB 7159, *Re Y* (2006), 32 OSCB 7161 and *Re Y* (2009), 32 OSCB 7163.

a. one year from the date of the August Order; or

b. Staff bringing enforcement proceedings against Katanga,

subject to the right of the parties to object to the publication of the August Order and these Reasons on the grounds that the publication would cause a party significant prejudice or otherwise not be in the public interest.

[51] Staff also requested that our further Order incorporate a number of other provisions regarding potential redactions and party objections closer to the publication date.

[52] In the alternative, if we were to order immediate publication, Staff submitted that publication of the August Order and these Reasons should include substantial redactions, to eliminate any reasonable possibility that such publication could expose Staff's investigation to the public. However, Staff argued that publishing a redacted August Order and an anonymized version of these Reasons would be "essentially hollow", given the many redactions that would be necessary to prevent exposure of Staff's confidential investigation. Specifically, Staff submitted that the following facts would have to be redacted from any immediately published version of the August Order and these Reasons:

a. the identity of the applicant;

b. the purpose for which the application was sought;

c. the stated grounds for the application;

d. the parties' arguments in support of their positions on the application;

e. the identity of the intended recipients of the disclosure;

f. the fact that the intended recipients of the disclosure are external auditors of the applicant;

g. the nature of the confidential information that formed the subject of the section 17 application, including the dates of the Summons, the company named in the Summonses and the documents identified in the Summonses; and

h. the Commission's assessment of the parties' arguments and the evidence led as part of the application.

[53] Katanga did not deliver submissions on this issue, but Staff advised us that Katanga is "agreeable to the approach proposed by Staff in Staff's submissions".

3. Application of the Law

[54] Upon balancing the desirability of openness on the one hand and the possible prejudice to Katanga and to Staff's investigation on the other, we find that the August Order and these Reasons should remain confidential for a limited period following issuance, but should be published in full, subject to further submissions, at a later date.

[55] In order to maintain confidentiality for no longer than is absolutely necessary, we find that publication should be on the earlier of the following two dates:

a. August 10, 2018, being one year from the date of the August Order; and

b. if Staff files a Statement of Allegations naming Katanga as a Respondent, and/or other Respondents in a proceeding involving Katanga's financial statements, 30 days after the Notice of Hearing is issued to commence that enforcement proceeding.

[56] If a Statement of Allegations is filed, all parties to that proceeding will have an opportunity to make submissions regarding the need for continuing confidentiality and its scope based upon prejudice to Staff's investigation or to those persons. If no Statement of Allegations is filed within the year, Staff and Katanga will still have the opportunity to make submissions regarding the need for continuing confidentiality and its scope.

[57] These Reasons will be issued along with an Order that adopts many of Staff's proposed terms in essence, but with two modifications of particular note: first, removing the Panel's obligation to identify, at first instance, specific redactions to the Reasons and Order and, second, advancing the timing of the vetting process before publication.

[58] In relation to the first point, Staff suggested that, in the event of publication at the one-year mark, the Office of the Secretary or the Panel would first redact the Order and Reasons to anonymize the applicant (i.e., Katanga) as well as the recipients and intended recipients of the disclosure sought by Katanga (i.e., the various Deloitte entities and the identified individuals at those entities). In that scenario, the parties would have advance notice of the intended publication and an opportunity to bring a motion objecting to the publication. However, this proposal would leave the burden of identifying the necessary redactions for either the Office of the Secretary or a Panel, without the benefit of additional party input.

[59] The parties are better situated to identify, at first instance, the redactions they believe are necessary to preserve any continuing need for confidentiality. A Panel can then evaluate, with the assistance of the parties, whether those redactions are appropriate, near the time of publication. Therefore, under our Order, Staff will be required, and Katanga will be permitted, to make written submissions shortly before publication, which submissions must include the specific details of any proposed redactions.

[60] In light of this change in the redaction process, it follows that Staff's proposed timing also requires modification. Staff proposed that the Commission should provide the parties with at least 15 days' notice of the intended date of publication and that any party could file a motion objecting to the publication at least 10 days prior to the intended publication date. Under our Order, the timing of objections will depend on the triggering event for publication. If a Statement of Allegations is filed before July 10, 2018, Staff will be required to deliver submissions on the issues of publication and redaction by no later than 10 days after the related Notice of Hearing is issued. If no Statement of Allegations is filed by July 10, 218, Staff will be required to deliver submissions on the issues of publication and redaction by no later than July 20, 2018. In either case, if Katanga wishes to deliver responding submissions, it will have 7 days to do so after Staff's submissions. This will leave a Panel some time to consider the submissions and proposed redactions before the scheduled publication.

[61] The modified approach outlined above is preferable to deciding at this point in Staff's investigation what information can be revealed and what must remain confidential. If such decisions are made at present, there may be a tendency to be overly protective of Staff's investigation, such that the published decisions would be of limited utility to the public. Awaiting a reasonable period of time and further submissions will allow a Panel to more precisely consider the need for, and scope of, any continuing confidentiality or anonymization.

IV. CONCLUSION

[62] For all the above reasons, the Commission's August Order authorized disclosure of the Katanga Summons to identified individuals at Deloitte SA and disclosure of the Staff Letter to identified individuals at Deloitte SA, Deloitte AG, Deloitte LLP and Deloitte Canada. The following conditions were also included in the August Order:

a. before any disclosure of the Katanga Summons or of the Staff Letter, Katanga shall obtain a written confirmation that the individual receiving the disclosure agrees to be bound by the confidentiality provisions of subsection 16(2) of the Act; and

b. the Staff Letter is confidential and may not be disclosed to any person or company, except to the individuals identified in the August Order.

[63] A further confidential Order will be issued along with these Reasons to address the timing of the future publication of the August Order and these Reasons. The publication date will vary, depending on whether enforcement proceedings are commenced against Katanga or others arising from the same subject matter, but in any event the parties will have a further opportunity to make submissions regarding the publication closer to the intended date of release.

Dated at Toronto this 18th day of October, 2017.

"D. Grant Vingoe"

"Deborah Leckman"

"Mark J. Sandler"

3.1.2 Larry Keith Davis – ss. 127(1), 127(10)

IN THE MATTER OF
LARRY KEITH DAVIS

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Citation: *Davis (Re)*, 2019 ONSEC 3
Date: 2019-01-15
File No. 2017-6

Hearing:	In Writing	
Decision:	January 15, 2019	
Panel:	Lawrence P. Haber	Commissioner
Submissions:	Kai Olson	For Staff of the Commission
		No hearing brief or written submissions were filed by or on behalf of Larry Keith Davis

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REASONS AND DECISION

I. INTRODUCTION

[1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that an order under section 127(1) of the *Securities Act*[1] be made against Larry Keith Davis (the **Respondent** or **Davis**) pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Act.

[2] In a decision issued by the British Columbia Securities Commission (the **BCSC**) on June 22, 2016[2] the BCSC found that the Respondent perpetrated a fraud, contrary to section 57(b) of the British Columbia *Securities Act*.[3]

1 Ontario *Securities Act*, RSO 1990, c S.5 (the **Act**).
2 *Re Davis,* 2016 BCSECCOM 214 (the **BCSC Findings**).
3 RSBC 1996, c 418 (the **BC Act**).

[3] Following a sanctions hearing, on November 7, 2016, the BCSC ordered the Respondent to pay a $15,000 administrative penalty and permanently prohibited him from participating in the securities market, with the exception that he was granted a carve-out for trading and purchasing securities for his own account through a person registered under the BC Act.[4]

[4] The Respondent appealed the BCSC Findings and the permanent market prohibition bans in the BCSC Original Sanctions Order to the British Columbia Court of Appeal (**BCCA**).

[5] On April 20, 2018, the BCCA issued its Reasons for Judgement, dismissing the Respondents' appeal of the BCSC's Findings but allowing the appeal of the BCSC Original Sanctions Order, and set aside the permanent market prohibition bans in the BCSC Original Sanctions Order, and remitted that specific issue back to the BCSC for reconsideration.[5]

[6] On July 6, 2018, the BCSC held a sanctions hearing with respect to the imposition of market prohibition bans on the Respondent.

[7] On September 19, 2018, the BCSC Order was issued,[6] ordering the same permanent market prohibition bans against the Respondent as was ordered in the BCSC Original Sanctions Order.[7]

[8] The Respondent is subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon him.

II. SERVICE AND PARTICIPATION

[9] On December 12, 2018 the Commission ordered that this proceeding follow the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure and Forms*.[8]

[10] The Respondent was served with the Commission's Order, the Amended Statement of Allegations dated December 12, 2018 and Staff's written submissions, hearing brief[9] and brief of authorities.

[11] Although served, the Respondent did not file a hearing brief or make any written submissions in this proceeding. The Commission may proceed in the absence of a party where that party has been given notice of the hearing.[10]

III. THE BCSC FINDINGS

A. Background

[12] The conduct for which the Respondent was sanctioned took place between June 2011 and May 2013 (the **Material Time**).[11] During this time, the Respondent was a resident of British Columbia. The Respondent has never been registered under the BC Act.[12]

[13] During the Material Time, the Respondent was working in investor relations using the name Bravo International Services (**Bravo**).[13]

[14] In 2009, the Respondent began doing investor relations work for various companies, including FormCap Corp. (**FormCap**), a Nevada company trading on the US over-the-counter market. His involvement with the companies was through an individual (**Mr. B**).[14]

[15] The Respondent had no agreement with FormCap to provide investor relations services and received no remuneration from the company. He obtained information relating to FormCap from Mr. B and public sources.[15]

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4 *Re Davis,* 2016 BCSECCOM 375 (the **BCSC Original Sanctions Order**). The Respondent did not appeal the administrative penalty ordered by the BCSC and that administrative penalty still remains in effect.

5 *Davis v British Columbia (Securities Commission)*, 2018 BCCA 149 at paras 90-91.

6 *Re Davis*, 2018 BCSECCOM 284 (the **BCSC Order**).

7 BCSC Order at para 57.

8 *Ontario Securities Commission Rules of Procedure and Forms*, (2017) 40 OSCB 8988 (the ***Rules of Procedure***).

9 Staff's Hearing Brief is marked as Exhibit 1.

10 *Statutory Powers Procedure Act,* RSO 1990 c S.22, s 7(2); *Rules of Procedure*, r 21(3).

11 BCSC Findings at paras 16 and 74.

12 BCSC Findings at para 6.

13 BCSC Findings at para 6.

14 BCSC Findings at paras 2 and 8.

15 BCSC Findings at para 9.

[16] For a brief period of time in early 2011, the Respondent was remunerated for his work relating to FormCap through the transfer of FormCap shares to him from existing shareholders, but he had sold his shares by April 2011.[16]

[17] The BCSC found that the Respondent never received FormCap shares after January 2011.[17]

[18] WM was a neighbour and family friend of the Respondent, who had little investment knowledge or experience.[18]

1. First Investment

[19] In June 2011, the Respondent led WM to believe that there was an investment opportunity for her in FormCap, and that she could purchase shares through him. WM provided the Respondent $4,000 towards her investment, which was to turn into 40,000 FormCap shares in August or September 2011. WM received a receipt for her investment on Bravo letterhead, with an attached Stock Purchase Agreement (**SPA**) which had been authored by the Respondent. The SPA set out the terms of the investment, including identifying the Respondent as the seller of the FormCap shares to WM.[19]

[20] The BCSC found that the Respondent deposited the investor's initial investment funds into his personal bank account. Rather than investing the funds as promised, the Respondent used them instead on personal expenses and cash withdrawals.[20]

[21] In July 2011, FormCap announced that it had approved a consolidation of its shares on a 1-for-10 share basis by which shareholders would receive one share for every ten shares tendered.[21]

[22] By October 17, 2011, however, FormCap abandoned the proposed 1-for-10 share consolidations and disclosed this publicly. The Respondent did not convey that information to WM.[22]

2. Second Investment

[23] In April 2012, the Respondent convinced WM to make a second investment of $3,000 in exchange for 30,000 FormCap shares. Although WM had yet to receive FormCap shares relating to her first investment, she proceeded with the additional investment. WM believed she was buying FormCap shares from the Respondent, through Bravo, and opened a brokerage account on the Respondents' suggestion, into which her FormCap shares were to be deposited. WM received no purchase agreement or receipt in respect of her second investment.[23]

[24] Following WM's second investment, FormCap restructured and commenced a 1-for-50 share consolidation on August 10, 2012.[24]

3. SPA Amendment and Request for Return of Investment Funds

[25] Throughout April and May 2013, WM asked the Respondent for the return of the funds she had invested. The Respondent repeatedly refused her requests, explaining, among other things, that WM's investments were in shares tied to the stock market. At the insistence of WM, the SPA was eventually amended in May 2013 to reflect her second investment.[25]

[26] The BCSC found that as late as May 2013, the Respondent continued to represent to WM that he owned FormCap shares, despite the 1-for-10 share consolidation having been abandoned in October 2011, and the fact that the Respondent had never received any FormCap shares following the 1-for-50 share consolidation which commenced in August 2012.[26]

[27] WM never received any FormCap shares from the Respondent, but eventually succeeded in getting the return of her funds from him through a Small Claims Court process.[27]

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16 BCSC Findings at para 10.
17 BCSC Findings at para 14.
18 BCSC Findings at para 7.
19 BCSC Findings at paras 16-17, 20-23 and 25.
20 BCSC Findings at paras 18-19.
21 BCSC Findings at para 15.
22 BCSC Findings at paras 26-27.
23 BCSC Findings at paras 28-32.
24 BCSC Findings at para 33.
25 BCSC Findings at paras 35-42 and 46.
26 BCSC Findings at para 74.
27 BCSC Findings at para 76.

B. BCSC Findings – Conclusions

[28] The BCSC found that the Respondent perpetrated a fraud on WM in the aggregate amount of $7,000 contrary to section 57(b) of the BC Act.[28]

C. The BCSC Order

[29] The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondent pursuant to the BC Act:

(a) under section 161(1)(b)(ii), Davis cease trading in, and is permanently prohibited from purchasing, any securities or exchange contracts, except Davis may trade or purchase securities for his own account through a registrant if he gives the registrant a copy of the BCSC Order;

(b) under section 161(1)(c), any or all of the exemptions set out in the BC Act, regulations or a decision do not apply to Davis;

(c) under section 161(1)(d)(i) and (ii), Davis resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or office of any issuer or registrant;

(d) under section 161(1)(d)(iii), Davis is permanently prohibited from becoming or acting as a registrant or promoter;

(e) under section 161(1)(d)(iv), Davis is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and

(f) under section 161(1)(d)(v), Davis is permanently prohibited from engaging in investor relations activities.[29]

IV. ANALYSIS AND DECISION

[30] Staff seeks an order imposing trading and market-access bans that substantially mirror those in the BCSC Order.

[31] The issues for this Panel to consider are:

(a) whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondent; and

(b) if so, whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

A. Subsection 127(10) of the Act

[32] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). This provision facilitates cross-jurisdictional enforcement by allowing the Commission to issue protective, preventive and prospective orders to ensure that misconduct that has taken place in another jurisdiction will not be repeated in Ontario's capital markets.

[33] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.[30]

B. Subsection 127(1) of the Act

[34] Subsection 127(1) empowers the Commission to make orders where it is in the public interest to do so. The Commission is not required to make an order similar to that made by the originating jurisdiction. Rather, the Panel must first satisfy itself that an order for sanctions is necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.

[35] Orders made under subsection 127(1) of the Act are "protective and preventive" and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.[31]

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28 BCSC Findings at para 80.

29 BCSC Order at para 57.

30 *Wong Sang Shen Cho (Craig Cho)*, 2014 ONSEC 20, (2014) 37 OSCB 7285 at para 48.

31 *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132 at paras 42-43.

[36] The Commission must make its own determination of what is in the public interest. It is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. The threshold for reciprocity is low.[32] A low threshold is supported by the principle found in section 2.1 of the Act, which provides that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[37] In determining the nature and scope of sanctions to be ordered, the Commission can consider a number of factors, including the seriousness of the conduct, specific and general deterrence, and any mitigating factors.[33]

[38] In this case, investor harm is an important consideration. As emphasized by the BCSC:

> [w]hile the amount of the fraud in this case and Davis' enrichment were not substantial, the harm suffered by the investor was significant. She was deprived of her funds for several years and eventually forced to seek recourse to the courts for their recovery. …[34]

[39] The investor was also negatively impacted emotionally and testified at the liability hearing before the BCSC that she had not invested since this experience, has lost trust in people and has had to seek counselling.[35]

[40] While the investor was successful in eventually recovering her $7,000 investment, it took considerable time and effort to do so. I agree with the statement of the BCSC that eventual repayment pursuant to civil proceedings does not negate the deprivation caused by the fraud perpetrated by the Respondent.[36]

[41] The BCSC did consider whether it would be appropriate to issue market prohibition bans of a lesser duration. However, given the seriousness of the misconduct, and the continuing risk the Respondent poses to investors, the BCSC did not find it appropriate or in the public interest to order market bans of a lesser duration.[37]

[42] There were no mitigating factors present that would affect the imposition of permanent market prohibition bans. I was not presented with any evidence or submissions in this proceeding to support the reduction of the bans. While the Respondent had no prior regulatory history, this factor is not in itself determinative and other factors such as investor harm and future risk weigh in favor of imposing permanent market prohibition bans.

[43] I agree with the BCSC that the Respondent poses a risk to the capital markets. Davis displayed a significant lack of honesty and an evident lack of integrity, with no indication that this will improve over time.[38] Given this risk and the investor harm, it is appropriate to impose permanent market prohibitions in Ontario as well. The permanent market prohibition bans serve as a deterrent to Davis and others and send a message that fraudulent conduct of any amount and investor harm will not be tolerated.

C. Differences between the Sanctions in the BCSC Order and the Proposed Order

[44] Due to the differences between the Act and the BC Act, some of the sanctions this Panel imposes cannot be identical to those imposed by the BCSC. This is true with respect to two aspects of the sanctions.

[45] First, the BCSC prohibited the Respondent from trading in or purchasing "exchange contracts", in addition to securities. The BC Act defines "exchange contract" to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order prohibiting the Respondent from trading in derivatives, as defined in the Act. In my view, when considering the factors described above that support the making of an order prohibiting trading, there is no reason to distinguish between securities and derivatives. In the circumstances of this case, it is equally in the public interest to protect Ontario investors and the capital markets by prohibiting the Respondent from trading in derivatives. This Panel will therefore make the order requested by Staff.

[46] Second, the BCSC prohibited the Respondent from engaging in "investor relations activities" and from "acting in a management or consultative capacity in connection with activities in the securities market." In Ontario, the Act does not use those terms. Instead, as Staff submits, such activities would largely be covered by the prohibitions already requested, against individuals acting as a director or officer of an issuer, or against any respondent acting as a registrant or promoter.

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32 *JV Raleigh Superior Holdings Inc (Re)*, 2013 ONSEC 18, (2013) 36 OSCB 4639 at para 21.

33 *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1136.

34 BCSC Order at para 49.

35 BCSC Original Sanctions Order at para 18; BCSC Order at para 49.

36 BCSC Original Sanctions Order at para 17; BCSC Order at para 10.

37 BCSC Order at para 52.

38 BCSC Order at para 52.

[47] This Panel finds that it is in the public interest to make the order as requested by Staff, and that such an order effectively mirrors the relevant provisions of the BCSC Order.

V. CONCLUSION

[48] For the reasons provided above, I make the following order:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Davis cease permanently, except that he may trade securities or derivatives for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davis cease permanently, except that he may purchase securities for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;

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

d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Davis resign any positions that he holds as a director or officer of any issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 15th day of January, 2019.

“Lawrence P. Haber”

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Noble Mineral Exploration Inc.	07 January 2019	17 January 2019

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
Blocplay Entertainment Inc.	04 December 2018	
Katanga Mining Limited	15 August 2017	
Leviathan Cannabis Group Inc.	07 January 2019	

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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:
RBC Canadian Bond Index Fund
RBC Canadian Government Bond Index Fund
RBC Canadian Index Fund
RBC U.S. Index Fund
RBC U.S. Index Currency Neutral Fund
RBC International Index Currency Neutral Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated January 16, 2019
Received on January 17, 2019
Offering Price and Description:
Series A, Series F and Series O units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc. (other than Series A)
Royal Mutual Funds Inc. (Series A)
Royal Mutual Funds Inc./RBC Direct Investing Inc.
The Royal Trust Company
RBC Dominion Securities Inc.
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc. (other than Series A)
Project #2774740

Issuer Name:
Invesco S&P International Developed Low Volatility Index ETF (formerly, PowerShares S&P International Dev Low Vol Index)
Principal Regulator – Ontario
Type and Date:
Amendment #4 to Final Long Form Prospectus dated January 16, 2019
Received on January 16, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Invesco Canada Ltd.
Project #2703193

Issuer Name:
iShares ESG Canadian Aggregate Bond Index ETF
iShares ESG Canadian Short Term Bond Index ETF
iShares ESG MSCI Canada Index ETF
iShares ESG MSCI EAFE Index ETF
iShares ESG MSCI Emerging Markets Index ETF
iShares ESG MSCI USA Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 18, 2019
NP 11-202 Preliminary Receipt dated January 21, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2865331

Issuer Name:
Matco Small Cap Class
Principal Regulator – Alberta (ASC)
Type and Date:
Amendment #1 to Final Annual Information Form dated January 15, 2019
Received on January 16, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2785518

Issuer Name:
Ninepoint Short-Term Bond Fund
Ninepoint Short-Term Bond Class
Ninepoint Real Asset Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 15, 2019
Received on January 17, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners LP
Project #2745066

Issuer Name:
RBC Canadian Short Term Bond Index ETF
RBC Canadian Bond Index ETF
RBC Global Government Bond (CAD Hedged) Index ETF
RBC Canadian Equity Index ETF
RBC U.S. Equity Index ETF
RBC International Equity Index ETF
RBC Emerging Markets Equity Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 16, 2019
Received on January 17, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2793652

Issuer Name:
Sentry All Cap Income Fund
Sentry Canadian Income Fund
Sentry Canadian Income Class
Sentry Diversified Equity Fund
Sentry Diversified Equity Class
Sentry Global Infrastructure Fund
Sentry Small/Mid Cap Income Fund
Sentry Small/Mid Cap Income Class
Sentry U.S. Growth and Income Fund
Sentry U.S. Growth and Income Class
Sentry Global REIT Fund
Sentry Global REIT Class
Sentry Precious Metals Fund
Sentry Precious Metals Class
Sentry Alternative Asset Income Fund
Sentry U.S. Monthly Income Fund
Sentry Corporate Bond Class
Sentry Global High Yield Bond Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 18, 2019
Received on January 18, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2773843

Issuer Name:
TD Active Global Enhanced Dividend ETF
TD Active Preferred Share ETF
TD Canadian Aggregate Bond Index ETF
TD Canadian Equity Index ETF (formerly TD S&P/TSX Capped Composite Index ETF)
TD Cash Management ETF
TD Global Technology Leaders Index ETF
TD International Equity CAD Hedged Index ETF
TD International Equity Index ETF
TD Select Short Term Corporate Bond Ladder ETF
TD Select U.S. Short Term Corporate Bond Ladder ETF
TD Systematic International Equity Low Volatility ETF
TD U.S. Equity CAD Hedged Index ETF (formerly TD S&P 500 CAD Hedged Index ETF)
TD U.S. Equity Index ETF (formerly TD S&P 500 Index ETF)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated January 17, 2019
NP 11-202 Preliminary Receipt dated January 18, 2019
Offering Price and Description:
CAD Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
TD Asset Management Inc.
Project #2865147

Issuer Name:
1832 AM Canadian Dividend LP
1832 AM Canadian Growth LP
1832 AM Canadian Preferred Share LP
1832 AM Global Completion LP
1832 AM North American Preferred Share LP
1832 AM Tactical Asset Allocation LP
Scotia Global Low Volatility Equity LP
Scotia Total Return Bond LP
Scotia U.S. Dividend Growers LP
Scotia U.S. Low Volatility Equity LP
Type and Date:
Final Simplified Prospectus dated January 18, 2019
Receipted on January 21, 2019
Offering Price and Description:
Series I units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2856126

Issuer Name:
RBC Canadian Bond Index Fund
RBC Canadian Government Bond Index Fund
RBC Canadian Index Fund
RBC U.S. Index Fund
RBC U.S. Index Currency Neutral Fund
RBC International Index Currency Neutral Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated January 16, 2019
NP 11-202 Receipt dated January 21, 2019
Offering Price and Description:
Series A, Series F and Series O units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc. (other than Series A)
Royal Mutual Funds Inc. (Series A)
Royal Mutual Funds Inc./RBC Direct Investing Inc.
The Royal Trust Company
RBC Dominion Securities Inc.
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc. (other than Series A)
Project #2774740

Issuer Name:
CIBC Active Investment Grade Corporate Bond ETF
CIBC Active Investment Grade Floating Rate Bond ETF
CIBC Multifactor Canadian Equity ETF
CIBC Multifactor U.S. Equity ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 14, 2019
NP 11-202 Receipt dated January 15, 2019
Offering Price and Description:
Common units and hedged units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2842652

Issuer Name:
CIBC Smart Balanced Growth Solution
CIBC Smart Balanced Income Solution
CIBC Smart Balanced Solution
CIBC Smart Growth Solution
CIBC Smart Income Solution
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 14, 2019
NP 11-202 Receipt dated January 15, 2019
Offering Price and Description:
Series A, Series T5, Series F, Series FT5, Series S, and Series ST5 units @ net asset value
Underwriter(s) or Distributor(s):
CIBC Securities Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #2841825

Issuer Name:
Dynamic Active Canadian Dividend Fund
Dynamic Active Crossover Bond Fund
Dynamic Active Global Dividend Fund
Dynamic Active Global Financial Services Fund
Dynamic Active Investment Grade Floating Rate Fund
Dynamic Active Preferred Shares Fund
Dynamic Active Tactical Bond Fund
Dynamic Active U.S. Dividend Fund
Dynamic Active U.S. Mid-Cap Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 18, 2019
NP 11-202 Receipt dated January 21, 2019
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
N/A
Project #2855791

Issuer Name:
Horizons Equal Weight Canada Banks Index ETF
Horizons Equal Weight Canada REIT Index ETF
Horizons Laddered Canadian Preferred Share Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 17, 2019
NP 11-202 Receipt dated January 18, 2019
Offering Price and Description:
Class A units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2856177

Issuer Name:
Mackenzie Global Growth Balanced Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 15, 2019
NP 11-202 Receipt dated January 16, 2019
Offering Price and Description:
Series A, AR, D, F, F5, F8, FB, FB5, O, PW, PWFB, PWFB5, PWR, PWT5, PWT8, PWX, PWX8, T5 and T8 units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2853426

Issuer Name:
Mackenzie Multi-Strategy Absolute Return Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 11, 2019
NP 11-202 Receipt dated January 18, 2019
Offering Price and Description:
Series A, F, FB, O, PW, PWFB and PWX
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2759653

Issuer Name:
NewGen Alternative Income Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 15, 2019
NP 11-202 Receipt dated January 17, 2019
Offering Price and Description:
Class F, Class G and Class I Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
NewGen Asset Management Limited.
Project #2848054

Issuer Name:
RP Strategic Income Plus Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 11, 2019
NP 11-202 Receipt dated January 15, 2019
Offering Price and Description:
Class A, Class A-USD, Class F, Class F-USD, Class O, Class M and Class M-USD Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
RP Investment Advisors LP
Project #2855885

Issuer Name:
Vanguard All-Equity ETF Portfolio
Vanguard Balanced ETF Portfolio
Vanguard Conservative ETF Portfolio
Vanguard Conservative Income ETF Portfolio
Vanguard Global Liquidity Factor ETF
Vanguard Global Minimum Volatility ETF
Vanguard Global Momentum Factor ETF
Vanguard Global Value Factor ETF
Vanguard Growth ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 15, 2019
NP 11-202 Receipt dated January 16, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Vanguard Investments Canada Inc.
Project #2855040

NON-INVESTMENT FUNDS

Issuer Name:
Antalis Ventures Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary CPC Prospectus dated January 18, 2019
Received on January 18, 2019
Offering Price and Description:
$300,000.00
3,000,000 OFFERED SHARES
Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
–
Project #2865415

Issuer Name:
BlackShire Capital Corp.
Type and Date:
Preliminary Long Form Prospectus dated January 14, 2019
(Preliminary) Receipted on January 15, 2019
Offering Price and Description:
No securities are being offered or sold pursuant to this Prospectus
Underwriter(s) or Distributor(s):
–
Promoter(s):
Blackshire Asset Management Ltd.
Project #2864077

Issuer Name:
Blue Lagoon Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 15, 2019
NP 11-202 Preliminary Receipt dated January 16, 2019
Offering Price and Description:
4,030,500 Common Shares on Exercise of 4,030,500 Outstanding Special Warrants
Underwriter(s) or Distributor(s):
–
Promoter(s):
Rana Vig
Project #2864483

Issuer Name:
iA Financial Corporation Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Shelf Prospectus dated January 18, 2019
NP 11-202 Preliminary Receipt dated January 21, 2019
Offering Price and Description:
$2,000,000,000.00
Debt Securities
Class A Preferred Shares
Common Shares
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2865309

Issuer Name:
Northern Dynasty Minerals Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated January 15, 2019
NP 11-202 Preliminary Receipt dated January 15, 2019
Offering Price and Description:
US$50,000,000.00
Common Shares Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2864385

Issuer Name:
CARDS II Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated January 18, 2019
NP 11-202 Receipt dated January 18, 2019
Offering Price and Description:
Up to $11,000,000,000.00 Credit Card Receivables Backed Notes
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
Andrew Stuart
Project #2858325

Issuer Name:
SLANG Worldwide Inc. (formerly Fire Cannabis Inc.)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 17, 2019
NP 11-202 Receipt dated January 21, 2019
Offering Price and Description:
43,998,590 Common Shares and 21,999,295 Warrants
issuable without payment upon the conversion of
43,998,590 Subscription Receipts
Underwriter(s) or Distributor(s):
Canacoord Genuity Corp.
Clarus Securities Inc.
GMP Securities L.P.
Paradigm Capital Inc.
Promoter(s):
Peter W.J. Miller
William Levy
Joel Leetzow
Keith Stein
Mario Boscarino
Mihalis Belantis
Project #2853077

Issuer Name:
Tempus Capital Inc.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 14, 2019
NP 11-202 Receipt dated January 15, 2019
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
–
Promoter(s):
Russell Tanz
Project #2801631

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: BNY Mellon Asset Management North America Corporation To: Mellon Investments Corporation	Portfolio Manager, Commodity Trading Manager and International Investment Fund Manager – Exemption	January 2, 2019
Name Change	From: Sprott Private Wealth LP To: Sprott Capital Partners LP	Investment Dealer	January 4, 2019
Change in Registration Category	Bloom Investment Counsel, Inc.	From: Investment Fund Manager, Portfolio Manager To: Exempt Market Dealer, Investment Fund Manager, Portfolio Manager	January 15, 2019
Change in Registration Category	Waypoint Investment Partners Inc.	From: Exempt Market Dealer & Portfolio Manager To: Exempt Market Dealer, Portfolio Manager & Investment Fund Manager	January 15, 2019
New Registration	FNB Capital Asset Management Inc.	Portfolio Manager,	January 15, 2019
Voluntary Surrender	Walton Capital Management Inc.	Exempt Market Dealer	January 17, 2019
New Registration	Gravity Partners Capital Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	January 18, 2019
New Registration	Nuveen Canada Company	Exempt Market Dealer	January 18, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.3 Clearing Agencies

13.3.1 Fixed Income Clearing Corporation – Application for Exemption from Recognition as a Clearing Agency – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

FIXED INCOME CLEARING CORPORATION

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

Fixed Income Clearing Corporation (**FICC**) has applied to the Commission for an order pursuant to section 147 of the *Securities Act* (Ontario) (**OSA**) to exempt it from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA (the **Application**).

FICC is registered as a clearing agency with the U.S. Securities and Exchange Commission (**SEC**) pursuant to the provisions of Section 17A of the *Securities Exchange Act of 1934*, as amended (**Exchange Act**) and is subject to regulatory supervision by SEC. In addition, FICC is regulated in the U.S. as a systemically important financial market utility (**SIFMU**) and subject to the regulatory oversight of the Federal Reserve Bank of New York (**FRBNY**), under authority delegated by the Board of Governors of the Federal Reserve System. The Exchange Act, including the SEC's regulations and rules thereunder, in conjunction with any other U.S. rules applicable to a clearing agency and SIFMU, set out a framework for regulating and overseeing the clearing agency's organization, governance, membership, operations, systems, risk management procedures and controls, reporting and notifications.

FICC proposes to provide trade comparison, netting, risk management, settlement and central counterparty services for residents in Ontario with respect to the U.S. government securities market and the U.S. mortgage-backed securities market.

As FICC will be carrying on business in Ontario, they are required to be recognized as a clearing agency under the OSA or apply for an exemption from the recognition requirement. Among other factors set out in the Application, FICC is seeking an exemption from the recognition requirement on the basis that they are subject to a comparable regulatory regime in its home jurisdiction, the United States, by the SEC.

B. Application and Draft Exemption Order

In the Application, FICC describes its requirements under U.S. regulation that are generally comparable, or that achieve similar outcomes to the requirements of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**). Subject to comments received, staff propose to recommend to the Commission that it grant FICC an exemption order in the form of the proposed draft order attached at Appendix A (**Draft Order**). This recommendation is based on the determination that FICC is not expected to pose significant risk to Ontario's capital markets and is subject to a comparable regulatory regime in its home jurisdiction by its home regulator.

In determining whether a clearing agency poses significant risk to Ontario, we consider the level of activity of the clearing agency in Ontario (using indicators such as notional value and volume of transactions cleared for Ontario residents) and other qualitative and quantitative factors, such as interconnectedness, size of obligations and the role and central importance of a clearing agency to a particular market.

The Draft Order requires FICC to comply with various terms and conditions set forth in Schedule "A" to the Draft Order, including relating to:

1. Regulation of FICC
2. Governance
3. Permitted scope of clearing activities in Ontario
4. Filing requirements
5. Information sharing

The Draft Order also acknowledges that the scope of, and the terms and conditions imposed by the Commission, or the determination whether it is appropriate that FICC continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or FICC's activities or regulatory status, or as a result of any changes to the laws in the U.S. or Ontario affecting trading or clearing of securities.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order for 30 days. A copy of FICC's Application can be found on the Commission website at: http://www.osc.gov.on.ca/en/Marketplaces_clearing-agencies_index.htm

We are seeking comment on all aspects of the Application and Draft Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before February 23, 2019 addressed to the attention of the:

Secretary of the Commission
Ontario Securities Commission
20 Queen Street West, Toronto,
Ontario, M5H 3S8
Fax: 416-593-2318
e-mail: comments@osc.gov.on.ca.

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

Questions may be referred to:

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

Rezarte Vukatana
Clearing Specialist, Market Regulation
Tel: 416-593-2188
rvukatana@osc.gov.on.ca

Jalil El Moussadek
Risk Specialist, Market Regulation
Tel: 416-204-8995
jelmoussadek@osc.gov.on.ca

APPENDIX "A"

DRAFT ORDER

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

AND

IN THE MATTER OF
FIXED INCOME CLEARING CORPORATION

ORDER
(Section 147 of the OSA)

WHEREAS Fixed Income Clearing Corporation (**FICC**) has filed an application (**Application**) with the Ontario Securities Commission (**Commission**) pursuant to section 147 of the OSA requesting an order exempting FICC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA (**Order**);

AND WHEREAS FICC has represented to the Commission that:

1.1 FICC is a business corporation organized under New York law providing clearing, settlement, risk management, and central counterparty (**CCP**) services for certain fixed income securities in the United States. FICC was established in 2003 through a combination of government securities and mortgage-backed securities clearing organizations.

1.2 FICC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (**DTCC**). DTCC is a non-public holding company that owns a number of companies operating financial market infrastructures.

1.3 The common shares of DTCC (**Common Shares**) are held of record by approximately 290 participants of DTCC's clearing agency subsidiaries, including FICC. The Common Shares are allocated to participants in accordance with a formula based on their relative usage of the services of the clearing agencies. Of the participants that own Common Shares, currently (i) approximately 33% are banks holding approximately 18% of the issued and outstanding Common Shares, (ii) approximately 66% are broker-dealers holding approximately 80% of the issued and outstanding Common Shares, and (iii) approximately 1% are other financial institutions.

1.4 FICC operates clearing services through two divisions, the Government Securities Division (**GSD**) and the Mortgage-Backed Securities Division (**MBSD**) (collectively, the **Divisions**).

1.5 GSD offers a suite of services to support and facilitate the submission, comparison, risk management, netting and settlement of trades executed by its members in the U.S. government securities market. It acts as a CCP, guarantees the settlement of, and novates, netting-eligible trades at the time of comparison of such trades, and processes buy-sell transactions of U.S. government securities and repurchase agreement (**repo**) transactions. Other than GSD's comparison-only service, the use of GSD for a trade would include GSD's netting and settlement and risk management services.

1.6 GSD currently clears buy-sell and repo transactions in securities issued by the U.S. Department of Treasury (**U.S. Treasury**) (e.g., bills, bonds, notes, and U.S. Treasury Inflation-Protected Securities (**TIPS**); Segregated Trading Registered Interest and Principle Securities (**STRIPS**) etc.); and U.S. government agency bonds and notes. GSD also currently clears General Collateral Finance Repo (**GCF Repo®**) trades through its GCF Repo® service. GCF Repo® trades are executed in generic CUSIPs collateralized with eligible securities, including fixed- and adjustable-rate mortgage-backed securities issued or guaranteed by Government National Mortgage Association (**Ginnie Mae**), Federal National Mortgage Association (**Fannie Mae**) and the Federal Home Loan Mortgage Corporation (**Freddie Mac**).

1.7 MBSD clears to-be-announced (**TBA**) transactions and specified pool transactions in pass-through mortgage-backed securities issued or guaranteed by corporations owned by the U.S. government (currently Ginnie Mae) or U.S. government-sponsored enterprises (currently Fannie Mae and Freddie Mac). TBA transactions are trades for which the actual identities of and/or the number of pools underlying each trade are not agreed to at the time of trade execution. TBA transactions are comprised of (i) settlement balance order destined trades; (ii) trade-for-trade destined trades; (iii) stipulated trades; and (iv) TBA options trades. Specified pool transactions are trades for which all pool data is agreed upon by the members at the time of execution.

1.8 The U.S. Securities and Exchange Commission (**SEC**) granted FICC permanent registration as a clearing agency pursuant to the provisions of Section 17A of the *Securities Exchange Act of 1934*, as amended (**Exchange Act**) on June 24, 2013 (SEC Release No. 34-69838). FICC is principally subject to regulatory supervision by the SEC and it is regulated in the United States as a systemically important financial market utility. In addition, the Federal Reserve Bank of New York supervises FICC under authority delegated by the Board of Governors of the Federal Reserve System, including through prescription of risk management standards, and consultation on examinations by the SEC and notices of material change.

1.9 FICC's activities are structured in accordance with the laws of the State of New York and the United States. The principal laws comprising the legal framework under which FICC operates include: (i) the Exchange Act, particularly Sections 17A and 19; (ii) the New York Business Corporation Law; (iii) the New York Uniform Commercial Code, particularly Articles 8 and 9; (iv) the *Securities Act of 1933*, as amended (**Securities Act**); (v) the *Federal Deposit Insurance Act*, as amended; (vi) the U.S. Bankruptcy Code; (vii) the *Federal Deposit Insurance Corporation Improvement Act of 1991*, as amended; (viii) the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, particularly Title II, regarding orderly liquidation authority, and Title VIII, the *Payment, Clearing, and Settlement Supervision Act of 2010*; and (ix) the *Securities Investor Protection Act of 1970*, as amended.

1.10 As a registered clearing agency, FICC is subject to the requirements that are contained in the Exchange Act and in the SEC's regulations and rules thereunder. These requirements include Exchange Act Rule 17Ad-22(e) (**CCA Standards**), adopted by the SEC in 2016. As a covered clearing agency, FICC complies with the CCA Standards that establish minimum requirements regarding how covered clearing agencies must maintain effective risk management procedures and controls as well as meet the statutory requirements of the Exchange Act on an ongoing basis.

1.11 FICC is also subject to the requirements of Regulation Systems Compliance and Integrity (**Reg SCI**) promulgated under the Exchange Act. Reg SCI requires FICC to, among other things, establish, maintain and enforce written policies and procedures reasonably designed to ensure that FICC's systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and operate in a manner that complies with the Exchange Act.

1.12 Through compliance with SEC requirements for registered clearing agencies, FICC addresses relevant international principles applicable to financial market infrastructures described 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.

1.13 Membership in each of the Divisions is available to various categories of members (**Members**), which currently are as set out below:

GSD membership categories include (i) Comparison-Only Members (who are only members of the comparison system); (ii) Netting Members (which includes Bank Netting Members, Dealer Netting Members, Inter-Dealer Broker Netting Members, Futures Commission Merchant Netting Members, Foreign Netting Members, Government Securities Issuer Netting Members, Insurance Company Netting Members, Registered Clearing Agency Netting Members and Registered Investment Company Netting Members); (iii) Sponsoring Members and Sponsored Members; (iv) CCIT Members; and (v) Funds-Only Settling Bank Members (Funds-Only Settling Bank Member are banks, trust companies, and other qualified entities that satisfy the requirements prescribed in GSD's rules).

MBSD membership categories include: (i) Clearing Members (who may be a Bank Clearing Member, a Dealer Clearing Member, an Inter-Dealer Broker Clearing Member, an Unregistered Investment Pool Clearing Member, a Government Securities Issuer Clearing Member, an Insurance Company Clearing Member, a Registered Clearing Agency Member, an Insured Credit Union Clearing Member or a Registered Investment Company Clearing Member); and (ii) Cash Settling Bank Members (Cash Settling Bank Members are banks, trust companies, and other qualified entities that satisfy the requirements prescribed in MBSD's rules).

1.14 Except for Sponsored Members, an applicant for membership must satisfy, among other things, requirements for operational capability and specified capital requirements. Various membership categories also have eligibility requirements in respect of regulatory or other status in the United States. As a result of current eligibility requirements, FICC expects that Members resident in Ontario would be Comparison-Only Members, Foreign Netting Members, Sponsored Members or CCIT Members of GSD and/or Foreign Clearing Members of MBSD. A Sponsored Member must be (i) a "qualified institutional buyer" as defined by Rule 144A under the Securities Act (**Rule 144A**), or (ii) a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph.

1.15 FICC maintains separate clearing funds for each of GSD and MBSD (each a **Clearing Fund** and collectively the **Clearing Funds**). Each Division's Clearing Fund (which also operates as each Division's default fund) provides the collateralization required to cover exposure from potential default of a member. Each Division's Clearing Fund consists of deposits posted by the respective Division's members in the form of cash and eligible securities. GSD maintains liquidity resources that include the following: (i) the cash portion of the GSD Clearing Fund; (ii) the cash that would be obtained by entering into repos using the securities portion of GSD's Clearing Fund (U.S. Treasury securities, agency securities guaranteed by the U.S. government and certain U.S. agency/government-sponsored enterprise pass-through securities); and (iii) the cash that would be obtained by entering into repos using the securities underlying transactions that would have been delivered to the defaulting GSD member had it not defaulted. GSD's Capped Contingency Liquidity Facility (**CCLF®**)), which is a supplemental liquidity contingency option, came into effect on November 15, 2018. The liquidity resources of MBSD include the following: (i) the cash portion of the MBSD Clearing Fund; (ii) the cash that would be obtained by entering into repos using the securities portion of the MBSD Clearing Fund (U.S. Treasury securities, U.S. agency securities guaranteed by the U.S. government and certain U.S. agency/government-sponsored enterprise pass-through securities); and (iii) the cash that would be obtained by entering into repos using the securities underlying transactions that would have been delivered to the defaulting MBSD member had it not defaulted. MBSD maintains a separate CCLF® arrangement as its supplemental liquidity contingency option.

1.16 FICC proposes to make membership available to entities resident in Ontario, which may include investment dealers, investment funds, banks, pension plans, asset managers and insurance companies, although it is possible there could be further unanticipated interest from other types of entities resident in Ontario in FICC's services.

1.17 FICC would provide its services to entities resident in Ontario without FICC establishing an office or having a physical presence in Ontario or elsewhere in Canada.

1.18 FICC submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

AND WHEREAS FICC has agreed to the terms and conditions attached hereto as Schedule "A";

AND WHEREAS based on the Application and the representations of FICC to the Commission, the Commission has determined that FICC is subject to regulatory requirements in the United States that are comparable to the requirements set out in NI 24-102 *Clearing Agency Requirements* and is subject to the SEC's supervision, and that granting an order to exempt FICC from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS FICC has acknowledged to the Commission that the scope of, and the terms and conditions imposed by, the Commission attached hereto as Schedule "A", or the determination whether it is appropriate that FICC continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets, FICC's activities or regulatory status, or any changes to the laws of the United States or Ontario affecting trading in or clearing and settlement of securities;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the OSA, FICC is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA;

PROVIDED THAT FICC complies with the terms and conditions attached hereto as Schedule "A".

DATED this [●] day of [●], 2019.

_____

_____

SCHEDULE "A"

Terms and Conditions

Definitions:

For the purposes of this Schedule "A":

Unless the context requires otherwise, terms used in this Schedule "A" shall have the meanings ascribed to them elsewhere in this order and in Ontario securities law (as defined in the OSA).

COMPLIANCE WITH ONTARIO LAW

1. FICC will comply with Ontario securities law to the extent applicable.

SCOPE OF PERMITTED CLEARING SERVICES

2. FICC's services that may be provided pursuant to this order will be limited to GSD and MBSD offering clearing and settlement services, and associated risk management services, within the general scope of the services described in representations 1.5 and 1.7 of FICC's representations set out above in this order (**Permitted Clearing Services**).

3. For purposes of this order, **Ontario Member** means a Member resident in Ontario that uses the Permitted Clearing Services.

REGULATION OF FICC

4. FICC will maintain its status as a registered clearing agency under the Exchange Act and will continue to be subject to the regulatory oversight of the SEC or any successor.

5. FICC will continue to comply with its ongoing regulatory requirements as a registered clearing agency under the Exchange Act or any comparable successor legislation and with its ongoing regulatory requirements by the Board of Governors of the Federal Reserve System.

GOVERNANCE

6. FICC will continue to promote a governance structure that minimizes the potential for conflict of interests between FICC and DTCC (including its other affiliates) that could adversely affect the Permitted Clearing Services or the effectiveness of FICC's risk management policies, controls and standards.

FILING REQUIREMENTS

Proposed Rule Changes Filed with the SEC

7. FICC will promptly provide to staff of the Commission a copy of the proposed rule changes filed with the SEC or its successor regarding the following:

    (a) material changes to its by-laws or the rules of GSD or MBSD where such changes would impact the Permitted Clearing Services used by Ontario residents (whether as a Member or otherwise);

    (b) new services or clearing of new types of products to be offered to Ontario Members or services or products that will no longer be available to Ontario Members; and

    (c) a new category of membership not listed in representation 1.13 of FICC's representations set out above in this order if FICC expects that category of membership would be available to Ontario Members;

Other SEC Filings

8. FICC will promptly provide to staff of the Commission a copy of the following information, to the extent that FICC is required to provide such information to, or file such information with, the SEC or its successor:

    (a) details of any material legal proceeding instituted against FICC;

(b) notification that FICC has failed to comply with an undisputed obligation to pay money or deliver property to a Member (including an Ontario Member) for a period of 30 days after receiving notice from the Member of FICC's past due obligation;

(c) notification that FICC has instituted a petition for a judgment of bankruptcy or insolvency or similar relief or to wind up or liquidate FICC, or has a proceeding for any such petition instituted against it;

(d) notification that FICC has initiated the Recovery Plan (as defined in the rules of the Divisions);

(e) the appointment of a receiver or the making of any general assignment for the benefit of creditors;

(f) the entering of FICC into any resolution regime or the placing of FICC into resolution by a resolution authority; and

(g) a notification or report that FICC files under Reg SCI.

Prompt Notice

9. FICC will promptly notify staff of the Commission of any of the following:

(a) a material change to its business or operations;

(b) a material problem with the clearance and settlement of transactions that could materially affect the safety and soundness of FICC;

(c) a material change or proposed material change in FICC's status as a clearing agency or to the regulatory oversight of FICC by the SEC or any successor or to the regulatory oversight by the Board of Governors of the Federal Reserve System or any successor;

(d) an Ontario Member being treated by FICC as insolvent or FICC ceasing to act for an Ontario Member or limiting or excluding an Ontario Member's utilization of Permitted Clearing Services; and

(e) the admission of any new Ontario Member..

Quarterly Reporting

10. FICC will maintain and submit the following information to the Commission in a manner and form acceptable to the Commission on a quarterly basis within 30 days of the end of each calendar quarter, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Members with their corresponding legal entity identifier (LEI), if any;

(b) a list of all Ontario Members against whom disciplinary or legal action has been taken in the quarter by FICC with respect to activities at FICC or, if notified to FICC by an Ontario Member pursuant to the GSD Rules or MBSD Rules, by any other authority that has or may have jurisdiction with respect to the Ontario Member's activities at FICC;

(c) a list of all current proceedings by FICC in the quarter relating to Ontario Members that may result in disciplinary or legal action by FICC against such Ontario Members;

(d) a list of all applicants who have been denied member status in GSD or MBSD in the quarter who would have been Ontario Members had they become Members;

(e) quantitative information in respect of the Permitted Clearing Services used by Ontario Members, as applicable[1], including in particular the following:

(i) as at the end of the quarter, the level, maximum and average of outstanding positions and daily volume of trades matched (based on trade sides and U.S. dollar value for GSD and trade sides and par value for MBSD) during the quarter for each Ontario Member of GSD and MBSD, respectively, by product type;

[1] Funds-Only Settling Bank Members do not have outstanding positions and/or Clearing Fund requirements, and CCIT Members, Comparison-Only Members and Sponsored Members are not required to post Clearing Fund.

(ii) the portion of the end of quarter level and average of outstanding positions and daily volume of trades matched (based on trade sides and U.S. dollar value for GSD and trade sides and par value for MBSD) during the quarter for all GSD and MBSD members, respectively, that represents the end of quarter level and average of outstanding positions and daily volume of trades matched (based on trade sides and U.S. dollar value for GSD and trade sides and par value for MBSD) during the quarter for each Ontario Member of GSD and MBSD, respectively, by product type;

(iii) the aggregate total Clearing Fund amount required by GSD and MBSD, respectively, ending on the last trading day during the quarter for each Ontario Member of GSD and MBSD, respectively;

(f) the portion of the total Clearing Fund required by GSD and MBSD, respectively, ending on the last trading day of the quarter for all GSD and MBSD members, respectively, that represents the total Clearing Fund required during the quarter for each Ontario Member of GSD and MBSD, respectively;

(g) a summary of risk management analysis related to the adequacy of the Clearing Fund requirement, including but not limited to stress testing and backtesting results;

(h) if known to FICC, for each Member (identified by LEI), including an Ontario Member, clearing on behalf of an Executing Firm (as defined in the GSD Rules) resident in Ontario that uses the Permitted Clearing Services, (i) the identities of such Executing Firms (including LEI, if any) and (ii) the aggregate volume of trades matched (based on trade sides and U.S. dollar value) for such Executing Firms during the quarter; and

(i) copies of the rules of the Divisions that show cumulative changes made during the quarter.

INFORMATION SHARING

11. FICC will promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws that would prevent the sharing of such information and subject to the application of solicitor-client privilege.

12. Unless otherwise prohibited under applicable law, FICC will share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

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