

The Ontario Securities Commission

# OSC Bulletin

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

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# Notices

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## 1.1 Notices

### 1.1.1 OSC Notice 11-785 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2020

#### ONTARIO SECURITIES COMMISSION NOTICE 11-785 – STATEMENT OF PRIORITIES

##### REQUEST FOR COMMENTS REGARDING STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2020

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin each year a statement of the Chair setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

This Statement of Priorities is a subset of our overall OSC Business Plan which is aligned with our OSC Strategic Plan. The document sets out the priority actions that the OSC will take in 2019-2020 to address each of the goals and its related priorities. While the proposed priorities will potentially impact more than one organizational goal, each priority is identified only under the specific goal where the greatest impact is expected. In certain cases, the process required to properly assess the issues, including consultations with market participants, and to develop and implement appropriate regulatory solutions, may take more than one year to complete.

In an effort to obtain feedback and specific advice on our proposed priorities, the Commission is publishing a draft Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback and make any necessary revisions prior to finalizing and publishing its 2019-2020 Statement of Priorities. Shortly after the conclusion of our 2018-2019 fiscal year the OSC will publish a report on its progress against its 2018-2019 priorities on our website.

#### Comments

Interested parties are invited to make written submissions by May 27, 2019 to:

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***[Editor's Note: The Statement of Priorities follows on separately numbered pages. Bulletin pagination resumes at the end of the Statement of Priorities.]***

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2019-2020

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OSC  
Statement of  
Priorities

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**REQUEST FOR COMMENT**

# INTRODUCTION

## OSC Statement of Priorities

We are pleased to present the OSC Chair's Statement of Priorities for the Ontario Securities Commission for the year commencing April 1, 2019. The *Securities Act* (Ontario) requires the OSC to publish the Statement of Priorities in its Bulletin and to deliver it to the Minister by June 30 of each year. This Statement of Priorities also supports the OSC's commitment to be both effective and accountable in delivering its regulatory services.

The OSC regulates the largest capital market in Canada and our actions have impacts for Ontario and the rest of Canada. The OSC remains committed to promoting safe, fair and efficient markets in Ontario and has identified a broad range of initiatives to improve the existing regulatory framework. We strive to anticipate problems in the market and act decisively to promote public confidence in our capital markets, protect investors, and support market integrity. We will continue to proactively identify emerging issues, trends, and risks in our capital markets.

Confidence in fair and efficient markets is a prerequisite for economic growth. Investor protection is always a top priority for the OSC. The OSC engages with investor advocacy groups for insights to help the OSC better understand investor needs and interests.

The OSC continues to move the regulatory agenda forward, improving the way we approach our work and engage with industry participants and other regulators to understand the issues and their concerns. The OSC interacts broadly with all stakeholders through various advisory committees to inform operational approaches and policy development.

Our significant work in the international regulatory environment will continue as another key means to gain insights into emerging issues and standards that can be integrated into our policy development and oversight activities. These actions are essential to reach solutions that balance the inclusion of innovation and competition in the marketplace while maintaining appropriate investor safeguards.

The OSC works as part of the Canadian Securities Administrators (CSA) to harmonize rules and their application across the country. The OSC is working with the Ontario government and the OSC's counterparts in other participating jurisdictions to develop a harmonized regulatory approach and seamless transition to the proposed CMRA.

# INTRODUCTION

## Vision, Mandate and Goals

### Our Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

### Our Mandate

To provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets and to contribute to the stability of the financial system and the reduction of systemic risk.

### Our Organizational Goals

#### PROMOTE

Confidence in Ontario's Capital Markets

*Promote confidence in Ontario's capital markets among market participants and investors by*

- Engaging and educating investors
- Exercising effective compliance oversight
- Pursuing timely and vigorous enforcement

#### REDUCE

Regulatory Burden

*Enhance access for businesses and financial services providers to Ontario's capital markets by*

- Modernizing regulation and removing unnecessary regulations
- Simplifying oversight processes
- Improving service delivery to market participants and investors

#### FACILITATE

Financial Innovation

*Cultivate an environment that supports development of innovative financial business models by*

- Deepening engagement with fintech businesses
- Creating flexible and proportionate regulatory approaches

### Strengthen Our Organizational Foundation

People

Technology

Information



# INTRODUCTION

## Key Priorities

Our 2019-2020 Statement of Priorities (SoP) sets out the priority areas on which the OSC intends to focus its resources and actions in 2019-2020. The OSC has identified four regulatory goals. This SoP sets out the priority initiatives that the OSC will pursue in support of each of these strategic goals. The SoP also describes the environmental factors that the OSC has

considered in setting these goals. It is important to note that the majority of OSC resources are focused on delivering the core regulatory work (authorizations, reviews, compliance, enforcement and the systems and infrastructure to support that work) undertaken by the OSC to maintain high standards of regulation in Ontario's capital markets.

### Promote Confidence in Ontario's Capital Markets

- Continue Developing and Consulting on Client Focused Reforms
- Continue CSA Policy Work on Mutual Funds Embedded Commissions
- Improve Experience for Retail Investors
- Expand Systemic Risk Oversight of Derivatives
- Timely and Impactful Enforcement Actions
- Support Transition to the CMRA

### Reduce Regulatory Burden

- Engage with Stakeholders on Burden Reduction Opportunities
- Initiate OSC Website Redevelopment

### Facilitate Financial Innovation

- Engage with the Fintech/Start-Up Sector
- Implement Alternative Funds Regime

### Strengthen Our Organizational Foundation

- Implement Strategic Workforce Planning (SWP)
- Continue Redevelopment of National Systems Renewal Program (NSRP)
- Implement First Phase of Market Analysis Platform (MAP)
- Modernize OSC Technology Platform
- Build a Data Driven, Evidence Based and Risk Focused Organization

# THE ENVIRONMENT

## Scan and Impact

Environmental factors influence securities regulators in their operations and regulatory oversight. Key challenges and issues that may influence the OSC's policy agenda, its operations, and the way it uses its resources, are as follows.

### Globalization

The potential impact of continuing geopolitical events, such as Brexit implementation, decisions by the US government and changing trade relationships could have profound impacts on financial regulation globally. The global interconnectedness of markets and mobility of capital create a strong need for harmonization and coordination of regulation. However, the potential for increased protectionism and de-regulation could inhibit global harmonization and create opportunities for regulatory arbitrage.

The markets, products, and participants that the OSC regulates and oversees continue to grow in size and complexity. Globalization of financial markets, products and services adds another layer to these challenges. The sustained growth of cross-border activities raises challenges to regulatory supervision, magnifies the value of cooperation between regulators and increases the benefit of achieving consistent standards and requirements both domestically and internationally.

The OSC works as part of the CSA to harmonize rules and their application across the country to facilitate business needs. Through these efforts, the OSC strives to achieve effective cross-jurisdiction enforcement and gain timely insight, understanding and input into emerging regulatory issues to achieve better regulatory outcomes.

Our international involvement informs how we regulate Ontario's capital markets. The OSC continues to play an active role in international organizations such as the International Organization of Securities Commissions (IOSCO) to influence and promote changes to international standards for securities

regulation and share new ideas and learnings that will benefit Ontario markets and participants.

### Regulatory Burden

A more competitive environment demands that securities regulators must balance pressures to respond to market issues while avoiding over-regulation. Regulatory costs should be proportionate to the regulatory objectives sought. Regulatory burden, along with the associated costs, is a key focus for many market participants and the Ontario government. The thrust to reduce the regulatory burden on business may require the need to simplify, remove and/or re-engineer our processes and systems. The need for a cost-effective regulatory framework, with proportionate regulation that supports innovation and competition – while maintaining appropriate investor protections – is critical. Both over-regulation and under-regulation can dampen innovation and undermine the competitiveness of our capital markets. By re-examining our rules and processes to identify opportunities to reduce undue burdens and streamline regulation the OSC can confirm they are appropriate and necessary while maintaining appropriate safeguards for investors.

### Technology and Innovation

The pace of technological evolution and innovation creates challenges to develop and maintain a responsive and aligned regulatory framework. Market participants continue to expand their product and service offerings. Fintech (technology facilitated financial services) and Regtech (technology facilitated regulatory compliance services) innovation continues to advance and is a key disruptive force in the financial services industry. Complexity driven by financial innovation offers many potential benefits and risks to the market. Fintech is leveraging new technology and creating new business models in the financial services industry such as providing new product offerings (e.g. blockchain-based crypto assets) and disrupting service channels (e.g. online advisors). Financial services

firms are using technological innovation, digitalization and growth in the use of the distributed ledger technology to reduce operational costs and improve efficiency.

The breadth and pace of innovation in the financial sector could result in gaps in regulation or become a source of non-compliance. For example, the potential applications and impacts of Artificial Intelligence (AI) are significant but are not well understood.

### **Modernize Financial Regulation**

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The Government of Ontario has identified initiatives to modernize the financial services regulatory framework. These policy priorities and changes in regulatory authority will impact the OSC and its operations including:

- Changes to the regulatory oversight of syndicated mortgage investments by the Financial Services Commission of Ontario and the OSC
- Title protection for financial planners and financial advisors
- Working with CMRA partners on the transition of the OSC to the proposed CMRA.

### **Growing Importance of Investor Education**

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As the responsibility for investing shifts to individuals, they are challenged to achieve the returns needed to finance future needs. There are wide gaps in the levels of investment experience and financial literacy among investors. Investor education has the potential to contribute to improved financial outcomes for investors and is an important component of investor protection.

The OSC is actively involved in providing investor education tools and resources to help investors achieve improved financial outcomes. The ability to achieve meaningful progress in financial literacy levels will be a key to strengthening investor protection. Investors with a greater level of understanding of financial concepts are better able to make informed investment decisions and avoid fraud. The OSC will seek new and innovative ways to deliver investor education and support retail investors in today's complex investing environment.

### **Changing Demographics and Investor Needs**

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Demographics are critical to understanding investor needs and are a key driver of most investor-focused issues. Different investor segments (e.g. seniors versus

millennials) have unique characteristics and present different challenges in terms of investment objectives and horizons. Their preferences can vary in terms of products (ETFs versus mutual funds) and service channels. Automated financial advice is redefining the delivery of client wealth management services and the fees charged for advice.

### **Investor Redress**

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Investors can be at risk for potential losses from improper or fraudulent interactions. Regulators are seeking ways to improve investor access to redress in these types of situations. Avenues to obtain investor redress, including an effective and fair dispute resolution system, are increasingly being included as part of investor protection frameworks. To achieve better results for investors, the OSC will continue its support for OBSI in its role as the independent dispute resolution service made available to investors.

### **Enforcement and Compliance Tools**

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Strong compliance oversight and enforcement are essential to maintaining the integrity and attractiveness of our capital markets. Disruption of illegal activity and deterrence are key strategies to prevent or limit harm to investors. Our actions against firms and individuals who do not comply with the rules need to be strong and visible to achieve the desired deterrent effect and enhance public confidence in our markets.

As securities fraud and misconduct become increasingly complex, regulators must evolve their compliance and enforcement approaches and expand their tools. Regulators will need greater access to data and more sophisticated surveillance and analysis tools to more effectively evaluate compliance with regulatory requirements and identify misconduct. Technology is enabling growth in cross-border activities that are detrimental to investors and very difficult to address. This creates challenges in supervision, surveillance and enforcement. If regulatory approaches are not aligned, cross-border supervision and enforcement efforts can be impeded.

### **Systemic Risk and Financial Stability**

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The OSC works with many domestic and international regulators to monitor financial stability risks and trends, improve market resilience, and reduce the potential risk of global systemic events. The OSC is continuing to build out a domestic derivatives framework and to operationalize the necessary

compliance and investigation tools required to achieve a practical and effective regime. As part of their review of market stability issues, financial system regulators are examining the need for companies to disclose exposure to economic, environmental and social sustainability risks, including climate change. The Financial Stability Board (FSB) has established a Task Force on Climate-related Financial Disclosures to develop a set of recommendations for consistent, comparable, reliable, clear and efficient climate-related disclosures by companies. The OSC will continue to monitor these developments to determine the need for a regulatory response.

### **Cybersecurity Resilience**

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Cyber-attacks that have the potential to disrupt our markets and market participants are likely to occur. Growing dependence on digital connectivity is raising the potential for digital disruption in our financial services and markets and creating a strong imperative to raise awareness about cyber-attacks and strengthen cybersecurity resilience. This is a growing challenge as more businesses, services and transactions span national and international borders. The OSC, working with other regulatory partners, has an important role to play in assessing and promoting readiness and supporting cybersecurity coordination

and resilience within the financial services industry and raising awareness of cybersecurity risks.

### **Data Management**

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Ever increasing market complexity is generating greater availability and reliance on data. The OSC is adding new tools and processes to support staff in delivering their responsibilities. A key element will be addressing challenges in managing growing volumes of data, including information security. The OSC is investing in information technology and infrastructure to support an integrated data management program that will improve access to information to identify trends and risks and support analysis and decision-making. This will also allow easier filings and access for market participants.

### **Workforce Strategy**

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The ability to meet the identified goals and strategic objectives is dependent upon obtaining sufficient and appropriate resources. To meet evolving needs, the OSC will strengthen its capabilities through its people. While attracting, motivating and retaining top talent in a competitive market environment continues to be challenging, the OSC is building its capabilities and skills by recruiting staff across a range of disciplines, and by developing the skills and experience of our internal talent.

# THE ENVIRONMENT

## Major Planning Themes

The OSC is committed to fostering confidence in Ontario's capital markets, supporting an environment where capital is available on competitive terms, streamlining regulation with a strengthened focus on reducing regulatory burden and maintaining Ontario's financial services sector as a world leader and significant contributor to the province's economy. The main themes of our 2019-2020 OSC Statement of Priorities support the Ontario Government's priorities to make Ontario "Open for Business" and to "Build more Efficient Regulators".

### Reduce Regulatory Burden

Delivering responsive regulatory oversight includes being mindful of the impact of regulatory burden on market participants. Reducing red tape will boost productivity, competitiveness and investment. The OSC is re-examining its rules and processes to ensure they are appropriate, necessary and with its CSA partners has identified and is pursuing opportunities to reduce undue burdens and streamline regulation without impeding the ability of the OSC to fulfill its responsibility to protect investors. Together with reducing red tape, the OSC is looking at ways to improve the investor experience, by seeking to modernize the information provided to investors or other interactions that investors have with issuers and registrants. The OSC continues to seek opportunities to make its interface with market participants easier and less costly, including the implementation of electronic solutions to make submission of data easier for market participants.

### Support Innovation to Attract Investment in Ontario

The OSC is committed to enhancing confidence and competitiveness in capital markets and making Ontario the most attractive place in North America in which to invest, grow businesses and create jobs. The OSC will continue to actively support business innovation through initiatives such as OSC LaunchPad, the CSA Regulatory Sandbox and globally through the

Global Financial Innovation Network (GFIN), to support fintech businesses seeking to offer innovative products, services and applications in Canada. These initiatives are critical to creating a globally competitive, efficient and strong capital markets regulatory system that attracts investments from around the world, streamlines capital raising for businesses and protects investors from financial system risk and misconduct.

### Invest in Technology to Support a More Data Driven OSC

The OSC supports the government's broader efforts to ensure services are delivered in the most efficient and effective ways possible. The OSC needs to invest in technology, systems infrastructure and expertise to expand and modernize its technology platform. These investments will be used to replace outdated systems and build the foundation to allow the OSC to become a data driven, evidence based, risk focused organization. Agile organizations make data-driven rather than subjective decisions. The OSC will strive to simplify, modernize and enhance the data that it collects. Development of a robust data and analytics framework for decisions will allow the OSC to deliver service outcomes that clearly demonstrate value for money to all stakeholders.

### Support Transition to the CMRA

Ontario's Minister of Finance is playing a leadership role in the implementation of the Cooperative Capital Markets Regulatory System (CCMR). The CCMR would help Ontario's businesses raise capital more efficiently and better protect investors. The OSC will be committing resources to support implementation of the CCMR as a streamlined capital markets regulatory system will make our capital markets more efficient and competitive relative to other countries, facilitate more effective monitoring and responses to systemic risk on a national basis and provide investors timely and uniform protections across jurisdictions.

# OUR GOALS

## Promote Confidence in Ontario's Capital Markets

We will promote confidence in Ontario's capital markets among market participants and investors by engaging and educating investors; exercising effective compliance oversight; and pursuing timely and vigorous enforcement.

### OUR KEY PRIORITIES

#### Continue Developing and Consulting on Client Focused Reforms

Propose amendments to registrant conduct requirements to better align the interests of securities advisers, dealers and representatives (registrants) with the interests of clients and improve outcomes for clients.

Actions will include:

- Implement recommendations based on the review of comment letters
- Determine next steps in consultation with the CSA and other stakeholders
- Draft second publication of proposed rule amendments and Companion Policy Guidance.

#### Planned Outcomes

- Better disclosure on product and service offerings reduces information asymmetry for investors
- Client outcomes enhanced when conflicts of interest are addressed in the client's best interest.
- Improved suitability determinations for clients when client's interests are put first.

#### Continue CSA Policy Work on Mutual Funds Embedded Commissions

With the CSA, develop responses to the proposals published for comment in September 2018.

#### Planned Outcomes

- Revised proposals developed and published for comment.

#### Improve Experience for Retail Investors

Improve the investor experience and enhance investor engagement and education.

Actions will include:

- Advance investor protection through investor education resources, themed months (e.g. Seniors Month, Financial Literacy Month) and outreach
- Increase partnerships with stakeholders and community groups interested in investor education initiatives
- Improve effectiveness of OSC policies and outcomes for retail investors through integration of behavioural insights
- Seek ways to improve the investor experience through disclosure innovations, plain language initiatives, improving investor tools and resources, and adopting customer-centric principles in a variety of work areas.

Work toward our vision of a stronger and more secure financial future for all Ontario Seniors.

Actions will include:

- Continue to develop and implement the OSC Seniors Strategy, which includes addressing issues of financial exploitation and cognitive decline
- Continue to evolve strategy to address emerging challenges facing older and vulnerable investors
- Provide education and regulatory tools to registrants to help them meet the needs and priorities of older and vulnerable investors.

#### Planned Outcomes

- Increased use of educational resources by investors
- Expanded outreach sessions and resources for seniors and new Canadian community groups
- Existing partnerships strengthened and new external relationships created to inform and advance investor focused issues
- Publish a staff notice and rule amendments for comment to address financial exploitation of seniors and vulnerable investors.

## **Expand Systemic Risk Oversight of Derivatives**

The OSC will continue to build out its regulatory framework through various policy and operational initiatives.

Actions will include:

- Publish a proposed business conduct rule and develop a registrant regulation framework
- Develop a compliance review program for derivatives market participants
- Establish a monitoring regime for data relevant to the applicability of a proposed margin rule for uncleared derivatives to Ontario entities
- Improve quality and completion of trade reports to improve systemic risk monitoring and enforcement
- Propose amendments to Trade Reporting rule to accommodate internationally adopted data standards
- Publish final amendments to Clearing rules regarding applicability to affiliates.

### **Planned Outcomes**

- Framework for analyzing OTC derivatives data for systemic risk oversight and market conduct purposes is in place and provides improved awareness of potential systemic vulnerabilities that can impact or be impacted by Ontario's capital markets
- Higher quality trade reports and measurable improvement in trade reporting completion statistics improves our ability to meet policy setting, systemic risk monitoring and enforcement assistance objectives
- Canadian regulatory framework keeps pace with global regulatory developments. Harmonized regulatory approaches (internationally and within the CSA) reduce regulatory burden on our market participants
- Monitoring regime for data relevant to the applicability of proposed margin rule for uncleared derivatives to Ontario entities established.

## **Timely and Impactful Enforcement Actions**

The OSC will promote confidence in Ontario's capital markets by increasing the deterrent impact of OSC enforcement actions and sanctions by actively pursuing timely and consequential enforcement cases to address serious securities laws violations.

Actions will include:

- Ensuring investigative and litigation resources are focused on cases expected to have a strong regulatory impact and are aligned with our strategic priorities
- The Joint Serious Offences Team (JSOT), that works in cooperation with policing partners, will continue to focus on fraudulent behaviour and recidivism
- Identifying ongoing harmful misconduct and take timely, proactive disruptive action to stop the misconduct at the earliest stage and minimize investor harm
- The Whistleblower group will triage tips to focus action on impactful enforcement proceedings with effective regulatory messages.

Our aim is to achieve fair and just outcomes in response to misconduct and ensure compliance with securities laws.

### **Planned Outcomes**

- Implementation of new tools supports increased use of data to support case selection and investigation decisions
- Enhanced profile for the OSC Whistleblower Program increases the number of credible tips
- Increased number of visible, effective disruption actions completed
- Increased visibility of priority case outcomes with strong regulatory messages aligned with OSC strategic priorities.
- Improved use of data analytics in market conduct cases to strengthen the detection of harmful conduct.

## **Support Transition to the CMRA**

The proposed transition to CMRA will require the OSC to re-prioritize, mobilize resources and adopt change management activities once workstreams are activated to prepare for the CMRA launch. The OSC will need to participate with other CMRA partners to complete work to develop effective legislation, regulations and efficient regulatory oversight processes.

### **Planned Outcomes**

- OSC is ready and able to seamlessly transition to the proposed CMRA.



# OUR GOALS

## Reduce Regulatory Burden

The Ontario Government is fostering a stronger environment for Ontario business and investors by cutting red tape and reducing regulatory burden. The government plans to systematically review Ontario's stock of regulations, then streamline, modernize and, in some cases, eliminate unnecessarily complicated, outdated or duplicative regulations. The OSC will support this goal by assessing policies and processes to streamline regulatory requirements and processes to make it easier to participate in Ontario's capital markets.

### OUR KEY PRIORITIES

#### Engage with Stakeholders on Burden Reduction Opportunities

##### *Regulatory Burden Task Force*

On January 14, 2019, the OSC published OSC Staff Notice 11-784: *Burden Reduction*, which outlines plans to broadly consult Ontario market participants on ways to further reduce regulatory burden and improve the investor experience. The OSC Task Force will develop a strategy to implement regulatory reduction in policy development and operational activities, identify areas that would benefit from a reduction of any undue regulatory burden and develop proposals to streamline those requirements without reducing investor protection or efficiency of the markets.

Stakeholder engagement, particularly with those most impacted by regulatory burden, is essential to the success of this initiative. Since launching the Task Force, the OSC has encouraged input from investors, market participants, SROs, government and staff, resulting in more than 70 comments and suggestions, as well as the participation of approximately 350 people at the first of three public roundtables on the subject. This input will inform the Task Force's priorities and activities.

Actions will include:

- Continue to gather and assess feedback from all stakeholders through online comment forms, public roundtables, internal engagement efforts, stakeholder outreach and consultation papers
- Determine short-, medium- and long-term regulatory burden goals, establish measurement criteria and prioritize initiatives of greatest impact
- Implement the plan set out in the CSA Staff Notice 81-329 *Reducing Regulatory Burden for Investment Fund Issuers*
- Revise and modernize NI 33-109 *Registration Information*
- Publish a Task Force Report that outlines an action plan and analysis of the expected impacts

##### *Regulatory Burden Initiatives*

The following initiatives are planned or underway by the OSC with the CSA:

- Develop a CSA agreed interpretation of what would trigger primary business financial statement requirements in an IPO
- Propose amendments to streamline, eliminate duplication among, and potentially consolidate into one report (both annual and interim), the financial statements, MD&A and AIF
- Consider modifications to the BAR requirements
- Codify exemptive relief routinely granted to facilitate at-the-market offerings and consider whether other changes to liberalize the current approach are appropriate
- Identify opportunities to enhance electronic delivery of documents
- Research and identify an alternative and streamlined offering regime for reporting issuers.

We will continue to enhance the impact analyses we conduct for policy initiatives. Proposed initiatives will be aligned with the OSC's mandate and supported by impact analyses that confirm that the value of the regulatory objectives being sought is proportionate to the expected burden on market participants. The



OSC will also conduct more post implementation reviews to confirm achievement of identified expected benefits and that no major impacts were missed from the initial analysis.

#### **Planned Outcomes**

- Streamlined regulatory requirements and processes make it easier to participate in Ontario's capital markets
- Timely alignment with international regulatory changes results in reduced reporting burden for market participants
- Investor protection is maintained or strengthened
- Proposed policy proposals are informed by impact analysis
- Improved efficiency and effectiveness of operations results in cost savings and improved resource usage.

#### **Initiate OSC Website Redevelopment**

The Commission is faced with an aging communications systems infrastructure. Updates to systems and processes are needed to realize efficiencies, comply with accessibility standards, and

adapt to increasing volumes. The OSC will undertake a redevelopment of the OSC website to overhaul service delivery to market participants. The redevelopment will improve stakeholder communications by streamlining content, dramatically enhancing search capability, improving usability and efficiency, and meeting accessibility standards in line with the Accessibility for Ontarians with Disabilities Act web content accessibility guidelines.

Actions will include:

- Complete discovery for content revision and website redevelopment, including a user engagement survey
- Develop and begin implementation of a content revision plan
- Develop a technical strategic plan for design and build of the new website

#### **Planned Outcomes**

- Identify content to be revised and removed, with an aim to decrease the size of the OSC website by 50%
- Engage vendors in content revision and website redevelopment.

# OUR GOALS

## Facilitate Financial Innovation

Rapid changes in financial technology have impacted regulators and the sale/distribution of financial products. Regulators are expected to create an environment that supports emerging financial technology, ensuring investor protection, while creating flexible and proportionate regulatory approaches.

The OSC will continue to develop flexible regulatory approaches to help support fintech innovation in Ontario. This includes creating flexible regulatory frameworks for crypto-asset business models, including initial coin and token offerings; crypto-asset investment funds; corporate finance issuers investing in crypto-assets, digital tokens and/or distributed ledger technology-related businesses; and crypto-asset trading platforms.

### OUR KEY PRIORITIES

#### Engage with the Fintech/Start-Up Sector

Assist Fintech businesses to understand and meet regulatory requirements to accelerate time-to-market and improve attractiveness of Ontario capital markets.

Actions will include:

- Identify issues and opportunities and integrate learnings gained by working with innovative businesses to modernize regulation, reduce burden, improve regulatory alignment and better support emerging businesses
- Publish a CSA/IIROC consultation paper on the regulatory framework for crypto-asset trading platforms
- Examine the current unit creation process for the ETF market, and specifically the less transparent “actively managed” ETF sector. Incorporate regulatory developments in global ETF markets as input in developing a tailored oversight framework for actively managed ETF in Canada.

#### Planned Outcomes

- OSC LaunchPad and the CSA Regulatory Sandbox supports development of novel business models, facilitates more timely registration and exemptive relief processes for emerging firms and supports fintech businesses to operate in Ontario and other Canadian jurisdictions
- Greater use of creative regulatory approaches (e.g. limited registration and other exemptive relief) provides an environment for innovators to test their products, services and applications
- Time-to-market of novel fintech businesses is reduced while maintaining appropriate investor safeguards
- Capital formation and innovation supported through OSC LaunchPad as Ontario is viewed as a fintech innovation hub with a positive and supportive environment for investment
- Timely updates on the OSC LaunchPad website reflect any fintech-related notices, news releases or guidance
- Oversight framework for actively managed ETFs responds to identified issues and challenges.

#### Implement Alternative Funds Regime

Expand investment choices for Ontario investors by supporting and facilitating industry stakeholders to develop and launch innovative structured investment products (e.g. foreign structured notes, ADR-type products) and enable portfolio managers to manage fund assets with more flexibility and efficiency.

#### Planned Outcomes

- Reduction in alternative fund related exemptive relief requests
- Increased numbers of new alternative funds improve investor choice
- Increase in fund managers offering public funds and funds with asset allocation strategies providing balanced exposure to Alternative Funds.

# OUR GOALS

## Strengthen Our Organizational Foundation

The OSC regulates and supports an ever-changing and highly competitive financial sector. The OSC faces challenges to regulate behaviour in a rapidly changing and technology-driven environment. To meet these challenges and regulate in a manner that is both sound and efficient requires a strong organizational foundation of people, systems and data management and analytics.

The OSC needs to enhance its workforce by seeking staff with strong data-gathering, intelligence, and analytic capabilities who can proactively identify emerging problems, especially when those problems do not fit established patterns. The OSC faces significant challenges to attract and retain staff with these skills as it operates in a competitive market where demand for people is high.

The OSC needs robust systems to manage high volumes of data and support advanced data analytical techniques to uncover patterns and detect non-compliance. Well organized data combined with the right regulatory approach, can help the OSC prevent and detect non-compliance, define where future resources should be focused and ultimately shape future regulatory strategy. Successfully addressing these challenges will position the OSC to provide efficient and effective regulation that delivers better outcomes.

### OUR KEY PRIORITIES

#### Implement Strategic Workforce Planning

The OSC will conclude the Strategic Workforce Planning (SWP) Project Pilots.

Actions will include:

- Measure the outcomes against success criteria
- Make recommendations to be incorporated into a broader SWP Framework
- In the framework, integrate multiple sources of workforce, employee, position and financial information to enable improved planning and decision making to support OSC operations.

#### Planned Outcomes

- Strategic workforce planning is integrated into OSC business operations
- Employment relationships are aligned with organizational and employee needs
- Lower turnover of staff with sought-after skill-sets, time to staff critical roles is reduced
- Staffing tactics and work structures reflect evolving approaches to policy and file work that draws upon multiple skills and expertise.

#### Continue Redevelopment of National Systems Renewal Program (NSRP)

Redevelopment of the CSA national systems is a critical foundation for the OSC to become a more data analytic focused and evidence-based regulator.

Actions will include:

- Support the CSA initiative to replace the CSA national systems with a modern, accessible, integrated, searchable, secure, robust database and system to deliver capabilities that support existing regulatory requirements and can be easily modified to support the future needs of market participants and regulators
- Amend the systems rule, plus a new CSA Systems Fee Rule
- Complete work on OSC local systems and related processes, workflows and policies to ensure they are aligned with the NSRP national systems when they are launched.

#### Planned Outcomes

- Successful launch of the NSRP system that meets the needs of the users and is aligned with the OSC local systems
- Improved operational functions and more efficient service delivery to market participants.

#### Implement First Phase of Market Analysis Platform (MAP)

MAP implementation creates enhanced internal analytical capacity to better conduct insider trading and market manipulation investigations and focused

policy research. Access to improved analytical resources reduces investigation timelines and creates capacity to complete more cases.

Actions will include:

- Complete Phase I implementation of MAP.

### **Planned Outcomes**

- Automation of multiple data management processes, thereby increasing data quality accuracy and reliability
- Increased ability to detect market misconduct
- Increased efficiency in terms of quality, reliance and usage of automated reports and queries
- Ability to store a wider breadth and depth of trade related data on a timelier and more standardized basis.

### **Modernize OSC Technology Platform**

The OSC has planned several strategic initiatives to modernize its technology platforms and safeguard information to support new approaches to its regulatory work and improve efficiency in delivering regulatory outcomes.

#### *Data Management Program*

The OSC will continue to pursue its Data Management Program (DMP) with integrated NSRP local system requirements. As part of the program, new business systems will be developed that support new approaches to regulatory work and improve efficiency in delivering regulatory outcomes.

Actions will include:

- A new centralized review and case management system for improved regulatory business workflow management
- A right-sized framework for on-going data governance
- A data management technology stack that includes tools for improved data management and analytics.

#### *Systems Modernization & IT Resilience*

Significant IT modernization investments on infrastructure services and enterprise software are planned.

Actions will include:

- New OSC Compliance System
- Enforcement E-Discovery System Replacement
- Additional Data Management & Analytics Tools

- On-going platform currency upgrades and improvements to various internal operational systems

#### *Information Security Program*

The OSC will continue to implement an Information Security Program that is aligned with the national Institute of Standards and Technology cybersecurity framework.

Actions will include:

- Improve information security governance
- Improve on-going information security operations and remediation of information security risks
- Implement additional information security tools and technology
- Develop additional policy, procedures and controls
- Continue on-going information security awareness training for all staff.

### **Planned Outcomes**

- Successful implementation of the OSC Data Management Program enables improved management, usage and quality of OSC data
- Implementation of additional tools and technologies facilitates improved data management and analytics
- On-going platform currency and upgrade activities completed as required
- Successful implementation of the Information Security Program results in secure operations of OSC systems and more reliable OSC system up-time.

### **Build a Data Driven, Evidence Based, Risk Focused Organization**

Implementation of a data-driven, evidence-based, risk focused organization will require a clearly defined data strategy, policies and procedures, standards, skilled resources and a shift in culture; as well as visible and active senior management support. The OSC will build its capability to be a data driven, evidence based, risk focused organization.

Actions will include:

- Establish and launch an Enterprise Data Management Office to support a data-driven, evidence-based and risk-focused organization
- Develop and implement a fit-for-purpose data governance framework and approach to data management to enhance the collection, management and analysis of data

- Promote use of enhanced data management and analytics at the OSC to support and inform OSC policy and operations
- Further develop staff expertise to assemble and analyze relevant, reliable, comparable and timely data in a systematic manner.

#### **Planned Outcomes**

- Integrated vision, strategy and governance of OSC data management initiatives
- Consistent cross-Commission compliance with data policies, standards and procedures
- Improved data management processes and more focused data collection

- Improved staff efficiency through timely access to accurate, complete and quality data that supports business needs
- Demonstrated use of data in support of priority setting and policy and operational decision-making
- Better service and trend analysis.

# BUDGET

## Financial Outlook

The OSC is proposing a balanced budget net of recoveries and exclusion of \$1.7 million interest charge under IFRS16. The total budgeted revenue of \$126.8 million remains unchanged from forecast but is an increase of \$6.8 million over the prior year's budget. Forecasted revenue was adjusted for actual experience in 2018-2019. Chargeable filing volumes are expected to decline as a result of the regulatory burden initiative. As plans crystalize, the impact to revenues will be determined. As a result, a reduction in revenues has not been budgeted at this time.

Overall operating expenses are expected to increase \$5.1 million from forecast primarily driven by incremental salaries and benefits costing \$2.9 million and IT maintenance of \$2.0 million.

Capital spending on projects is expected to increase \$1.7 million from the forecast for new and on-going projects. A non-cash right of use asset for \$56.7 million is to be recorded for financing lease arrangements under IFRS16.

\$000's	2018-2019 Budget	2018-2019 Forecast	2019-2020 Proposed Budget	Proposed Budget to 2018-19 Budget		Proposed Budget to 2018-19 Forecast	
				\$	%	\$	%
				<i>Favourable / (Unfavourable)</i>			
Revenues	119,990	126,773	126,839	6,849	6%	66	0%
Operating Expenses	129,446	124,328	129,443	3	0%	(5,115)	(4%)
Finance Costs (IFRS 16)	-	-	1,729	(1,729)	(100%)	(1,729)	(100%)
Recovery of Enforcement Costs	(1,000)	(2,658)	(1,000)	-	0%	(1,658)	(62%)
Recovery of Investor Education Costs	(1,530)	(1,530)	(1,587)	57	4%	57	4%
Expenses (Net of Recoveries and Finance Costs)	126,916	120,140	128,585	(1,669)	1%	(8,445)	(7%)
Operating Surplus/(Deficit)	(6,926)	6,633	(1,746)	5,180	75%	(8,379)	(126%)
Capital Additions	9,948	5,552	7,244	2,704	27%	(1,692)	(30%)

**1.2 Notices of Hearing**

**1.2.1 3iQ Corp. and The Bitcoin Fund – s. 8**

**FILE NO.:** 2019-7

**IN THE MATTER OF  
3iQ CORP. and  
THE BITCOIN FUND**

**NOTICE OF HEARING**  
Section 8 of the  
*Securities Act*, RSO 1990, c S.5

**PROCEEDING TYPE:** Application for Hearing and Review

**HEARING DATE AND TIME:** April 3, 2019 at 1:00 p.m.

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

**PURPOSE**

The purpose of this proceeding is to consider the Application dated March 15, 2019 made by the parties named above to review a decision of a Director of the Commission dated February 15, 2019.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's *Practice Guideline*.

**REPRESENTATION**

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

**FAILURE TO ATTEND**

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

**FRENCH HEARING**

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

**AVIS EN FRANÇAIS**

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

Dated at Toronto this 21st day of March, 2019.

"Grace Knakowski"  
Secretary to the Commission

**For more information**

Please visit [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or contact the Registrar at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca).

**1.3 Notices of Hearing with Related Statements of Allegations**

**1.3.1 Clifton Blake Asset Management Ltd. et al. – s. 127**

**FILE NO.:** 2019-4

**IN THE MATTER OF  
CLIFTON BLAKE ASSET MANAGEMENT LTD.,  
CLIFTON BLAKE MORTGAGE FUND TRUST,  
QASIM (KC) DAYA,  
VICTOR HSU, and  
WESLEY MYLES**

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

**PROCEEDING TYPE:** Public Settlement Hearing

**HEARING DATE AND TIME:** March 28, 2019 at 9:00 a.m.

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

**PURPOSE**

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated March 22, 2019, between Staff of the Commission and the respondents in respect of the Statement of Allegations filed by Staff of the Commission dated March 22, 2019.

**REPRESENTATION**

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

**FAILURE TO ATTEND**

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

**FRENCH HEARING**

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

**AVIS EN FRANÇAIS**

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

Dated at Toronto this 25th day of March, 2019.

"Grace Knakowski"  
Secretary to the Commission

**For more information**

Please visit [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or contact the Registrar at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca).



IN THE MATTER OF  
CLIFTON BLAKE ASSET MANAGEMENT LTD.,  
CLIFTON BLAKE MORTGAGE FUND TRUST,  
QASIM (KC) DAYA,  
VICTOR HSU, AND  
WESLEY MYLES

**STATEMENT OF ALLEGATIONS**

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

**A. ORDER SOUGHT**

1. Staff of the Enforcement Branch (**Enforcement Staff**) of the Ontario Securities Commission (the **Commission**) request that the Commission make an order pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**) to approve the settlement agreement dated March 22, 2019 between Clifton Blake Asset Management Ltd. (**CBAM**), Clifton Blake Mortgage Fund Trust (**CBMF Trust**), Qasim (KC) Daya (**Mr. Daya**), Victor Hsu (**Mr. Hsu**), and Wesley Myles (**Mr. Myles**) (collectively, the **Respondents**) and Enforcement Staff.

**B. FACTS**

Enforcement Staff make the following allegations of fact:

**OVERVIEW**

2. Registration requirements under Ontario securities law are set out in the Act and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Mortgage investment entities (MIEs) that invest all or substantially all of their assets in mortgages and are in the business of trading securities, which include the distribution of the securities of MIEs, require registration.
3. CSA Staff Notice 31-323 *Guidance Relating to the Registration Obligations of Mortgage Investment Entities*, which was published in February 2011, re-iterates that MIEs, or any other person or company trading in the securities of an MIE, is required to register with the Commission if it is in the business of trading securities. Staff Notice 81-722 *Mortgage Investment Entities and Investment Funds*, which was published in September 2013, provides further guidance on the distinction between MIEs and investments funds and their respective registration requirements. This information is reiterated to market participants in OSC Staff Notice 33-738 *2012 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*. This information was publicly available during the Relevant Period (defined below).
4. From July 2015 to December 2016 (the **Relevant Period**), the Respondents were in the business of trading in the securities of the CBMF Trust in Ontario. The Respondents sold approximately \$25 million worth of units in CBMF Trust, an MIE, to approximately 144 investors, most of whom live in Ontario. The Respondents were not registered with the Commission and no registration exemption was available.
5. During the Relevant Period, trades in the units of CBMF Trust were made in reliance on prospectus exemptions since no prospectus or preliminary prospectus had been filed with the Commission. While the Respondents sought to rely on prospectus exemptions, they failed to comply with the applicable requirements on certain occasions and in those cases an exemption was therefore not available.
6. The Respondents engaged in conduct contrary to the public interest by failing to adequately know their clients and ensure "Know Your Client" (**KYC**) information was collected and assessed for each investor in the CBMF Trust, and thereby failed to ensure the investments were suitable for each of the investors.

**THE RESPONDENTS**

7. CBAM operates a broad-based Ontario real estate business including development, asset management, property management, and mortgage lending and administration. CBAM also raises capital through the sale of partnership units in real estate private equity funds (the **CB Funds**) and the sale of units in the CBMF Trust. All of the CB Funds are Ontario limited partnerships of which CBAM is the general partner. CBAM manages the CB Funds and the CBMF Trust.
8. In June 2015, CBAM and the Principals (as defined below) established the CBMF Trust, an MIE with a pooled mortgage fund structure, with Clifton Blake Capital Corp. (**CBCC**) as the originator and administrator of the mortgage loans funded by CBMF Trust. Clifton Blake Mortgage Fund LP (**CBMF LP**) is an Ontario limited partnership wholly owned by CBMF Trust which holds the portfolio of first and second mortgages funded by the CBMF Trust.

9. CBMF Trust is a mutual fund trust for tax purposes that carries on a mortgage origination and lending business. The CBMF Trust is managed by CBAM. The Trustee is Caledon Trust, which also has a limited management role. The units of CBMF Trust are redeemable in accordance with the terms of CBMF Trust's Trust Agreement dated June 26, 2015, which governs the CBMF Trust.
10. CBMF LP is an Ontario limited partnership of which the sole limited partner is the CBMF Trust. The CBMF LP does not conduct any activities other than holding the mortgage portfolio of the Trust.
11. Clifton Blake Mortgage Fund (GP) Inc. is a wholly owned subsidiary of CBAM, and is the general partner of the LP.
12. Mr. Daya is a resident of Toronto, Ontario. Mr. Daya is a partner in CBAM, the President and an indirect 33% owner of CBAM. Mr. Daya is licensed as a mortgage broker with FSCO and is the principal broker of CBCC.
13. Mr. Hsu is a resident of Toronto, Ontario. Mr. Hsu is a partner of CBAM and an indirect 33% owner of CBAM.
14. Mr. Myles is a resident of Toronto, Ontario. Mr. Myles is a partner in CBAM and an indirect 33% owner of CBAM.

#### UNREGISTERED TRADING

15. CBAM is owned indirectly by Messrs Daya, Hsu, and Myles (collectively, the **Principals**). CBAM began the business of trading in securities in July 2015 when CBAM began selling units in the CBMF Trust.
16. During the Relevant Period, investors in the CBMF Trust subscribed by executing a subscription agreement confirming they were accredited investors, or alternatively, family, friends and business associates. Investors who invested during the period from October 2016 onward made a capital commitment contingent upon the CBMF Trust finding suitable mortgages to fund in order to increase the CBMF Trust portfolio. Investors only contributed their capital when the CBMF Trust identified a mortgage and then "called" for the capital. Investors received CBMF Trust units once the capital was contributed.
17. Initially CBAM raised \$6.45 million from 15 investors through the sale of units in the CBMF Trust. However, by December 2016, CBAM had raised \$25 million through the sale of units in the CBMF Trust from approximately 144 investors.
18. No sales commissions or referral fees were charged or paid in respect of these sales.
19. The units of the CBMF Trust are securities as that term is defined in subsection 1(1) of the Act. However, they are not of the nature to permit reliance upon the licensed mortgage broker dealer registration or prospectus exemptions available pursuant to subsections 35(4) and 73.2(3) of the Act. During the Relevant Period, none of the Respondents were registered in any capacity with the Commission.
20. During the Relevant Period, the Respondents engaged in the business of trading in securities by selling units of the CBMF Trust to the public. As such, the Respondents required dealer registration, yet failed to register under the Act despite there being no exemptions to the registration requirement available to the Respondents under Ontario securities law, contrary to subsection 25(1) of the Act.

#### ILLEGAL DISTRIBUTIONS OF CBMF TRUST SECURITIES

21. The units of the CBMF Trust had not been previously issued. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to the trades of the units of the CBMF Trust.
22. Certain of the distributions in the CBMF Trust were made in reliance on the family, friends and business associates exemption. In certain circumstances, the Respondents failed to comply with the applicable requirements of the friends, family and business associates exemption, and in those cases an exemption was therefore not available.

#### FAILURE TO MEET OBLIGATIONS AS A DEALER

23. During the Relevant Period, the Respondents acted as a securities dealer that sold only securities of related issuers.
24. The Respondents did not adequately collect or consider KYC information from investors and did not examine investors' portfolios to ensure that investments in the CBMF Trust were suitable for them.

25. Investors in the CBMF Trust completed subscription agreements and received certificates evidencing their investment. The subscription agreements included forms by which investors could indicate upon which prospectus exemption they were relying. However, aside from checking to see that these forms had been completed, there was no formal KYC review conducted with prospective investors to see if they qualified for the prospectus exemption.

#### LIABILITY OF DIRECTORS AND OFFICERS

26. During the Relevant Period, the Principals as directors and/or officers CBAM and de facto directors and/or officers of CBMF Trust, authorized, permitted or acquiesced in the corporate Respondents' non-compliance with Ontario securities law.

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

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

27. CBAM engaged in the business of, or held themselves out as engaging in the business of, trading in securities of the CBMF Trust, without being registered in accordance with Ontario securities law as a dealer, contrary to subsection 25(1) of the Act, and where there were no exemptions available.
28. Certain of the distributions in the CBMF Trust were made in reliance on the family, friends and business associates exemption. In certain circumstances, the Respondents failed to comply with the applicable requirements of the friends, family and business associates exemption, and in those cases an exemption was therefore not available. These distributions constituted distributions of securities in circumstances where: (1) no preliminary prospectus and prospectus were filed and receipts had not been issued for them by the Director; and, (2) where there were no exemptions available under Ontario securities law, contrary to section 53 of the Act.
29. The Respondents engaged in conduct contrary to the public interest by failing to adequately know their clients and ensure sufficient KYC information was collected for each investor in the CBMF Trust in order to ensure the investments were suitable for each of the investors.
30. The Principals as directors and/or officers of CBAM and *de facto* directors and/or officers of the CBMF Trust authorized, permitted or acquiesced in CBAM's and CBMF Trust's non-compliance with Ontario securities law as set out above, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

**DATED** this 22nd day of March, 2019.

Christina Galbraith  
Litigation Counsel  
Enforcement Branch  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, ON M5H 3S8  
Tel: (416) 596-4298  
Email: cgalbraith@osc.gov.on.ca

Lawyer for Staff of the Ontario Securities Commission

1.3.2 Alain Armand Theroux – ss. 127(1), 127(10)

FILE NO.: 2019-9

**IN THE MATTER OF  
ALAIN ARMAND THEROUX**

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

**PROCEEDING TYPE:** Inter-jurisdictional Enforcement Proceeding

**HEARING DATE AND TIME:** In writing

**PURPOSE**

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on March 26, 2019.

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

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

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

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

**REPRESENTATION**

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

**FAILURE TO ATTEND**

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

**FRENCH HEARING**

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**AVIS EN FRANÇAIS**

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

Dated at Toronto this 26th day of March, 2019

"Grace Knakowski"  
Secretary to the Commission

**For more information**

Please visit <http://www.osc.gov.on.ca> or contact the Registrar at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca).

IN THE MATTER OF  
ALAIN ARMAND THEROUX

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

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

**A. ORDER SOUGHT**

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 1 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
- (a) against Alain Armand Theroux (**Theroux** or the **Respondent**) that:
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Theroux cease permanently;
  - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Theroux be prohibited permanently;
  - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Theroux permanently;
  - iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Theroux resign any positions that he holds as a director or officer of any issuer or registrant;
  - v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Theroux be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
  - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Theroux be prohibited permanently from becoming or acting as a registrant or promoter;
- (b) such other order or orders as the Commission considers appropriate.

**B. FACTS**

Staff make the following allegations of fact:

**(i) Overview**

3. On April 19, 2018, Theroux pleaded guilty in the Ontario Court of Justice to five counts of fraud over \$5,000, contrary to section 380(1)(a) of the *Criminal Code of Canada*, RSC, 1985, c. C-46 (the **Criminal Code**). Theroux's guilty plea was accepted by the Court, and he was convicted and sentenced to 12 months imprisonment, to be followed by two years of probation.
4. The offences for which Theroux was convicted arose from transactions, business or a course of conduct related to securities.
5. Staff is seeking an inter-jurisdictional enforcement order reciprocating Theroux's conviction, pursuant to paragraph 1 of subsection 127(10) of the Act.
6. The conduct for which Theroux was sanctioned took place between August 21, 2008 and June 30, 2010 (the **Material Time**).

**(ii) The Respondent**

7. Theroux is a resident of Ontario.

8. Theroux was previously registered in various capacities, including as a mutual fund salesperson with PFSL Investments Canada Limited (**PFSL**) from March 1992 to July 2008, and as a branch manager with PFSL from November 2003 to April 2008. Theroux has not been registered in any capacity under the Act since July 2008.

**(iii) The Ontario Court of Justice Proceedings**

Conviction for Fraud

9. By Information dated August 16, 2016 (the **Information**), Theroux was charged with 11 various counts of contravening the Criminal Code.
10. On April 19, 2018, Theroux pleaded guilty before the Honourable Justice Gage of the Ontario Court of Justice to five counts of fraud over \$5,000, contrary to section 380(1)(a) of the Criminal Code, being counts 1, 3, 5, 7 and 9 of the Information.

The Findings

11. For the purpose of his guilty plea, Theroux, through his counsel, agreed with the following facts:
- (a) During the Material Time, Theroux approached a number of his former PFSL clients and personal friends to invest in a biofuel venture with Organo Capital Incorporated (**Organo**), a Quebec-based company with which Theroux was associated.
  - (b) Theroux assured investors that he had done his homework, and that the biofuel venture was a secure and low-risk investment.
  - (c) Theroux solicited and accepted funds in excess of \$1 million from Ontario investors with respect to the investment. While the majority of the investors' funds were made payable to, and deposited directly into, Organo's account, some funds were made payable instead to Theroux Enterprises, and deposited into bank accounts controlled by Theroux.
  - (d) Statements provided to investors reflected their investments in bonds, promissory notes and bridge financing, with generous returns of up to 100% for a one-year term.
  - (e) During the Material Time, five of the investors (the **Five Investors**), to whom Theroux was either a friend or long-time financial advisor, provided Theroux with funds totalling \$445,000 for the purpose of investing with Organo and associated companies. However, only \$274,800 of those funds were invested with Organo. Theroux misappropriated the remaining balance of \$170,800, which he instead used for his own purposes, and to make payments to other investors.
  - (f) Ultimately, the Five Investors did not receive returns on their investments as promised, nor the return of their initial investment funds from Theroux.

Theroux's Sentence

12. A sentencing hearing was subsequently held on July 24, 2018 before Justice Gage of the Ontario Court of Justice. Justice Gage sentenced Theroux to 12 months' imprisonment, followed by two years of probation.
13. Justice Gage also ordered Theroux to pay restitution to the Five Investors totalling \$170,800, and a fine in lieu of forfeiture of \$75,000 to be paid within 15 years of his release. Alternatively, Justice Gage further ordered that in default of payment of the fine, Theroux be imprisoned for an additional two years.

**C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION**

14. Pursuant to paragraph 1 of subsection 127(10) of the Act, Theroux's convictions for offences arising from transactions, business or a course of conduct related to securities or derivatives may form the basis for an order in the public interest made under subsection 127(1) of the Act.
15. Staff allege that it is in the public interest to make an order against Theroux.
16. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

**DATED** at Toronto this 26th day of March, 2019.

Kai Olson  
Litigation Counsel  
Enforcement Branch  
Tel: (416) 597-7242  
Fax: (416) 204-8956  
Email: [kolson@osc.gov.on.ca](mailto:kolson@osc.gov.on.ca)

**1.4 Notices from the Office of the Secretary**

**1.4.1 Donna Hutchinson et al.**

**FOR IMMEDIATE RELEASE  
March 21, 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 March 21 and 22, 2019 at 10:00 a.m. will not proceed as scheduled.

The hearing will continue on June 10 and 12, 2019 at 10:00 a.m.

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

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

For investor inquiries:

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

**1.4.2 3iQ Corp. and The Bitcoin Fund**

**FOR IMMEDIATE RELEASE  
March 21, 2019**

**3iQ CORP. and  
THE BITCOIN FUND,  
File No. 2019-7**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing to consider the Application dated March 15, 2019 made by the parties named above to review a decision of a Director of the Commission dated February 15, 2019.

The hearing is the first attendance in this proceeding and will be held on April 3, 2019 at 1:00 p.m. on the 17th floor of the Commission's office located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated March 21, 2019 and the Application dated March 15, 2019 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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For investor inquiries:

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



**1.4.3 Martin Bernholtz**

**FOR IMMEDIATE RELEASE  
March 25, 2019**

**MARTIN BERNHOLTZ,  
File No. 2018-16**

**TORONTO** – Take notice that the hearing in the above named matter scheduled to be heard on March 25, 27, 28, 29 and April 1, 2019 will not proceed as scheduled.

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

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

For investor inquiries:

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

**1.4.4 Clifton Blake Asset Management Ltd. et al.**

**FOR IMMEDIATE RELEASE  
March 25, 2019**

**CLIFTON BLAKE ASSET MANAGEMENT LTD.,  
CLIFTON BLAKE MORTGAGE FUND TRUST,  
QASIM (KC) DAYA,  
VICTOR HSU, AND  
WESLEY MYLES,  
File No. 2019-4**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Clifton Blake Asset Management Ltd., Clifton Blake Mortgage Fund Trust, Qasim (KC) Daya, Victor Hsu, and Wesley Myles in the above named matter.

The hearing will be held on March 28, 2019 at 9:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated March 25, 2019 and Statement of Allegations dated March 22, 2019 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

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

For investor inquiries:

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

**1.4.5 Alain Armand Theroux**

**FOR IMMEDIATE RELEASE**  
**March 26, 2019**

**ALAIN ARMAND THEROUX,**  
**File No. 2019-9**

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

A copy of the Notice of Hearing dated March 26, 2019 and Statement of Allegations dated March 26, 2019 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 The Depository Trust & Clearing Corporation

##### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from filing report of exempt distribution – the securities are issued by parent company to members of subsidiary clearing agencies – the purpose of the issuance of the securities is to facilitate a commercial relationship between the clearing agency and its members – the acquisition of the securities by the member does not represent an investment decision on the part of the member – relief granted subject to conditions.

##### Applicable Legislative Provisions

National Instrument 45-106 Prospectus Exemptions, ss. 6.1, 7.1.

March 19, 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  
THE DEPOSITORY TRUST & CLEARING CORPORATION  
(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**) for an exemption from the requirement (the **Reporting Requirement**) of section 6.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) that the Filer file a completed Form 45-106F1 *Report of Exempt Distribution* when the Filer distributes shares of its common stock (the **Common Shares**) to accredited investors under section 2.3 of NI 45-106 or, in Ontario, section 73.3 of the *Securities Act* (Ontario) (the **Act**) (the **Exemption 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 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 British Columbia, Alberta and Québec (the **Passport Jurisdictions**).

##### Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* 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 user-owned entity that, through its subsidiaries, serves as the primary financial market infrastructure serving the United States capital markets across multiple asset classes, including equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments, mutual funds, insurance, alternative investment products and OTC derivatives. It is a non-public holding company that owns a number of companies operating financial market infrastructure, including Fixed Income Clearing Corporation (**FICC**) and two other clearing agencies (collectively, including FICC, the **Clearing Agencies**). The Filer is organized under New York law.
2. FICC is a business corporation organized under New York law providing clearing, settlement, risk management, and central counterparty (**CCP**) services for fixed income securities in the United States, including treasury securities and mortgage-backed securities. FICC operates clearing services through two divisions, the Government Securities Division (**GSD**) and the Mortgage-Backed Securities Division (**MBSD**).
3. The Common Shares are held of record by approximately 290 members of the Clearing Agencies. The Common Shares are allocated in accordance with a formula based on the relative usage of the Clearing Agencies' services by members. Of the participants that own Common Shares, (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. In addition, the Filer's Series A Preferred Shares are held of record by Stock Clearing Corporation, a wholly owned subsidiary of New York Stock Exchange LLC, its Series B Preferred Shares are held of record by the Financial Industry Regulatory Authority, Inc. (FINRA), and its Series C Preferred Shares are held of record by institutional investors.
4. As at September 30, 2018, the condensed statements of financial condition of the Filer showed common shareholders' par value of US\$5 million and paid-in capital of US\$411 million, while the value of participants' and clearing funds and other participants' assets was US\$34.7 billion.
5. FICC is applying to the OSC for an order exempting it from recognition as a clearing agency under section 21.2 of the Act in order to provide its CCP services to Ontario market participants (the **Recognition Relief**). Depending on the extent of interest in becoming members of FICC among market participants in the Passport Jurisdictions following the granting of the Recognition Relief by the OSC, FICC might subsequently apply for corresponding orders in one or more of the Passport Jurisdictions.
6. Netting Members of GSD other than Registered Investment Company Netting Members are categorized as Tier One Netting Members. Registered Investment Company Netting Members and CCIT Members are categorized as Tier Two Members. Clearing Members of MBSD other than Registered Investment Company Clearing Members are categorized as Tier One Members. Registered Investment Company Clearing Members are categorized as Tier Two Members.
7. Each Netting Member of GSD (other than a central securities depository, Federal Reserve bank, central counterparty or Registered Investment Company Netting Members) and Clearing Member of MBSD (other than a central securities depository, Federal Reserve bank, central counterparty or Registered Investment Company Clearing Member) is required to purchase and own Common Shares. A Comparison-Only Member (other than a central securities depository, Federal Reserve bank or central counterparty) or a Tier Two Member of GSD and a Registered Investment Company Clearing Member of MBSD is permitted, but not required, to purchase and own Common Shares. Other members of GSD and MBSD are neither required nor permitted to purchase and own Common Shares.
8. Subject to FICC obtaining exemptions from any applicable requirements to be recognized as a clearing agency, Canadian entities would be eligible to be Foreign Netting Members of GSD or Foreign Clearing Members of MBSD, in which case they would be required to purchase Common Shares. Canadian entities also would be eligible to be CCIT Members of GSD, in which case they would be permitted to purchase Common Shares.
9. A shareholders agreement restricts the transfer of the Common Shares and the Filer's Series A Preferred Shares and Series B Preferred Shares. The Series C Preferred Shares contain a legend that restricts transfers, unless pursuant to a registration statement declared effective under the *Securities Act of 1933*, as amended (the **Securities Act**), to (i) the Filer, (ii) the lead managers for the offering of the those shares, and (iii) for so long as those shares are eligible for resale pursuant to Rule 144A under the Securities Act (**Rule 144A**), "qualified institutional buyers" as defined in Rule 144A.
10. Ownership of the Common Shares is not a financial investment, but instead is a vehicle for supporting the Clearing Agencies and influencing their policies and operations through the election of directors. It guarantees that members of the Clearing Agencies govern and control the activities of the Clearing Agencies, including the kinds and quality of

services provided and the service fees charged. It enables members of the Clearing Agencies to be in a position to assure that the Clearing Agencies establish fees that are cost-based and use-based.

11. The securities of the Filer (other than non-convertible debt securities) being beneficially owned by more than 50 persons reflects the extensive scope of the activities of the Filer, including its wholly owned subsidiaries, in the world's largest financial market. The larger number of securityholders does not indicate the Filer should be considered other than as a non-public entity, although it is unable to rely on the "private issuer" exemption in NI 45-106 or the Act, under which there is no Reporting Requirement.
12. Under the Recognition Relief, FICC would promptly notify the OSC of the admission of any new Ontario member and would provide the OSC with certain quarterly information, including a current list of all Ontario members, and promptly provide such other information as may be requested from time to time by the OSC or its staff. The Filer would propose to provide equivalent notice and information if it is granted an exemption from recognition in any of the Passport Jurisdictions.

### Decision

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

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

- (a) the Common Shares are distributed only to "permitted clients" (as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*) other than individuals;
- (b) the Filer is not a reporting issuer in any jurisdiction of Canada at the time of the distribution; and
- (c) upon the request of staff of a securities regulatory authority of a jurisdiction of Canada, the Filer will promptly provide information about any distribution made under this decision.

"Winnie Sanjoto"  
Manager, Corporate Finance

## 2.1.2 Citizens Bank, National Association

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application to revoke a previous decision dated November 11, 2014, In the Matter of Citizens Bank, National Association – Previous decision had exempted the applicant from the dealer registration and the prospectus requirement, in sections 25(1) and 53(1) of the Securities Act, for certain trades in over-the-counter (OTC) derivatives with “permitted counterparties” subject to a sunset condition.

New decision provides relief from dealer registration and prospectus requirements in sections 25(1) and 53(1) of the Securities Act in connection with certain trades in OTC derivatives with “permitted counterparties”, consisting exclusively of persons or companies who are “permitted clients” as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Relief sought in Ontario and certain other jurisdictions as interim response to current regulatory uncertainty associated with OTC derivatives in Canada – Relief subject to sunset condition that is (i) the date that is four years after the date of the decision; and (ii) the coming into force in the jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC derivative transactions.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74(1), 144.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 (“permitted client”).

November 2, 2018

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

AND

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

AND

IN THE MATTER OF  
CITIZENS BANK, NATIONAL ASSOCIATION  
(the Filer)

DECISION

### Background

#### Previous Decision

The Filer made an application (the **Previous Application**) to the Ontario Securities Commission and obtained from the Ontario Securities Commission, as the principal regulator for the Previous Application, a decision dated November 11, 2014, *In Re Citizens Bank, National Association*, (2014) 37 OSCB 10107 (the **Previous Decision**), providing relief from the dealer registration requirement and the prospectus requirement that may otherwise be applicable to a trade in or a distribution of an OTC Derivative made by either the Filer to a Permitted Counterparty or a Permitted Counterparty to the Filer, subject to certain terms and conditions.

The Previous Decision provided that the relief would terminate on the date that is the earlier of: (i) the date that is four years after the date of the Previous Decision (being November 11, 2018); and (ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

### **New Decision**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) revoking the Previous Decision and providing that the dealer registration requirement and the prospectus requirement in the Legislation that may otherwise be applicable to a trade in or distribution of an OTC Derivative transaction (as defined below) made by either

- (a) the Filer to a Permitted Counterparty (as defined below), or
- (b) by a Permitted Counterparty to the Filer,

shall not apply to the Filer or the Permitted Counterparty, as the case may be (the Requested Relief), subject to certain terms and conditions.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission (**OSC**) is the principal regulator for the Application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in New Brunswick (to the extent Local Rule 91-501 *Derivatives* does not apply), Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon (the **Passport Jurisdictions**).

### **Interpretation**

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

The terms **OTC Derivative** and **Underlying Interest** are defined in the Appendix (the **Appendix**) to this decision.

The term **Permitted Counterparty** means a person or company that is a “permitted client”, as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

### **Representations**

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

#### **The Filer**

1. The Filer is a national full-service commercial and retail bank organized under the laws of the United States of America under charter number 24571. Its primary regulator in the United States is the Office of the Comptroller of the Currency. The Filer's head office is located at One Citizens Plaza, Providence, Rhode Island, 02903, U.S.A.
2. The Filer is not currently registered in any capacity in Canada or with the U.S. Securities and Exchange Commission.
3. The Filer is not required to register under U.S. law with the U.S. Commodity Futures Trading Commission as a swap dealer or a major swap participant.
4. The Filer is wholly owned by Citizens Financial Group, Inc. In September 2014, Citizens Financial Group, Inc. (NYSE:CFG) became a publicly traded company. Previously wholly owned by the Royal Bank of Scotland Group PLC, in November 2015, Royal Bank of Scotland Group PLC completed its divestiture of Citizens Financial Group, Inc. Headquartered in Providence, Rhode Island, Citizens Financial Group, Inc. is one of the oldest and largest financial institutions in the United States, with \$153.5 billion in assets as of March 31, 2018.
5. The Filer is not in default of securities, commodity futures or derivatives legislation in any jurisdiction in Canada.
6. The Filer is in compliance in all material respects with U.S. securities, commodity futures and derivatives laws.
7. The Filer will not maintain an office, sales force or physical place of business in Canada.
8. The Filer is not a registrant and is not a broker-dealer registered with the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority or any state securities regulator.

### ***Proposed Conduct of OTC Derivative Transactions***

9. The Filer proposes to enter into bilateral OTC Derivative transactions with counterparties located in all provinces and territories of Canada that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between the Filer and a Permitted Counterparty will consist of a commodity; an interest rate; a currency; a foreign exchange rate; a security; an economic indicator, an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.
10. The Filer will not offer or provide credit or margin to any of its Permitted Counterparties for purposes of executing an OTC Derivative transaction.
11. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada. The Filer acknowledges that registration and prospectus requirements may be triggered for the Filer in connection with the derivative contracts under any such uniform framework to be developed for the regulation of OTC Derivative transactions.

### ***Regulatory Uncertainty and Fragmentation associated with the Regulation of OTC Derivative Transactions in Canada***

12. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as “securities” in the provinces and territories of Canada other than Quebec.
13. In each of British Columbia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon, OTC Derivative transactions are regulated as securities on the basis that the definition of the term “security” in the securities legislation of each of these jurisdictions includes an express reference to a “futures contract” or a “derivative”.
14. In Alberta, New Brunswick and Saskatchewan, the defined term “security” no longer includes an express reference to a “futures contract”. Alberta, New Brunswick and Saskatchewan securities legislation now includes a definition of “derivative”.
15. In each of Manitoba, Newfoundland and Labrador, Nova Scotia and Ontario, it is not certain whether, or in what circumstances, OTC Derivative transactions are “securities” because the definition of the term “security” in the securities legislation of each of these jurisdictions makes no express reference to a “futures contract” or a “derivative”.
16. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario (OSC Notice 91-702)*. OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (**OSA**) and constitute “investment contracts” and “securities” for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.
17. In Quebec, OTC Derivative transactions are subject to the *Derivatives Act* (Quebec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Quebec’s securities regulatory requirements.
18. In each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan (the **Blanket Order Jurisdictions**) and Quebec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as “Qualified Parties” in the Blanket Order Jurisdictions and “accredited counterparties” in Quebec.
19. The corresponding OTC Derivative Exemptions are as follows:
 

Alberta	ASC Blanket Order 91-507 <i>Over-the-Counter Trades in Derivatives</i>
British Columbia	Blanket Order 91-501 <i>Over-the-Counter Derivatives</i>
Manitoba	Blanket Order 91-501 <i>Over-the-Counter Trades in Derivatives</i>
New Brunswick	Local Rule 91-501 <i>Derivatives</i>



Nova Scotia	Blanket Order 91-501 <i>Over the Counter Trades in Derivatives</i>
Saskatchewan	General Order 91-908 <i>Over-the-Counter Derivatives</i>
Quebec	Section 7 of the <i>Derivatives Act</i> (Quebec)

20. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Quebec, or indirectly through amendments to the definition of the term “security” in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.
21. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.
22. The Final Report of the Ontario Commodity Futures Act Advisory Committee, published in January, 2007, concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.
23. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the OSA that were made by the *Helping Ontario Families and Managing Responsibly Act, 2010* (Ontario).
24. The amendments to the OSA establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed. On April 19, 2018, the Canadian Securities Administrators (CSA) published a Notice and Request for Comment on the Proposed National Instrument 93-102 *Derivatives: Registration*, and on June 14, 2018, the CSA published a Notice and Second Request for Comment on the Proposed National Instrument 93-101 *Derivatives: Business Conduct*, which, together, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives.

#### ***Rationale for Requested Relief***

25. The Requested Relief would substantially address, for the Filer and its Permitted Counterparties, the regulatory uncertainty and fragmentation that is currently associated with the regulation of OTC Derivative transactions in Canada, by permitting these parties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation of each Passport Jurisdiction that are comparable to the OTC Derivative Exemptions.

#### **Books and Records**

26. As a result of the Previous Decision, the Filer is a “market participant” for the purposes of the OSA, and will continue to be so as a consequence of this decision. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.
27. For the purposes of its compliance with subsection 19(1) of the OSA, the books and records that the Filer will keep will include books and records that:
- (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;
  - (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation;
  - (c) identify all OTC Derivative transactions conducted on behalf of the Filer and each of its clients domiciled in a Passport Jurisdiction, including the name and address of all parties to the transaction and the terms of those transactions; and

- (d) set out for each OTC Derivative transaction entered into by the Filer, information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by the Filer in reliance upon the “accredited investor” prospectus exemption in section 2.3 [Accredited investor] of National Instrument 45-106 *Prospectus Exemptions*.

### 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 is that the Previous Decision is revoked and the Requested Relief is granted, provided that:

- (a) the counterparty to any OTC Derivative transaction that is entered into by the Filer is a Permitted Counterparty;
- (b) in the case of any trade made by the Filer to a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty; and
- (c) the Requested Relief shall terminate on the date that is the earlier of:
  - (i) the date that is four years after the date of this decision; and
  - (ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

“M. Cecilia Williams”  
Commissioner  
Ontario Securities Commission

“AnneMarie Ryan”  
Commissioner  
Ontario Securities Commission

## Appendix

### Definitions

**“Clearing Corporation”** means an association or organization through which Options or futures contracts are cleared and settled.

**“Contract for Differences”** means an agreement, other than an Option, a Forward Contract, a spot currency contract or a conventional floating rate debt security, that provides for:

- (a) an exchange of principal amounts; or
- (b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of the value, level or price of, an Underlying Interest

**“Forward Contract”** means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (a) make or take delivery of the Underlying Interest of the agreement; or
- (b) settle in cash instead of delivery.

**“Option”** means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

- (a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.
- (b) purchase a specified quantity of the Underlying Interest of the Option.
- (c) sell a specified quantity of the Underlying Interest of the Option.

**“OTC Derivative”** means one or more of, or any combination of, an Option, a Forward Contract, a Contract for Differences or any instrument of a type commonly considered to be a derivative, in which:

- (a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, Contract for Differences or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;
- (b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and
- (c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

**“Underlying Interest”** means, for a derivative, the commodity, interest rate, currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

## 2.1.3 Russell Investments Canada Limited

### Headnote

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

### Applicable Legislative Provisions

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

February 27, 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  
RUSSELL INVESTMENTS CANADA LIMITED  
(the Filer)

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Russell Investments Global Infrastructure Pool (the **Initial ETF Fund**) and such other mutual funds as are managed by the Filer now or in the future and that are structured in the same manner as the Initial ETF Fund (the **Future ETF Funds** and together with the Initial ETF Fund, the **ETF Funds** and each, individually, an **ETF Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and each ETF Fund as set forth below:

- (a) an exemption from section 2.6(a)(i) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Borrowing Requirement**) to permit each ETF Fund and the Filer to borrow cash from the custodian of the ETF Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets, as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but not yet been received by, the borrowing ETF Fund; and
- (b) an exemption from the provisions of Parts 9, 10 and 14 of NI 81-102 (the **Sales and Redemptions Requirements**) to permit the Filer and each ETF Fund to treat its ETF Securities (as defined below) and its Mutual Fund Securities (as defined below) as if such securities were separate funds in connection with their compliance with the Sales and Redemptions Requirements,

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

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

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

### Interpretation

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

**Affiliate Dealer** means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the resale of Creation Units from time to time;

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

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

**Creation Units** means newly issued ETF Securities of an ETF Fund;

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

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

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

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

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

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

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

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

**Securityholders** means beneficial or registered holders of ETF Securities or Mutual Fund Securities, as applicable, of the ETF Fund; and

**TSX** means the Toronto Stock Exchange.

### Representations

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

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

2. The Filer is registered in each Jurisdiction in the categories of investment fund manager, portfolio manager and exempt market dealer. The Filer also is registered in Ontario as a commodity trading manager and as a mutual fund dealer exempt from membership in the Mutual Funds Dealer Association of Canada. The Filer also is registered in Manitoba as an advisor (commodities).
3. The Filer is the investment fund manager of and portfolio adviser to each ETF Fund. Other portfolio managers may be sub-advisers to the ETF Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.
5. Each ETF Fund:
  - (a) is, or will be, established either as a trust governed by the laws of Ontario or as a class of shares of a mutual fund corporation; and
  - (b) is, or will be, a reporting issuer in one or more Jurisdictions in which its securities are distributed.
6. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each ETF Fund is, or will be, subject to NI 81-102 and its Securityholders will have the right to vote at a meeting of Securityholders in respect of the matters prescribed by NI 81-102.
7. Each ETF Fund offers, or will offer, Mutual Fund Securities and ETF Securities.
8. The Initial ETF Fund currently offers series A, B, E, F, O and P units. These Mutual Fund Securities are currently distributed under a simplified prospectus dated June 29, 2018. On or before May 30, 2019, a preliminary prospectus in respect of the ETF Securities of the Initial ETF Fund, or an amended and restated prospectus in respect of the Mutual Fund Securities and ETF Securities of the Initial ETF Fund, will be filed with the securities regulatory authorities in each of the Jurisdictions.
9. The Filer will apply to list the ETF Securities of each ETF Fund on the TSX or another Marketplace. The Filer will not file a final prospectus for any ETF Fund in respect of its ETF Securities until the TSX or other applicable Marketplace has conditionally approved the listing of such ETF Securities.
10. Mutual Fund Securities of an ETF Fund may be subscribed for or purchased by investors directly from the ETF Fund through appropriately registered dealers.
11. ETF Securities of an ETF Fund will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. A Prescribed Number of ETF Securities may generally only be subscribed for or purchased directly from the ETF Funds by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.
12. In addition to subscribing for and reselling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market.
13. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, an ETF Fund may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.
14. 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 Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.
15. Each ETF Fund will appoint a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for its ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

16. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from an ETF Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
17. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the TSX or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

#### **Borrowing Requirement**

18. Paragraph 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, paragraph 2.6(a)(i) prohibits an ETF Fund from borrowing from its Custodian to fund distributions under its Distribution Policy (as defined below).
19. Each ETF Fund will make distributions on a monthly, quarterly or annual basis or at such frequency as the Filer may, in 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) (the **Distribution Policy**).
20. Amounts included in the calculation of net income and net realized capital gains of an ETF Fund for a taxation year that must be distributed in accordance with its Distribution Policy sometimes include amounts that are owing to but have not yet been received by the ETF Fund from the issuers of securities held in the ETF Fund's portfolio (**Issuers**).
21. While it is possible for an ETF Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with its Distribution Policy, maintaining such a cash position or making such a disposition (which generally would be followed by an acquisition of the same securities once the cash is received from the Issuer) will impact the ETF Fund's performance. Maintaining assets in cash, or disposing and reacquiring the same securities, means that a portion of the net asset value of the ETF Fund is not invested in accordance with its investment objective.
22. The Filer is of the view that it is in the interests of each ETF Fund to have the ability to borrow cash from its 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 Fund from Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction to the ETF Fund's performance if the ETF Fund had to hold cash instead of securities in order to fund the distribution.

#### **Sales and Redemptions Requirements**

23. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single mutual fund structure. Accordingly, without the Sales and Redemptions Relief, the Filer and the ETF Funds would not be able to technically comply with those parts of NI 81-102.
24. The Exemption Sought will permit the Filer and each ETF Fund to treat its ETF Securities and Mutual Fund Securities as if such securities were separate funds in connection with its compliance with Parts 9, 10 and 14 of NI 81-102. The Exemption Sought will enable each ETF Fund to comply with Parts 9, 10 and 14 of NI 81-102 as appropriate for the type of security being offered.

#### **Decision**

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

1. The decision of the principal regulator is that the Exemption Sought from the Borrowing Requirement is granted, provided that the ETF Fund will be in compliance with the following conditions:

- (a) the borrowing by the ETF Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the ETF Fund but have not been received by the ETF Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the ETF Fund;
  - (b) the borrowing is not for a period longer than 45 days;
  - (c) any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;
  - (d) the ETF Fund does not make any distribution to Securityholders where the distribution would impair the ETF Fund's ability to repay any borrowing to fund distributions; and
  - (e) the final prospectus of the ETF Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.
2. The decision of the principal regulator under the Legislation is that the Exemption Sought from the Sales and Redemptions Requirements is granted, provided that the ETF Fund will be in compliance with the following conditions:
- (a) with respect to its Mutual Fund Securities, each ETF Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and
  - (b) with respect to its ETF Securities, each ETF Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"Darren McCall"  
Manager  
Investment Funds & Structured Products Branch  
Ontario Securities Commission



## 2.1.4 Fixed Income Clearing Corporation – s. 6.1 of NI 24-102 Clearing Agency Requirements

### Headnote

Section 6.1 of NI 24-102 Clearing Agency Requirements (NI 24-102) – exemption granted from the requirement in paragraph 5.1 (2)(a) of NI 24-102 that would require FICC to retain its books and records maintained under paragraph 5.1 of NI 24-102 for a period of seven years from the date the record was made or received, whichever is later provided that FICC continues to comply with U.S. Requirements for the retention of books, records and other documents.

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

**AND**

**IN THE MATTER OF  
NATIONAL INSTRUMENT 24-102  
CLEARING AGENCY REQUIREMENTS  
(NI 24-102)**

**AND**

**IN THE MATTER OF  
FIXED INCOME CLEARING CORPORATION  
(the Filer)**

**DECISION  
(Section 6.1 of NI 24-102)**

### Background

The Ontario Securities Commission (the **OSC**) has received an application (**Application**) from the Filer for a decision by the Director, pursuant to section 6.1 of NI 24-102, exempting the Filer from the requirement of paragraph 5.1(2)(a) of NI 24-102 that the Filer retain its books and records maintained under section 5.1 of NI 24-102 for a period of seven years from the date the record was made or received, whichever is later (the **Record Retention Requirement**).

### Interpretation

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

### Representations

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

1. The Filer is a business corporation organized under New York law providing clearing, settlement, risk management, and central counterparty (**CCP**) services for fixed income securities in the United States, including treasury securities and mortgage-backed securities.
2. As a registered clearing agency in the United States, the Filer is subject to the requirements of the U.S. Securities Exchange Act of 1934, as amended (the **Exchange Act**), and the regulations and rules of the U.S. Securities and Exchange Commission thereunder (**U.S. Requirements**). The Filer complies with the U.S. Requirements for the retention of books, records and other documents.
3. The Filer is applying to the OSC for an order exempting it from recognition as a clearing agency under section 21.2 of the Act in order to provide its CCP services to Ontario market participants (the **Recognition Exemption Order**).
4. Rule 17a-1 under the Exchange Act requires every registered clearing agency to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts and other such records that it makes or receives in the course of business for a period of not less than five years. Accordingly, the Filer's extensive operating systems have been set up to retain books, records and other documents for five years.

5. Compliance with the retention period of seven years mandated by paragraph 5.1(2)(a) of NI 24-102 would require significant changes to the Filer's operating systems, which would be unduly time-consuming and expensive in the context of the Recognition Exemption Order. FICC data records are comprised of historical reports, which are mandated to reside on immutable storage to ensure updates cannot be performed to historical data according to a Write Once, Read Many (WORM) paradigm, and also data records residing within a relational database archive for online historical data inquiry. Data purge processes are systemically implemented in FICC to leverage common data selection criteria utilizing current settlement date values in order to maintain a rolling and consistent five year history across both data sources. Implementing custom retention within the systems would introduce significant complexity to the FICC purge and retention processing as counterparty, reference and other data would become inconsistent if settlement date criteria varied across data records and reports. Such customization would require programmatic reconciliation and logic review to ensure accuracy as the current paradigm takes a holistic and integrated, systemic view across data sources.

**Decision**

**UPON** considering the Application and representations made by the Filer;

**IT IS ORDERED** by the Director pursuant to section 6.1 of NI 24-102 that the Filer is exempted from the Record Retention Requirement;

**PROVIDED THAT** the Filer continues to comply with the U.S Requirements for the retention of books, records and other documents.

**DATED** this 13<sup>th</sup> day of March, 2019, effective on the date the OSC issues the Recognition Exemption Order.

"Susan Greenglass"  
Director, Market Regulation Branch  
Ontario Securities Commission

## 2.1.5 Pernod Ricard S.A.

### Headnote

Dual application for Exemptive Relief Applications – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities or FCPEs are subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are de minimis – Relief granted, subject to conditions – 5 year sunset clause.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.

National Instrument 45-106 Prospectus Exemptions, s. 2.24.

Ontario Securities Commission Rule 72-503 Distributions Outside Canada, ss. 2.8, 2.9.

March 22, 2019

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

AND

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

AND

IN THE MATTER OF  
PERNOD RICARD S.A.  
(the Filer)

DECISION

### Background

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

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:
  - a) trades of:
    - i) units (the 2019 Units) of a compartment named Accelerate 2019 NP (the **2019 Compartment**), a compartment of a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee-investors, named Accelerate (the **2019 Fund**, and together with the Compartments (as defined below) and the Transfer Fund (as defined below), the **Funds**); and
    - ii) units (together with the 2019 Units, the **Units**) of future compartments of the 2019 Fund organized in the same manner as the 2019 Compartment (together with the 2019 Compartment, the **Compartments**),

made pursuant to an Employee Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador,

Nova Scotia, Prince Edward Island and Saskatchewan (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Units, the **Canadian Participants**);

- b) trades of ordinary shares of the Filer (the **Shares**) by the relevant Compartment and another compartment of the FCPE "Accelerate" named Accelerate C or another FCPE invested in Shares (the **Transfer Fund**) to or with Canadian Participants upon the redemption of Units and Transfer Fund Units (as defined below), respectively, as requested by Canadian Participants; and
  - c) trades of Transfer Fund Units made pursuant to an Employee Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the relevant Compartment to the Transfer Fund at the end of the applicable Lock-Up Period (as defined below); and
2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Funds and Amundi Asset Management (the **Management Company**) in respect of the following:
- a) trades in Units made pursuant to an Employee Offering to or with Canadian Employees not resident in Ontario and Manitoba;
  - b) trades in Shares by the relevant Compartment and the Transfer Fund to or with Canadian Participants upon the redemption of Units and Transfer Fund Units, respectively, as requested by Canadian Participants; and
  - c) trades in Transfer Fund Units made pursuant to an Employee Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the relevant Compartment to the Transfer Fund at the end of the applicable Lock-Up Period.

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

- a) the Autorité des marchés financiers is the principal regulator for this application;
- b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan; and
- c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

## Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3), *Regulation 11-102* and *Regulation 45-106 respecting Prospectus Exemptions* (chapter V-1.1, r. 21) (**Regulation 45-106**) 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 formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris. The Filer is not in default of securities legislation of any jurisdiction of Canada.
- 2. The Filer carries on business in Canada through certain related entities and has established a global employee share offering (the **2019 Employee Offering**) and expects to establish subsequent global employee share offerings following 2019 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2019 Employee Offering, the **Employee Offerings**) for Qualifying Employees and its participating related entities, including related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **Pernod Ricard Group**). Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada.
- 3. As of the date hereof, "Local Related Entities" include Hiram Walker & Sons Limited, Ungava Spirits Co. Ltd., Corby Spirit and Wine Limited and The Foreign Affair Winery Limited. For any Subsequent Employee Offering, the list of "Local Related Entities" may change.

4. Each Employee Offering will be made under the terms as set out herein and for greater certainty, all of the representations will be true for each Employee Offering other than paragraphs 3, 29 and 34 which may change (save for references to the 2019 Compartment and the 2019 Employee Offering which will be varied such that they are read as references to the relevant Compartment and Subsequent Employee Offering, respectively).
5. As of the date hereof and after giving effect to any Employee Offering, the Filer is and will be a “foreign issuer” as such term is defined in section 2.15(1) of Regulation 45-102 – *Resale of Securities* (**Regulation 45-102**) and the Filer is not and will not be a reporting issuer in any jurisdiction of Canada.
6. Each Employee Offering involves an offering of Shares to be subscribed through the relevant Compartment of the 2019 Fund (the Leveraged Plan), subject to the decision of the supervisory board of the FCPE and the approval of the French AMF (as defined below).
7. Only persons who are employees of an entity forming part of the Pernod Ricard Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.
8. The 2019 Compartment was established for the purpose of implementing the 2019 Employee Offering. The Transfer Fund was established for the purpose of receiving assets transferred at the end of the applicable Lock-Up Period. The 2019 Fund was established for the purpose of implementing the Employee Offering generally. There is no current intention for any of the 2019 Compartment, the Transfer Fund or the 2019 Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any future Compartment that will be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.
9. The 2019 Fund, the 2019 Compartment and the Transfer Fund have been registered with, and approved by, the Autorité des marchés financiers in France (the **French AMF**) on January 22, 2019. It is expected that each Compartment established for Subsequent Employee Offerings will be registered with, and approved by, the French AMF.
10. Under the Leveraged Plan, each Employee Offering will be made as follows:
  - a) Canadian Participants will subscribe for Units, and the relevant Compartment will then subscribe for Shares using the Employee Contribution (as defined below) and certain financing made available by Société Générale (the **Bank**), which is a bank governed by the laws of France. For any Subsequent Employee Offering, the “Bank” may change. In the event of such a change, the successor to the Bank will remain a large French commercial bank subject to French banking legislation.
  - b) The subscription price will be the Canadian dollar equivalent of the average opening price of the Shares (expressed in Euros) on Euronext Paris for the 20 trading days preceding the date of the fixing of the subscription price (the **Reference Price**), less a specified discount to the Reference Price.
  - c) Canadian Participants will contribute 10% of the price of each Share (expressed in Euros) to the relevant Compartment (the **Employee Contribution**). The relevant Compartment will enter into a swap agreement (the **Swap Agreement**) with the Bank. Under the terms of the Swap Agreement, the Bank will contribute the remaining 90% of the price of each Share (expressed in Euros) to be subscribed for by the relevant Compartment (the **Bank Contribution**). The relevant Compartment will apply the cash received from the Employee Contribution and the Bank Contribution to subscribe for Shares.
  - d) Each Canadian Participant will receive Units in the relevant Compartment entitling him or her to the Euro amount of the Employee Contribution and a multiple of the Average Increase (as defined below) in the price of the Shares subscribed for on his or her behalf.
  - e) Under the terms of the Swap Agreement, the relevant Compartment will remit to the Bank an amount equal to the net amount of any dividends paid on the Shares held in such Compartment.
  - f) All Units acquired in an Employee Offering by Canadian Participants will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions provided for under French law and adopted for an Employee Offering (such as death, disability or termination of employment).

- g) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period (**Early Redemption**), the Canadian Participant may request the redemption of Units from the relevant Compartment using the Redemption Formula (as defined below).
- h) At the end of the applicable Lock-Up Period, the relevant Compartment will owe to the Bank an amount equal to  $A - [B+C]$ , where:
  - i) "A" is the market value of all the Shares held in the relevant Compartment at the end of the applicable Lock-Up Period (as determined pursuant to the terms of the Swap Agreement),
  - ii) "B" is the aggregate Euro amount of all Employee Contributions,
  - iii) "C" is an amount (the **Appreciation Amount**) equal to the greater of:
    - A) a multiple of the Average Increase, if any, of the Shares above the Reference Price (where the "**Average Increase**" is the average price of the Shares based on the monthly average of the closing price of the Shares in the last 60 weeks of the Lock-Up Period), and further multiplied by the number of Shares held in the relevant Compartment (in the event the Average Increase is lower than the Reference Price, the Reference Price will be used instead), or
    - B) a certain annual capitalized return on the Euro amount of all Employee Contributions.
- i) If, at the end of the Lock-Up Period, the market value of the Shares held in the relevant Compartment is less than: 100% of the Employee Contributions plus the Appreciation Amount, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the relevant Compartment to make up such shortfall.
- j) At the end of the relevant Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:
  - i) the Canadian Participant's Employee Contribution; and
  - ii) the Canadian Participant's portion of the Appreciation Amount, if any (the Redemption Formula).
- k) If a Canadian Participant does not request the redemption of his or her Units in the relevant Compartment at the end of the Lock-Up Period, his or her investment will be transferred to the Transfer Fund (subject to the decision of the supervisory board of the 2019 Fund and the approval of the French AMF).
- l) Units of the Transfer Fund (**Transfer Fund Units**) will be issued to Canadian Participants in recognition of the assets transferred to the Transfer Fund. Canadian Participants may request the redemption of the Transfer Fund Units whenever they wish. However, following a transfer to the Transfer Fund, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement (including the Bank's guarantee contained therein).
- m) Pursuant to the terms of the guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution at the end of the Lock-Up Period or in the event of an Early Redemption. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in limited circumstances where it is in the best interests of the unitholders. The Management Company is required to act in the best interests of unitholders of a Compartment under French law. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the unitholders, then such unitholders would have a right of action under French law against the Management Company.
- n) Under no circumstances will a Canadian Participant be responsible to contribute an amount greater than his or her Employee Contribution.
- o) In the event of an Early Redemption, a Canadian Participant may request the redemption of Units from the relevant Compartment. The value of the Units will be calculated in accordance with the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the Early Redemption instead.

11. The subscription price for an Employee Offering will not be known to Canadian Employees until after the end of the applicable reservation period. However, this information will be provided to Canadian Employees prior to the start of the revocation period, during which Canadian Participants may choose to revoke all (but not part) of their subscription under the Leveraged Plan and thereby not participate in the relevant Employee Offering.
12. Under no circumstances will a Canadian Participant be liable to a Compartment, the Transfer Fund, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under an Employee Offering.
13. For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the relevant Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.
14. The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer on the proposition of the board of directors. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.
15. To respond to the fact that, at the time of the initial investment decision relating to participation in an Employee Offering, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or its Local Related Entities are prepared to indemnify each Canadian Participant for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of Euros per calendar year per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the relevant Compartment on his or her behalf under an Employee Offering.
16. At the time the relevant Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the relevant Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Compartment, on behalf of the Canadian Participant, to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the Income Tax Act (Canada) or comparable provincial legislation (as applicable).
17. Under French law, an FCPE is a limited liability entity. The portfolio of the Compartment will consist almost entirely of Shares as well as the rights and associated obligations under the Swap Agreement. The Compartment may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.
18. As indicated above, a Canadian Participant's assets in a Compartment will only be transferred to the Transfer Fund if such Canadian Participant does not elect to request the redemption of his or her Units at the end of the Lock-Up Period. A Canadian Participant will be able to request the redemption of Transfer Fund Units at any time in consideration of the underlying Shares or a cash payment equal to the then market value of the Shares held by the Transfer Fund.
19. Any dividends paid on the Shares held in the Transfer Fund will be contributed to the Transfer Fund and used to purchase additional Shares on the stock market. To reflect this reinvestment, either new Transfer Fund Units (or fractions thereof) will be issued to Canadian Participants or no additional Transfer Fund Units will be issued and the net asset value of the existing Transfer Fund Units will be increased.
20. The portfolio of the Transfer Fund will consist almost entirely of Shares, and may also include, from time to time, cash in respect of dividends paid on the Shares which will be reinvested in additional Shares as well as cash or cash equivalents held for the purpose of investing in the Shares and redeeming Transfer Fund Units.
21. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depositary (as defined below), for any violation of the rules and regulations governing FCPEs, any violations of the rules of the 2019 Fund, or for any self-dealing or negligence. The Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. For any Subsequent Employee Offering, the "Management Company" may change. In the event of such a change, the successor to the Management Company will comply with the terms and conditions described in this paragraph.
22. The Management Company's portfolio management activities in connection with an Employee Offering and the Compartment are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund

redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement. The Management Company's portfolio management activities in connection with the Transfer Fund will be limited to purchasing Shares from the Filer using a Canadian Participant's Employee Contribution plus his or her portion of the Appreciation Amount, if any, based on the Redemption Formula, selling Shares held by the Transfer Fund as necessary in order to fund redemption requests, and investing available cash in cash equivalents.

23. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents in respect of the relevant Compartment and the Transfer Fund. The Management Company's activities will not affect the value of the Shares.
24. None of the entities forming part of the Pernod Ricard Group, the Funds or the Management Company, or any of their directors, officers, employees, agents or representatives will provide investment advice to Canadian Employees with respect to an investment in Shares or Units.
25. None of the entities forming part of the Pernod Ricard Group, the Funds or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.
26. Shares issued under an Employee Offering will be deposited in the relevant Compartment's accounts or the Transfer Fund's accounts, as the case may be, with CACEIS Bank (the **Depository**), a large French commercial bank subject to French banking legislation. For any Subsequent Employee Offering, the "Depository" may change. In the event of such a change, the successor to the Depository will remain a large French commercial bank subject to French banking legislation.
27. Participation in an Employee Offering is voluntary, and Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.
28. The total amount that may be invested by a Canadian Participant in an Employee Offering cannot exceed 25% of his or her estimated gross annual compensation (the calculation of the 25% investment limit takes into account the Bank Contribution).
29. For the 2019 Employee Offering, annual compensation includes the employee's gross base salary, bonus and/or overtime paid between January 1, 2019 and December 31, 2019.
30. The Shares, Units and Transfer Fund Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares, Units or Transfer Fund Units so listed. As there is no market for the Shares in Canada, and as none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of an exchange outside of Canada.
31. The Filer will retain a securities dealer registered as a broker/investment dealer (the **Registrant**) under the securities legislation of Ontario and Manitoba to provide advisory services to Canadian Employees resident in such provinces who express an interest in an Employee Offering and to make a determination, in accordance with industry practices, as to whether an investment in an Employee Offering is suitable for each such Canadian Employee based on his or her particular financial circumstances.
32. Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a summary of the terms of the relevant Employee Offering and a description of the relevant Canadian income tax consequences of subscribing for and holding the Units and requesting the redemption of such Units at the end of the applicable Lock-Up Period. The information package will also include a risk statement which will describe certain risks associated with an investment in Units. Canadian Employees will have access to the Filer's *Document de Référence* (in French and English) filed with the French AMF in respect of the Shares and a copy of the rules of the relevant Compartment and 2019 Fund. Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares.
33. Canadian Participants will receive an initial statement of their holdings under the Employee Offering together with an updated statement at least once per year.
34. For the 2019 Employee Offering, there are approximately 559 Qualifying Employees resident in Canada, with the greatest number residing in the province of Ontario (452), and the remainder in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec and Saskatchewan, who represent in the aggregate approximately 3% of the number of employees in the Pernod Ricard Group worldwide eligible to participate in the 2019 Employee Offering.



## Decision

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

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

1. with respect to the 2019 Employee Offering, the prospectus requirement will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision unless all of the following conditions are met:
  - a) the issuer of the security was a foreign issuer on the distribution date, as such term is defined in paragraph 2.15(1) of Regulation 45-102, section 11(1) of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* and section 2.8(1) of OSC Rule 72-503 *Distributions Outside Canada*;
  - b) the issuer of the security:
    - i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
    - ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
  - c) the first trade is made:
    - i) through an exchange, or a market, outside of Canada, or
    - ii) to a person or company outside of Canada;
2. with respect to any Subsequent Employee Offering under this decision completed within five years from the date of this decision, the following conditions are met:
  - a) the representations other than those in paragraphs 3, 29 and 34 remain true and correct with the necessary adaptations in respect of that Subsequent Employee Offering, and
  - b) the conditions set out in paragraph 1 apply, with the necessary adaptations, to any such Subsequent Employee Offering; and
3. in Alberta and Ontario, the prospectus exemption above, for the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, is not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a trade to a person or company in Canada.

“Lucie J. Roy”

Directrice principale du financement des sociétés

## 2.1.6 IMAX Corporation

### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the issuer bid requirements set out in Part 2 of NI 62-104 in connection with purchases by the issuer of up to 10% of its outstanding shares through the facilities of the NYSE under repurchase programs that the issuer may implement from time to time – the shares are not listed on any Canadian exchange and are only listed and posted for trading on the NYSE – the issuer believes that less than 2% of the shares are beneficially owned by resident Canadians – requested relief granted, subject to conditions, including that the bid is made in compliance with applicable U.S. securities laws and the rules of the NYSE, the aggregate number of shares acquired by the issuer and any joint actors within a 12 month period doesn't exceed 10% of the outstanding shares at the beginning of the 12-month period, the shares are not listed and posted for trading on an exchange in Canada, and the requested relief apply only to the acquisition of shares occurring within 36 months of the date of the decision.

### Applicable Legislative Provisions

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

March 25, 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  
IMAX CORPORATION  
(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 principal regulator (the **Legislation**) exempting the Filer from the requirements applicable to issuer bids (the **Issuer Bid Requirements**) in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) in connection with purchases by the Filer of up to 10% of the Filer's outstanding common shares (the **Shares**) made through the facilities of the New York Stock Exchange (the **NYSE**) under repurchase programs that the Filer may implement from time to time (such programs, the **Repurchase Programs**, and such exemption, the **Exemption Sought**).

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

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

### 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 existing under the *Canada Business Corporations Act* with its head office and one of its two principal executive offices located in Mississauga, Ontario. The Filer's other principal executive office is located in New York, New York.
2. The Filer is a reporting issuer in all of the provinces of Canada, and is not in default of any requirements of the securities legislation of the jurisdictions in which it is a reporting issuer.
3. The Filer is also a registrant with the Securities and Exchange Commission in the United States (the **SEC**) and is subject to the requirements of the *Securities Act of 1933* (United States) (the **1933 Act**) and the *Securities Exchange Act of 1934* (United States) (the **1934 Act**).
4. The authorized capital of the Filer consists of an unlimited number of Shares and an unlimited number of non-voting special shares. As at February 7, 2019, the Filer had 61,478,168 Shares and no special shares issued and outstanding.
5. Upon the completion of its initial public offering in 1994, the Shares were concurrently listed and posted for trading on the Toronto Stock Exchange (the **TSX**) and the NASDAQ Stock Exchange (the **NASDAQ**). In 2011, the Filer delisted the Shares from the NASDAQ and instead listed and posted the Shares for trading on the NYSE. From that point onward, until January 19, 2015, the Shares were listed and posted for trading on the TSX and the NYSE.
6. The Filer was of the view that the low trading volume of the Shares on the TSX over a sustained period no longer justified the financial and administrative costs associated with maintaining its listing of the Shares on the TSX, and on January 12, 2015, the Filer applied for a voluntary delisting of the Shares from the TSX. The delisting was effective as of the close of markets on January 19, 2015.
7. The Shares are no longer listed and posted for trading on any exchange in Canada. The Shares are only listed and posted for trading on the NYSE under the symbol "IMAX".
8. As at February 7, 2019, the Filer's "public float" (as such term is defined by the TSX and the NYSE) consisted of 51,805,027 Shares, representing approximately 84% of the outstanding Shares.
9. On June 12, 2017, the Filer announced that its board of directors approved a U.S.\$200 million share Repurchase Program (the **Current Repurchase Program**). The Current Repurchase Program commenced on July 1, 2017 and authorizes the Filer to purchase up to U.S.\$200 million worth of Shares until June 30, 2020 pursuant to open market purchases or private transactions, subject to market conditions, applicable legal requirements and other relevant factors.
10. The exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the **Other Published Markets Exemption**) provides that an issuer bid that is made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any period of 12 months does not exceed 5% of the outstanding securities of that class at the beginning of the 12-month period.
11. The Ontario Securities Commission issued a decision on April 1, 2016 (the **Prior Relief**) exempting the Filer from the Issuer Bid Requirements in connection with purchases by the Filer of up to 10% of its outstanding Shares made through the facilities of the NYSE under Repurchase Programs implemented by the Filer from time to time, subject to certain conditions set out in the decision, for a period of 36 months.
12. As at March 18, 2019, the Filer repurchased a total of 3,436,783 Shares for an aggregate amount of U.S.\$71,409,039 through the facilities of the NYSE under the Current Repurchase Program. Any and all Shares purchased under the Current Repurchase Program prior to April 1, 2019 have been, or will be, acquired in reliance on the Prior Relief. As at March 18, 2019, the Filer repurchased an aggregate of 7,575,737 Shares pursuant to the Prior Relief under the Current Repurchase Program and the prior Repurchase Program that was announced on June 16, 2014 and amended on April 20, 2016.
13. The Prior Decision will expire on April 1, 2019. However, as at March 18, 2019, the Filer had U.S.\$128,591,001 remaining available to repurchase Shares under the Current Repurchase Program and the Filer wishes to be able to continue to make repurchases under the Current Repurchase Program and any Repurchase Programs that may be implemented by

the Filer on the facilities of the NYSE in excess of the maximum allowable in reliance on the Other Published Markets Exemption (such repurchases, the **Proposed Bids**).

14. The Filer believes that the Proposed Bids are in the best interests of the Filer and its shareholders.
15. Based on information provided by the Filer's transfer agent, as at February 7, 2019:
  - (a) 54,437,362 Shares (or approximately 88.547% of the issued and outstanding Shares) were registered to shareholders in the United States;
  - (b) 7,039,370 Shares (or approximately 11.450% of the issued and outstanding Shares) were registered to shareholders in Canada (the **Registered Canadian Shares**);
  - (c) of the Registered Canadian Shares, 7,020,667 Shares were registered to The Canadian Depositary for Securities (the **CDS Position**), and 18,703 Shares (or approximately 0.030% of the issued and outstanding Shares) were held among fewer than 50 registered shareholders in Canada; and
  - (d) of the CDS Position, 6,212,986 Shares were held by American intermediaries (the **U.S. Intermediary Shares**), and 807,681 Shares (or approximately 1.314% of the issued and outstanding Shares) were held by Canadian intermediaries.
16. Based on the information provided by the Filer's transfer agent noted in paragraph 15, the Filer reasonably believes that:
  - (a) less than 2% of the Shares are beneficially owned by more than 50 shareholders resident in Canada; and
  - (b) the size of the CDS Position, and the fact that the U.S. Intermediary Shares form part of the CDS Position, is likely a result of the Shares having been listed on the TSX for over 20 years.
17. The Proposed Bids will be effected in accordance with the 1933 Act, the 1934 Act, the rules of the SEC made pursuant thereto, including the safe harbour provided by Rule 10b-18 under the 1934 Act (collectively, the **Applicable U.S. Securities Laws**) and any by-laws, rules, regulations or policies of the NYSE (the **Exchange Rules**).
18. Applicable U.S. Securities Laws require that, in respect of purchases by an issuer of its own securities through the facilities of the NYSE: all purchases made during a single trading day must be conducted through a single broker or dealer; purchases cannot be effected during the last 10 minutes before the scheduled close of market or be the opening purchase; purchases must be made at a price that does not exceed the highest independent bid or the last transaction price quoted; and in any given day, the issuer cannot purchase more than 25% of its average daily trading volume on the NYSE over the past four weeks.
19. Applicable U.S. Securities Laws also require that the Filer report any repurchases conducted pursuant to the Current Repurchase Program (and any Repurchase Programs that may be implemented by the Filer) in its quarterly and annual reports.
20. The Proposed Bids would be permitted under the Exchange Rules and Applicable U.S. Securities Laws.
21. The purchase of Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.

## Decision

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

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

- (a) the Proposed Bids are permitted under the Exchange Rules and Applicable U.S. Securities Laws, and are established and conducted in accordance and compliance with the Exchange Rules and Applicable U.S. Securities Laws;
- (b) the aggregate number of Shares acquired in reliance on the Exemption Sought by the Filer and any person acting jointly or in concert with the Filer within any period of 12 months does not exceed 10% of the outstanding Shares at the beginning of the 12-month period;

- (c) the Shares are not listed and posted for trading on an exchange in Canada;
- (d) the Exemption Sought apply only to the acquisition of Shares by the Filer occurring within 36 months of the date of this decision pursuant to a Proposed Bid; and
- (e) prior to purchasing Shares in reliance on this decision, the Filer discloses the terms of the Exemption Sought and the conditions applicable thereto in a press release that is issued and filed on the System for Electronic Document Analysis and Retrieval, and includes such information as part of the news release required to be issued in accordance with the Other Published Markets Exemption in respect any Repurchase Program that may be implemented by the Filer.

“Naizam Kanji”  
Director, Office of Mergers & Acquisitions  
Ontario Securities Commission

## 2.1.7 Hydro One Inc. and Hydro One Limited

### Headnote

NP 11-203 – issuer not required to send an information circular as it is a wholly owned subsidiary – issuer required to include executive compensation disclosure in its annual information form – issuer granted relief from requirement to include executive compensation disclosure in its annual information form provided that the disclosure is included in the information circular of the sole shareholder of the issuer.

### Applicable Legislative Provisions

Form 51-102F2 Annual Information Form, Item 18.1.

National Instrument 51-102 Continuous Disclosure Obligations, ss. 11.6(1), 13.1.

March 20, 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  
HYDRO ONE INC.  
(the Applicant)

AND

HYDRO ONE LIMITED  
(the Parent)

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Applicant for a decision under the securities legislation of the Jurisdiction (the **Legislation**), granting the Applicant an exemption from the requirements under Item 8 of Item 18.1 of Form 51-102F2 – *Annual Information Form* (**Form 51-102F2**), to disclose the executive compensation disclosure information required by Form 51-102F6 – *Statement of Executive Compensation* (**Form 51-102F6**) in the Applicant's completed Form 51-102F2 (**Applicant AIF**), for so long as:

- (a) the Applicant files the executive compensation disclosure required by Form 51-102F6 with respect to the Applicant (the **Applicant CD&A Disclosure**) as a stand-alone document with the securities regulatory authorities in each of the provinces of Canada no later than 140 days after the end of the Applicant's most recently completed financial year; and
- (b) the Applicant includes in an Applicant AIF in respect of a financial year a notice that the Applicant CD&A Disclosure in respect of that financial year, when filed, is deemed to be incorporated by reference in the Applicant AIF.

(the **Exemption Sought**).

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;

- (b) the Applicant 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Passport Jurisdictions); and
- (c) the decision of the principal regulator automatically results in an equivalent decision in the Passport Jurisdictions.

### Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102 and National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) have the same meaning if used in this decision, unless otherwise defined.

### Representations

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

1. The Applicant is incorporated under the *Business Corporations Act* (Ontario) (the **OBCA**). The head office of the Applicant is located at 483 Bay Street, 8th Floor, South Tower, Toronto, Ontario M5G 2P5.
2. The Applicant is a reporting issuer in each of the provinces of Canada and is a wholly-owned subsidiary of the Parent. The Applicant's 4.59% unsecured medium term notes due 2043 (Series 29) are listed for trading on the New York Stock Exchange under the symbol "HYDO43". As such, the Applicant is a reporting issuer but not a "venture issuer" for reporting purposes under applicable Canadian securities laws.
3. The Applicant's financial year end is December 31.
4. The Applicant has various series of non-convertible unsecured medium term notes issued and outstanding that have been distributed to the public via various prospectuses but it is not required to send a Form 51-102F5 – *Information Circular* (**Form 51-102F5**) to any of its securityholders.
5. The Parent is incorporated under the OBCA. The head office of the Parent is located at 483 Bay Street, 8th Floor, South Tower, Toronto, Ontario M5G 2P5. The Parent owns all of the issued and outstanding shares of the Applicant.
6. The Parent is a reporting issuer in each of the provinces and territories of Canada.
7. The Parent's financial year end is December 31.
8. The common shares of the Parent are listed for trading on the Toronto Stock Exchange under the symbol "H". As such, the Parent is a reporting issuer but not a "venture issuer" for reporting purposes under applicable Canadian securities laws.
9. Both the Applicant and Parent are "SEC issuers" as defined in NI 51-102.
10. Neither the Applicant nor the Parent are in default of securities legislation in any jurisdiction.
11. Item 18.1 of Form 51-102F2 requires reporting issuers that are not required to send an information circular (an **Information Circular**) in accordance with NI 51-102 and Form 51-102F5 to any of their securityholders, to disclose in their AIF, in addition to certain other disclosure, the information required under Item 8 of Form 51-102F5, being the executive compensation disclosure required by Form 51-102F6.
12. Subsection 6.2(a) of NI 51-102 requires reporting issuer that are not venture issuers to file a completed Form 51-102F2 (an **AIF**) on or before the 90th day after the end of the reporting issuer's most recently completed financial year. In respect of the Applicant, the applicable filing deadline for the Applicant AIF is the 90th day after the Applicant's financial year end of December 31. In respect of the Parent, the applicable filing deadline for the Parent's AIF is the 90th day after the Parent's financial year end of December 31.
13. The Applicant is not required to prepare and send an Information Circular to any of its securityholders. Accordingly, absent the Exemption Sought, pursuant to Item 8 of Item 18.1 of Form 51-102F2, the Applicant is required to include the Applicant CD&A Disclosure directly in the Applicant AIF.
14. Subsections 9.3.1(1) and 9.3.1(2) of NI 51-102 require that, subject to Item 8 of Form 51-102F5, a reporting issuer required to send an Information Circular to a securityholder in accordance with subsection 9.1(2)(a) of NI 51-102 (where

proxies are being solicited from registered holders of voting securities and such solicitation is being made by or on behalf of management), must disclose certain executive compensation as required by subsection 9.3.1(1) of NI 51-102 for the periods set out in and in accordance with Form 51-102F6. In the case of the Parent, subsection 9.3.1(2.2) of NI 51-102 requires that the Parent's executive compensation disclosure be filed not later than 140 days after the end of the issuer's most recently completed financial year. In respect of the Parent, the applicable filing deadline for the Parent Circular is the 140th day after the Parent's financial year end of December 31.

15. The Parent is required to prepare and send an Information Circular to the holders of its common shares and is required to include the executive compensation disclosure required by Form 51-102F6 in the Parent Circular. The Parent usually holds its annual meeting of shareholders in May of each year and historically has filed the Parent Circular with the securities regulatory authorities in each of the provinces and territories between late March and mid April each year in advance of each such meeting of shareholders.
16. The Board of Directors and the Human Resources Committee of the Applicant are comprised of the same directors as the Board of Directors and the Human Resources Committee of the Parent, respectively, and each of the boards and committees of the Applicant and the Parent hold joint meetings. This allows the Applicant and the Parent to make joint compensation decisions in respect of officers of both corporations and results in the same compensation practices being applied to both corporations. As a result, employees of the Applicant and its subsidiaries participate in the compensation plans of the Parent and the compensation practices of the Applicant largely reflect the compensation practices of the Parent. However, although decisions may be made jointly, they do not result in duplicative compensation paid at both the Applicant and the Parent level. Accordingly, executive compensation disclosure for the Applicant cannot be finalized until it has been determined for the Parent.
17. Pursuant to National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109)*, both the Applicant and the Parent are required to certify their "annual filings" as defined in NI 52-109 on the later of the dates on which each files its AIF or its annual financial statements and annual management's discussion and analysis. NI 52-109 requires the AIF to be a completed Form 51-102F2 which, in the case of the Applicant, includes the executive compensation disclosure required by Form 51-102F6 and, in the case of the Parent, does not include the executive compensation disclosure required by Form 51-102F6.
18. Absent the Exemption Sought, the Applicant must wait until the executive compensation disclosure required by Form 51-102F6 is finalized in order to file the Applicant AIF and file the required certificates under NI 52-109, while the Parent does not. Accordingly, the Applicant must either: (a) delay filing the Applicant AIF to coincide with when the Parent files the Parent Circular (usually in late March); or (b) include executive compensation disclosure in the Applicant AIF before the Parent Circular is filed. The Applicant is also required to certify the executive compensation disclosure forming part of the Applicant AIF at the time the "annual filings" certificate is filed, while the Parent and every other similarly situated reporting issuer does not.
19. If the Exemption Sought is granted, the Applicant would file the Applicant AIF and file the required certificates under NI 52-109 without the exemptive compensation disclosure required by Form 51-102F6. Accordingly, the Applicant would not need to wait until the executive compensation disclosure required by Form 51-102F6 is finalized and the Applicant would not be required to certify executive compensation disclosure forming part of the Applicant AIF. The Applicant would include in an Applicant AIF a notice that the Applicant CD&A Disclosure, when filed, will be deemed to be incorporated by reference in the Applicant AIF.
20. The Applicant CD&A Disclosure will be filed as a stand-alone document within 140 days after the end of the Applicant's most recently completed financial year, which is consistent with the requirements of Section 11.6 of NI 51-102.
21. The Parent will include in the Parent Circular the executive compensation disclosure required by NI 51-102 in respect of itself and its subsidiaries, including the Applicant.

### **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 is that the Exemption Sought is granted, for so long as:

- (a) the Applicant files the Applicant CD&A Disclosure as a stand-alone document with the securities regulatory authorities in each of the provinces of Canada no later than 140 days after the end of the Applicant's most recently completed financial year; and



- (b) the Applicant includes in an Applicant AIF in respect of a financial year a notice that the Applicant CD&A Disclosure in respect of that financial year, when filed, is deemed to be incorporated by reference in the Applicant AIF.

“Michael Balter”  
Manager, Corporate Finance  
Ontario Securities Commission

**2.1.8 BMO Investments Inc. et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because the mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – terminating funds and continuing funds do not have substantially similar fundamental investment objectives – the fee structure of a certain terminating fund and continuing fund are not substantially similar – securityholders of the terminating funds are provided with timely and adequate disclosure regarding the mergers.

**Applicable Legislative Provisions**

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

**March 6, 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 INVESTMENTS INC.  
(the Manager)**

**AND**

**BMO LADDERED CORPORATE BOND FUND,  
BMO FIXED INCOME YIELD PLUS ETF PORTFOLIO and  
BMO BALANCED YIELD PLUS ETF PORTFOLIO  
(each, a Terminating Fund and collectively, the Terminating Funds,  
and with the Manager, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Manager on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction (the “**Legislation**”) approving the mergers (the “**Mergers**”) of each Terminating Fund into its applicable Continuing Fund (defined below) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (the “**Approval 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 Manager has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (“**MI 11-102**”) is intended to be relied upon in each of the provinces and territories of Canada, other than the province of Ontario (“Other Jurisdictions”).

**Interpretation**

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

**Continuing Fund** means each of BMO Core Bond Fund, BMO Fixed Income ETF Portfolio, and BMO Balanced ETF Portfolio;

**Fund** or **Funds** means, individually or collectively, the Terminating Funds and the Continuing Funds;

**IRC** means the independent review committee for the Funds;

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

**NI 81-106** means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

**Tax Act** means the *Income Tax Act* (Canada).

## Representations

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

### *The Manager*

1. The Manager is a corporation governed by the laws of Canada with its head office in Toronto, Ontario.
2. The Manager is the trustee and manager of the Funds.
3. The Manager is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and as a mutual fund dealer in Ontario and the Other Jurisdictions.

### *The Funds*

4. The Funds are open-ended mutual fund trusts established under the laws of Ontario.
5. Securities of the Funds are currently qualified for sale under the simplified prospectus, annual information form and fund facts each dated May 4, 2018, as amended (collectively, the “**Offering Documents**”).
6. Each of the Funds is a reporting issuer under the applicable Legislation of Ontario and the Other Jurisdictions.
7. Neither the Manager nor the Funds is in default under the applicable Legislation of Ontario and the Other Jurisdictions.
8. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under NI 81-102.
9. The net asset value for each series of the Funds is calculated on a daily basis in accordance with the Funds’ valuation policy and as described in the Offering Documents.
10. All of the Continuing Funds have substantially similar valuation procedures to those of their applicable Terminating Funds.
11. Securities of the Funds are qualified investments under the Tax Act for RRSPs, RRIFs, DPSPs, RESPs, RDSPs and TFSAAs.

### *Reason for Approval Sought*

12. Regulatory approval of the Mergers is required because each Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. The pre-approval criteria are not satisfied in the following ways:
  - (a) The fundamental investment objectives of each Continuing Fund are not, or may be considered not to be, “substantially similar” to the investment objectives of its corresponding Terminating Fund; and
  - (b) The fee structure of Series F of BMO Laddered Corporate Bond Fund is not, or may be considered not to be, “substantially similar” to the fee structure of Series F of BMO Core Bond Fund, its corresponding Continuing Fund.

13. Except as described in this decision, the proposed Mergers comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

***The Proposed Mergers***

14. The Manager intends to reorganize the Funds as follows:
- (a) BMO Laddered Corporate Bond Fund will merge into BMO Core Bond Fund;
  - (b) BMO Fixed Income Yield Plus ETF Portfolio will merge into BMO Fixed Income ETF Portfolio; and
  - (c) BMO Balanced Yield Plus ETF Portfolio will merge into BMO Balanced ETF Portfolio.
15. In accordance with NI 81-106, a press release announcing the proposed Mergers was issued and filed on SEDAR on January 25, 2019. A material change report was filed via SEDAR on January 25, 2019 and amendments to the Offering Documents were filed via SEDAR on January 29, 2019 with respect to the proposed Mergers.
16. As required by NI 81-107, an IRC has been appointed for the Funds. The Manager presented potential conflict of interest matters related to the proposed Mergers to the IRC for a recommendation. On December 5, 2018, the IRC reviewed the potential conflict of interest matters and provided its positive recommendation for each of the Mergers after determining that each proposed Merger, if implemented, would achieve a fair and reasonable result for each applicable Fund.
17. Securityholders of the Terminating Funds will be asked to approve the Mergers at special meetings to be held on or about April 4, 2019.
18. By way of order dated December 8, 2016, the Manager was granted relief (the “**Notice-and-Access Relief**”) from the requirement set out in paragraph 12.2(2)(a) of NI 81-106 to send a printed management information circular to securityholders while proxies are being solicited, and, subject to certain conditions, instead allows a notice-and-access document (as described in the Notice-and-Access Relief) to be sent to such securityholders.
19. In accordance with the Manager’s standard of care owed to the relevant Funds pursuant to applicable legislation, the Manager will only use the notice-and-access procedure for a particular meeting where it has concluded it is appropriate and consistent to do so, also taking into account the purpose of the meeting and whether the Funds would obtain better participation rates by sending the management information circular with the other proxy-related materials.
20. Pursuant to the requirements of the Notice-and-Access Relief, a notice-and-access document and applicable proxies in connection with the special meetings, along with the fund facts of the relevant series of the Continuing Funds, as applicable (collectively, the “**Meeting Materials**”), will be mailed to securityholders of the corresponding Terminating Funds commencing on March 4, 2019 and concurrently filed via SEDAR. The management information circular, to which the notice-and-access document provides a link, will also be filed via SEDAR at the same time.
21. The tax consequences of the Mergers, the differences between the investment objectives and fee structures of the Terminating Funds and the Continuing Funds, as applicable, and the IRC’s recommendation of the Mergers will be described in the Meeting Materials so that the securityholders of the Terminating Funds can consider this information before voting on the Mergers.
22. The Meeting Materials will describe the various ways in which investors could obtain a copy of the simplified prospectus, annual information form and fund facts for each Continuing Fund and its most recent interim and annual financial statements and management reports of fund performance.
23. Securityholders of each Terminating Fund will continue to have the right to redeem or switch their securities of the Terminating Fund at any time up to the close of business on the business day immediately before the effective date of the Mergers.
24. No sales charges, redemption fees or other fees or commissions will be payable by securityholders of the Terminating Funds in connection with the Mergers. The Manager will waive any redemption fees payable by a securityholder in connection with the redemption of securities of the Terminating Funds purchased under the standard deferred charge option or the low load deferred charge option.

25. Purchases made pursuant to pre-established systematic purchase plans will be suspended as of the close of business on the fifth business day immediately preceding the effective date of the Mergers. Following the Mergers, systematic plans that have been established for each Terminating Fund will be re-established for the applicable Continuing Fund, unless securityholders of the Terminating Funds advise otherwise. A systematic plan may be changed at any time.

***Merger Steps***

26. The proposed Mergers will be structured as follows:
- (a) Each Terminating Fund will jointly elect with the applicable Continuing Fund that the Merger be a “qualifying exchange” as defined in subsection 132.2(1) of the Tax Act.
  - (b) Prior to effecting the Mergers, if required, each Terminating Fund will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of the applicable Continuing Fund. As a result, the Terminating Funds may temporarily hold cash or money market instruments and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Mergers being effected.
  - (c) Each Terminating Fund will distribute a sufficient amount of its net income and net realized capital gains, if any, to securityholders to ensure that it will not be subject to tax for its current tax year.
  - (d) The value of each Terminating Fund’s portfolio and other assets will be determined at the close of business on the effective date of the applicable Merger in accordance with the constating documents of the Terminating Fund.
  - (e) Each Terminating Fund will sell its investment portfolio and other assets to the applicable Continuing Fund in exchange for securities of the Continuing Fund.
  - (f) Each Continuing Fund will not assume liabilities of the applicable Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the applicable Merger.
  - (g) The securities of each Continuing Fund received by the applicable Terminating Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Fund is acquiring from the Terminating Fund, and the securities of the Continuing Fund will be issued at the applicable series net asset value per security as of the close of business on the effective date of the applicable Merger.
  - (h) Immediately thereafter, the securities of each Continuing Fund received by the applicable Terminating Fund will be distributed to securityholders of the Terminating Fund in exchange for their securities in the Terminating Fund on a dollar-for-dollar and series-by-series basis, as applicable.
  - (i) As soon as reasonably possible following each Merger, and in any case within 60 days following the effective date of the Merger, the applicable Terminating Fund will be wound up.
27. Securityholders of each series of the Terminating Fund will receive the corresponding series of securities of the Continuing Fund.
28. The existing standard deferred charge or low load deferred charge schedule applicable to securities of a Terminating Fund will be carried over to the securities of the relevant Continuing Fund.
29. The Manager will pay for the costs of the Mergers. These costs consist mainly of brokerage charges associated with the Merger-related trades that occur both before and after the effective date of the Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.
30. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of its applicable Terminating Fund.
31. The investment portfolio and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund in order to effect the Mergers are currently, or will be, acceptable, on or prior to the effective date of the Mergers, to the portfolio manager(s) of the applicable Continuing Fund and are, or will be, consistent with the investment objectives of the applicable Continuing Fund.

32. Subject to receipt of all required securityholder approvals, it is intended that each Terminating Fund will merge into its applicable Continuing Fund on or about the close of business on April 5, 2019, and each Continuing Fund will continue as a publicly offered open-ended mutual fund.
33. Each Merger will be effected on a tax-deferred basis.

**Benefits of Mergers**

34. The Manager believes that the Mergers are beneficial to securityholders of each Terminating Fund and Continuing Fund for the following reasons:
- (a) the Continuing Funds have broader investment objectives than their corresponding Terminating Funds thereby providing greater flexibility to the portfolio manager, which may benefit investors across market cycles and credit cycles;
  - (b) the Mergers will result in a more streamlined and simplified product line-up that is easier for investors to understand;
  - (c) the Continuing Funds have delivered stronger long term performance than their corresponding Terminating Funds;
  - (d) following the Mergers, each Continuing Fund will have a portfolio of greater value, which may allow for increased portfolio diversification opportunities if desired;
  - (e) each Continuing Fund, as a result of its greater size, may benefit from its larger profile in the marketplace; and
  - (f) in most cases, management fees and/or fixed administration fees will be lower for the Continuing Funds and, thus, the management expense ratios of the Continuing Funds are expected to be lower than for their corresponding Terminating Funds.

**Decision**

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

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

“Stephen Paglia”

Manager

Investment Funds & Structured Products Branch

Ontario Securities Commission

## 2.2 Orders

### 2.2.1 Fixed Income Clearing Corporation – s. 147

#### Headnote

Application under section 147 of the Securities Act (Ontario) (Act) for an order exempting Fixed Income Clearing Corporation from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2(0.1), 147.

**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**<sup>®</sup>), 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 19<sup>th</sup> day of March 2019.

“Grant Vingo”  
Vice-Chair

“Tim Moseley”  
Vice-Chair

## 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,<sup>1</sup> 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;

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<sup>1</sup> 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.

## 2.4 Rulings

### 2.4.1 Global Asset Advisors 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 Applicant 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.

March 22, 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  
GLOBAL ASSET ADVISORS LLC**

**RULING  
(Section 38 of the CFA)**

**UPON** the application (the **Application**) of Global Asset Advisors 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 subsidiary of GAIN Capital Holdings Inc., a publicly listed company on the New York Stock Exchange.
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.

“T. Moseley”  
Vice-Chair or Commissioner  
Ontario Securities Commission

“M. Cecilia Williams”  
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<sup>1</sup>

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

<sup>1</sup> 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).

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

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 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
NBS Capital Inc.	07 March 2019	19 March 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
Katanga Mining Limited	15 August 2017	

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## **Chapter 7**

# **Insider Reporting**

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).



## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Invesco FTSE RAFI U.S. ETF Fund (formerly,  
PowerShares FTSE RAFI® U.S. Fundamental Fund)  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March  
18, 2019

Received on March 19, 2019

**Offering Price and Description:**

Series A and Series F

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

N/A

**Promoter(s):**

N/A

**Project #2784274**

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**Issuer Name:**

Franklin Canadian Core Equity Fund  
Franklin Emerging Markets Core Equity Fund  
Franklin International Core Equity Fund  
Franklin U.S. Core Equity Fund  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated March 18, 2019  
NP 11-202 Preliminary Receipt dated March 19, 2019

**Offering Price and Description:**

Series O securities

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

Franklin Templeton Investments Corp.

**Promoter(s):**

Franklin Templeton Investments Corp.

**Project #2886693**

**Issuer Name:**

Guardian Balanced Fund  
Guardian Balanced Income Fund  
Guardian Canadian Bond Fund  
Guardian Canadian Equity Fund  
Guardian Canadian Equity Select Fund  
Guardian Canadian Focused Equity Fund  
Guardian Canadian Growth Equity Fund  
Guardian Canadian Short-Term Investment Fund  
Guardian Emerging Markets Equity Fund  
Guardian Equity Income Fund  
Guardian Fixed Income Select Fund (formerly, Guardian  
Private Wealth Bond Fund)  
Guardian Fundamental Global Equity Fund  
Guardian Global Dividend Growth Fund  
Guardian Global Equity Fund  
Guardian High Yield Bond Fund  
Guardian International Equity Fund  
Guardian International Equity Select Fund  
Guardian Investment Grade Corporate Bond Fund  
Guardian Managed Growth Portfolio  
Guardian Managed Income & Growth Portfolio  
Guardian Managed Income Portfolio  
Guardian Risk Managed Conservative Portfolio  
Guardian Short Duration Bond Fund  
Guardian SteadyFlow Equity Fund  
Guardian SteadyPace Equity Fund  
Guardian U.S. Equity All Cap Growth Fund  
Guardian U.S. Equity Fund  
Guardian U.S. Equity Select Fund  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified  
Prospectus dated March 20, 2019  
NP 11-202 Preliminary Receipt dated March 21, 2019

**Offering Price and Description:**

–

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

Worldsource Financial Management Inc.  
Guardian Capital LP  
Worldsource Securities Inc.

**Promoter(s):**

Guardian Capital Inc.

**Project #2887706**

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**Issuer Name:**

Meritage American Equity Portfolio  
 Meritage Balanced Income Portfolio  
 Meritage Balanced Portfolio  
 Meritage Canadian Equity Class Portfolio  
 Meritage Canadian Equity Portfolio  
 Meritage Conservative Income Portfolio  
 Meritage Conservative Portfolio  
 Meritage Diversified Fixed Income Portfolio  
 Meritage Dynamic Growth Class Portfolio  
 Meritage Dynamic Growth Income Portfolio  
 Meritage Dynamic Growth Portfolio  
 Meritage Global Balanced Portfolio  
 Meritage Global Conservative Portfolio  
 Meritage Global Dynamic Growth Class Portfolio  
 Meritage Global Dynamic Growth Portfolio  
 Meritage Global Equity Class Portfolio  
 Meritage Global Equity Portfolio  
 Meritage Global Growth Class Portfolio  
 Meritage Global Growth Portfolio  
 Meritage Global Moderate Portfolio  
 Meritage Growth Class Portfolio  
 Meritage Growth Income Portfolio  
 Meritage Growth Portfolio  
 Meritage International Equity Portfolio  
 Meritage Moderate Income Portfolio  
 Meritage Moderate Portfolio  
 Meritage Tactical ETF Balanced Portfolio  
 Meritage Tactical ETF Equity Portfolio  
 Meritage Tactical ETF Fixed Income Portfolio  
 Meritage Tactical ETF Growth Portfolio  
 Meritage Tactical ETF Moderate Portfolio  
 National Bank Balanced Diversified Fund  
 National Bank Conservative Diversified Fund  
 National Bank Growth Diversified Fund  
 National Bank Moderate Diversified Fund  
 National Bank Secure Diversified Fund  
 NBI Balanced Portfolio  
 NBI Bond Fund  
 NBI Canadian All Cap Equity Fund  
 NBI Canadian Bond Index Fund  
 NBI Canadian Bond Private Portfolio  
 NBI Canadian Diversified Bond Private Portfolio  
 NBI Canadian Equity Fund  
 NBI Canadian Equity Growth Fund  
 NBI Canadian Equity Index Fund  
 NBI Canadian Equity Private Portfolio  
 NBI Canadian High Conviction Equity Private Portfolio  
 NBI Canadian Index Fund  
 NBI Canadian Preferred Equity Private Portfolio  
 NBI Canadian Small Cap Equity Private Portfolio  
 NBI Conservative Portfolio  
 NBI Corporate Bond Fund  
 NBI Corporate Bond Private Portfolio  
 NBI Diversified Emerging Markets Equity Fund (formerly,  
 NBI Emerging Markets Equity Private Portfolio)  
 NBI Dividend Fund  
 NBI Equity Income Private Portfolio  
 NBI Equity Portfolio  
 NBI Floating Rate Income Fund  
 NBI Global Bond Fund  
 NBI Global Diversified Equity Fund (formerly, National Bank  
 Global Diversified Equity Fund)

NBI Global Equity Fund  
 NBI Global Real Assets Income Fund  
 NBI Global Tactical Bond Fund  
 NBI Growth Portfolio  
 NBI High Yield Bond Fund  
 NBI High Yield Bond Private Portfolio  
 NBI Income Fund  
 NBI International Currency Neutral Index Fund  
 NBI International Equity Index Fund  
 NBI International Equity Private Portfolio  
 NBI International High Conviction Equity Private Portfolio  
 NBI International Index Fund  
 NBI Jarislowsky Fraser Select Balanced Fund  
 NBI Jarislowsky Fraser Select Canadian Equity Fund  
 NBI Jarislowsky Fraser Select Income Fund  
 NBI Moderate Portfolio  
 NBI Money Market Fund  
 NBI Multiple Asset Class Private Portfolio  
 NBI Municipal Bond Plus Private Portfolio  
 NBI Non-Traditional Capital Appreciation Private Portfolio  
 NBI Non-Traditional Fixed Income Private Portfolio  
 NBI North American Dividend Private Portfolio  
 NBI Precious Metals Fund  
 NBI Preferred Equity Fund  
 NBI Preferred Equity Income Fund  
 NBI Presumed Sound Investments Fund  
 NBI Quebec Growth Fund  
 NBI Real Assets Private Portfolio  
 NBI Resource Fund  
 NBI Science and Technology Fund  
 NBI Secure Portfolio  
 NBI Small Cap Fund  
 NBI SmartBeta Canadian Equity Fund  
 NBI SmartBeta Global Equity Fund  
 NBI SmartData International Equity Fund  
 NBI SmartData U.S. Equity Fund  
 NBI Strategic U.S. Income and Growth Fund  
 NBI Tactical Asset Allocation Fund  
 NBI Tactical Equity Private Portfolio  
 NBI Tactical Fixed Income Private Portfolio  
 NBI Tactical Mortgage & Income Fund  
 NBI U.S. Bond Private Portfolio  
 NBI U.S. Currency Neutral Index Fund  
 NBI U.S. Dividend Fund  
 NBI U.S. Equity Fund  
 NBI U.S. Equity Index Fund  
 NBI U.S. Equity Private Portfolio  
 NBI U.S. High Conviction Equity Private Portfolio  
 NBI U.S. Index Fund  
 NBI Unconstrained Fixed Income Fund  
 NBI Westwood Emerging Markets Fund  
 Principal Regulator – Quebec

**Type and Date:**

Combined Preliminary and Pro Forma Simplified  
 Prospectus dated March 21, 2019  
 NP 11-202 Preliminary Receipt dated March 25, 2019

**Offering Price and Description:**

Investor, Advisor, F, N, NR and O Series

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

National Bank Investments Inc.

**Promoter(s):**

National Bank Investments Inc.

**Project #2888229**

**Issuer Name:**

Ninepoint Alternative Health Fund (formerly Ninepoint UIT Alternative Health Fund)  
 Ninepoint Concentrated Canadian Equity Fund (formerly, Sprott Concentrated Canadian Equity Fund)  
 Ninepoint Diversified Bond Class (formerly, Sprott Diversified Bond Class)  
 Ninepoint Diversified Bond Fund (formerly, Sprott Diversified Bond Fund)  
 Ninepoint Energy Fund (formerly, Sprott Energy Fund)  
 Ninepoint Enhanced Balanced Fund (formerly, Sprott Enhanced Balanced Fund)  
 Ninepoint Enhanced Equity Class (formerly, Sprott Enhanced Equity Class)  
 Ninepoint Enhanced U.S. Equity Class (formerly, Sprott Enhanced U.S. Equity Class)  
 Ninepoint Focused Global Dividend Class (formerly, Sprott Focused Global Dividend Class)  
 Ninepoint Global Infrastructure Fund (formerly, Sprott Global Infrastructure Fund)  
 Ninepoint Global Real Estate Fund (formerly, Sprott Global Real Estate Fund)  
 Ninepoint Gold and Precious Minerals Fund (formerly, Sprott Gold and Precious Minerals Fund)  
 Ninepoint High Interest Savings Fund (formerly, Ninepoint Short-Term Bond Fund)  
 Ninepoint International Small Cap Fund (formerly, Sprott International Small Cap Fund)  
 Ninepoint Resource Class (formerly, Sprott Resource Class)  
 Ninepoint Silver Equities Class (formerly, Sprott Silver Equities Class)  
 Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated March 22, 2019  
 NP 11-202 Preliminary Receipt dated March 25, 2019

**Offering Price and Description:**

Series D securities

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

N/A

**Promoter(s):**

Ninepoint Partners GP Inc.

**Project #2889042**

**Issuer Name:**

Ninepoint Gold Bullion Fund (formerly, Sprott Gold Bullion Fund)  
 Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated March 22, 2019  
 NP 11-202 Preliminary Receipt dated March 25, 2019

**Offering Price and Description:**

Series D units

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

N/A

**Promoter(s):**

Ninepoint Partners GP Inc.

**Project #2889038**

**Issuer Name:**

Ninepoint Silver Bullion Fund (formerly, Sprott Silver Bullion Fund)  
 Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated March 22, 2019  
 NP 11-202 Preliminary Receipt dated March 25, 2019

**Offering Price and Description:**

Series D units

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

N/A

**Promoter(s):**

Ninepoint Partners GP Inc.

**Project #2889039**

**Issuer Name:**

Invesco FTSE RAFI U.S. ETF Fund (formerly, PowerShares FTSE RAFI® U.S. Fundamental Fund)  
 Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March 18, 2019  
 NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

Series A and Series F

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

N/A

**Promoter(s):**

N/A

**Project #2784274**

**Issuer Name:**

Dynamic Real Estate & Infrastructure Income II Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated March 22, 2019  
NP 11-202 Receipt dated March 25, 2019

**Offering Price and Description:**

Series A, F and O Units

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

1832 Asset Management G.P. Inc.  
1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management G.P. Inc.

**Project #2881028**

**Issuer Name:**

First Trust Indxx Innovative Transaction and Process ETF  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated March 22, 2019  
NP 11-202 Receipt dated March 25, 2019

**Offering Price and Description:**

units @ net asset value

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

N/A

**Promoter(s):**

N/A

**Project #2873647**

**Issuer Name:**

PIMCO Global Short Maturity Fund (Canada)  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March 14, 2019  
NP 11-202 Receipt dated March 20, 2019

**Offering Price and Description:**

–

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

N/A

**Promoter(s):**

PIMCO Canada Corp.

**Project #2866025**

**Issuer Name:**

Scotia Latin American Fund  
Scotia International Equity Fund  
Scotia Pacific Rim Fund  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March 7, 2019

NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

Series A, Series F and Series I units

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

Scotia Capital Inc.  
Scotia Securities Inc.  
1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management L.P.

**Project #2829063**

**Issuer Name:**

Purpose MLP & Infrastructure Income Fund (formerly,  
Redwood MLP & Infrastructure Income Fund)  
Principal Regulator – Ontario

**Type and Date:**

Amendment #4 to Final Simplified Prospectus dated March 15, 2019

NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

–

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

N/A

**Promoter(s):**

Purpose Investments Inc.

**Project #2764789**

**Issuer Name:**

Ridgewood Canadian Bond Fund  
Ridgewood Tactical Yield Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated March 20, 2019  
NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

Series A @ net asset value

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

Ridgewood Capital Asset Management Inc.

**Promoter(s):**

N/A

**Project #2872398**

**Issuer Name:**

Sun Life Multi-Strategy Target Return Fund  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 15, 2019

NP 11-202 Receipt dated March 25, 2019

**Offering Price and Description:**

Series A, Series F, Series I and Series O securities

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

1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management L.P.

**Project #**2758665

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**Issuer Name:**

Timbercreek Global Real Estate Income Fund  
Principal Regulator – Ontario

**Type and Date:**

Amended and Restated Amendment to Final Simplified  
Prospectus dated January 25, 2019

NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

Series A, Series F, Series I, Series T6.5, Series FT6.5,  
Series F90, Series F90T6.5 @ net asset value

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

N/A

**Promoter(s):**

N/A

**Project #**2782123

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**Issuer Name:**

Vision Alternative Income Fund  
Principal Regulator – Ontario

**Type and Date:**

Amended and Restated Amendment to Final Simplified  
Prospectus dated March 15, 2019

NP 11-202 Receipt dated March 20, 2019

**Offering Price and Description:**

–

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

N/A

**Promoter(s):**

Vision Capital Corporation

**Project #**2862242

## NON-INVESTMENT FUNDS

**Issuer Name:**

Appili Therapeutics Inc.  
Principal Regulator – Nova Scotia

**Type and Date:**

Preliminary Long Form Prospectus dated March 20, 2019  
NP 11-202 Preliminary Receipt dated March 21, 2019

**Offering Price and Description:**

\$3,586,813.00  
843,956 Class A Common Shares Issuable Upon the  
Exercise or Deemed Exercise of 843,956 Outstanding  
Special Warrants

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

MACKIE RESEARCH CAPITAL CORP.  
ECHELON WEALTH PARTNERS INC.  
BLOOM BURTON SECURITIES INC.

**Promoter(s):**

BLOOM BURTON DEVELOPMENT CORP.

**Project #2887885**

**Issuer Name:**

AX1 Capital Corp.  
Principal Regulator – British Columbia

**Type and Date:**

Long Form Prospectus dated March 18, 2019  
NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

12,998,656 Common Shares Issuable upon the Acquisition  
of Luxxfolio Network Inc.

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

–

**Promoter(s):**

Kelly Klatik  
Dean Linden  
**Project #2858151**

**Issuer Name:**

BARRIAN MINING CORP.  
Principal Regulator – British Columbia

**Type and Date:**

Amendmed and Restated Long Form Prospectus dated  
March 14, 2019  
NP 11-202 Receipt dated March 19, 2019

**Offering Price and Description:**

Minimum Offering to raise gross proceeds of \$3,000,000.00  
through the issuance of  
15,000,000 Shares at a price of \$0.20 per Share  
Maximum Offering to raise gross proceeds of  
\$4,000,000.00 through the issuance of  
20,000,000 Share at a price of \$0.20 per Share

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

Haywood Securities Inc.

**Promoter(s):**

Max Sali  
**Project #2839319**

**Issuer Name:**

Barrick Gold Corporation  
Principal Regulator – Ontario

**Type and Date:**

Base Shelf Prospectus dated March 20, 2019  
NP 11-202 Receipt dated March 20, 2019

**Offering Price and Description:**

US\$4,000,000,000.00  
COMMON SHARES  
DEBT SECURITIES  
SUBSCRIPTION RECEIPTS  
WARRANTS SHARE PURCHASE CONTRACTS  
UNITS

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

–

**Promoter(s):**

–

**Project #2884880**

**Issuer Name:**

Canaccord Genuity Growth Corp.  
Principal Regulator – Ontario

**Type and Date:**

Long Form Prospectus dated March 21, 2019  
NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

–

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

–

**Promoter(s):**

CG Investments Inc.  
**Project #2875684**

**Issuer Name:**

Cavenham Gold Corporation  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated March 20, 2019  
NP 11-202 Preliminary Receipt dated March 21, 2019

**Offering Price and Description:**

OFFERING: 1,600,000 Common Shares at a price of  
C\$0.25 per Share

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

Haywood Securities Inc.

**Promoter(s):**

Dr. Juraj Adamec  
**Project #2887897**



**Issuer Name:**

Charlotte's Web Holdings, Inc. (formerly Stanley Brothers Holdings Inc.)

Principal Regulator – Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated March 20, 2019

NP 11-202 Preliminary Receipt dated March 21, 2019

**Offering Price and Description:**

C\$500,000,000.00

Common Shares

Preferred Shares

Warrants

Subscription Receipts

Units

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

–

**Promoter(s):**

Joel Stanley

Jared Stanley

**Project #2887843**

---

**Issuer Name:**

Drone Delivery Canada Corp. (formerly Asher Resources Corporation)

Principal Regulator – Ontario

**Type and Date:**

Short Form Prospectus dated March 20, 2019

NP 11-202 Receipt dated March 20, 2019

**Offering Price and Description:**

\$10,020,000.00 – 8,350,000 Units

C\$1.20 per Unit

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

GMP Securities L.P.

Canaccord Genuity Corp.

Echelon Wealth Partners Inc.

**Promoter(s):**

–

**Project #2882917**

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**Issuer Name:**

eCobalt Solutions Inc.

Principal Regulator – British Columbia

**Type and Date:**

Shelf Prospectus dated March 15, 2019

NP 11-202 Receipt dated March 19, 2019

**Offering Price and Description:**

\$100,000,000.00

Common Shares

Preference Shares

Debt Securities

Warrants

Subscription Receipts Units

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

–

**Promoter(s):**

–

**Project #2881088**

**Issuer Name:**

Flower One Holdings Inc. (formerly Theia Resources Ltd.)

Principal Regulator – Ontario

**Type and Date:**

Short Form Prospectus dated March 22, 2019

NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

Minimum and Maximum Offering of \$50,000,000.00 – 9.5%

Unsecured Convertible Debenture Units

PRICE: C\$1,000.00 per Convertible Debenture Unit

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

Mackie Research Capital Corporation

Canaccord Genuity Corp.

Cormark Securities Inc.

Eight Capital

Industrial Alliance Securities Inc.

PI Financial Corp.

**Promoter(s):**

–

**Project #2881840**

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**Issuer Name:**

Foreshore Exploration Partners Corp.

Principal Regulator – British Columbia

**Type and Date:**

Amended and Restated Preliminary Long Form Prospectus dated March 20, 2019

NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

No securities are being offered pursuant to this Prospectus

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

–

**Promoter(s):**

Chris Beltgens

Toby Pierce

Benjamin Gelber

**Project #2859201**

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**Issuer Name:**

Norbord Inc.

Principal Regulator – Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated March 22, 2019

NP 11-202 Preliminary Receipt dated March 25, 2019

**Offering Price and Description:**

US\$500,000,000.00

Common Shares

Debt Securities

Subscription Receipts

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

–

**Promoter(s):**

–

**Project #2888836**

**Issuer Name:**

North American Palladium Ltd.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated March 22, 2019  
NP 11-202 Preliminary Receipt dated March 22, 2019

**Offering Price and Description:**

\$500,000,000.00  
COMMON SHARES  
DEBT SECURITIES  
SUBSCRIPTION RECEIPTS  
WARRANTS  
SHARE PURCHASE CONTRACTS  
UNITS

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

–

**Promoter(s):**

–

**Project #2888549**

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**Issuer Name:**

Northland Power Inc.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 22, 2019  
NP 11-202 Receipt dated March 22, 2019

**Offering Price and Description:**

\$750,002,000.00 – 32,120,000 Common Shares  
Price: C\$23.35 per Common Share

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

CIBC WORLD MARKETS INC.  
BMO CAPITAL MARKETS  
NATIONAL BANK FINANCIAL INC.  
RBC DOMINION SECURITIES INC.  
SCOTIA CAPITAL INC.  
TD SECURITIES INC.  
DESJARDINS SECURITIES INC.  
CANACCORD GENUITY CORP.  
HSBC SECURITIES (CANADA) INC.  
INDUSTRIAL ALLIANCE SECURITIES INC.  
RAYMOND JAMES LTD.

**Promoter(s):**

–

**Project #2886741**

**Issuer Name:**

Ontario Power Generation Inc.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated March 18, 2019  
NP 11-202 Receipt dated March 19, 2019

**Offering Price and Description:**

\$4,000,000,000.00 – Medium Term Notes  
(unsecured)

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

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Desjardins Securities Inc.  
Goldman Sachs Canada Inc.  
HSBC Securities (Canada) Inc.  
Laurentian Bank Securities Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

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**Project #2886652**

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**Issuer Name:**

Pender Growth Fund Inc.  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary Shelf Prospectus dated March 20, 2019  
NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

\$50,000,000.00  
COMMON SHARES  
DEBT SECURITIES  
CONVERTIBLE SECURITIES  
SUBSCRIPTION RECEIPTS  
WARRANTS  
RIGHTS  
UNITS

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

–

**Promoter(s):**

–

**Project #2887867**

**Issuer Name:**

PIKE MOUNTAIN MINERALS INC.  
Principal Regulator – British Columbia

**Type and Date:**

Long Form Prospectus dated March 19, 2019  
NP 11-202 Receipt dated March 21, 2019

**Offering Price and Description:**

4,000,000 Common Shares (\$400,000.00) at C\$0.10 per  
Common Share

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

Haywood Securities Inc.

**Promoter(s):**

R. Timothy Henneberry  
W. John Meekison

**Project #2865039**

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**Issuer Name:**

Trenchant Capital Corp.  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated March 19, 2019  
NP 11-202 Receipt dated March 19, 2019

**Offering Price and Description:**

Minimum Offering: \$1,000,000.00  
Maximum Offering: \$12,000,000.00  
8% Series B Secured Convertible Debentures

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

INDUSTRIAL ALLIANCE SECURITIES INC.  
CANACCORD GENUITY CORP.  
GMP SECURITIES L.P.  
RAYMOND JAMES LTD.  
ECHELON WEALTH PARTNERS INC.  
PI FINANCIAL CORP.  
HAMPTON SECURITIES LIMITED  
INTEGRAL WEALTH SECURITIES LTD.

**Promoter(s):**

Eric Boehnke

**Project #2886993**

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**Issuer Name:**

Victoria Gold Corp.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 18, 2019  
NP 11-202 Receipt dated March 19, 2019

**Offering Price and Description:**

\$32,555,900.00  
39,890,000 Common Shares and 28,310,000 Flow-  
Through Shares  
Price:

C\$0.44 per Offered Common Share  
C\$0.53 per Flow-Through Share

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

BMO Nesbitt Burns Inc.  
Cormark Securities Inc.  
Echelon Wealth Partners Inc.  
PI Financial Corp.

**Promoter(s):**

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**Project #2886480**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Frontwater Capital Inc.	From: Portfolio Manager, Commodity Trading Manager & Exempt Market Dealer  To: Portfolio Manager, Commodity Trading Manager, Exempt Market Dealer & Investment Fund Manager	March 21, 2019
New Registration	Corton Capital Inc.	Portfolio Manager, Investment Fund Manager, and Exempt Market Dealer	March 25, 2019
Change in Registration Category	Barrantagh Investment Management Inc.	From: Portfolio Manager  To: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	March 26, 2019

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## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.1 SROs

#### 13.1.1 MFDA – Proposed Amendments to MFDA By-Law No. 1, ss. 1 (Definitions) and 22 (Investigatory Powers) – Request for Comments

##### REQUEST FOR COMMENT

##### MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

##### PROPOSED AMENDMENTS TO MFDA BY-LAW NO. 1 SECTIONS 1 (DEFINITIONS) AND 22 (INVESTIGATORY POWERS)

The MFDA is publishing for public comment proposed amendments (Proposed Amendments) to section 1 (Definitions) and section 22 (Investigatory Powers) of MFDA By-law No. 1.

The objectives of the Proposed Amendments are to: (i) update and clarify section 22 to ensure that it reflects current MFDA practices, and (ii) harmonize the MFDA examination and investigation powers with equivalent powers under the Rules of the Investment Industry Regulatory Organization of Canada.

A copy of the MFDA Notice, including the text of the Proposed Amendments, is published on our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). The comment period ends on June 19, 2019.

**13.1.2 MFDA – Proposed Amendments to MFDA By-Law No. 1, s. 24.A (Ombudservice) – Request for Comment**

**REQUEST FOR COMMENT**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)**

**PROPOSED AMENDMENTS TO MFDA BY-LAW NO. 1**

**SECTION 24.A (OMBUDSERVICE)**

The MFDA is publishing for public comment proposed amendments (Proposed Amendments) to section 24.A (Ombudservice) of its By-law No. 1.

The primary objective of the Proposed Amendments is to remove the potential for inconsistency between section 24.A of MFDA By-law No. 1 and the OBSI Terms of Reference, thereby ensuring that the provision of information by OBSI to the MFDA is governed by section 16.5 of the OBSI Terms of Reference.

A copy of the [MFDA Notice](#), including the text of the Proposed Amendments, is published on our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). The comment period ends on June 26, 2019.



### 13.1.3 IIROC – Amendments to Transaction Reporting for Debt Securities – Notice of Commission Approval

#### NOTICE OF COMMISSION APPROVAL

#### INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

#### AMENDMENTS TO TRANSACTION REPORTING FOR DEBT SECURITIES

The Ontario Securities Commission has approved IIROC's proposed amendments to the Dealer Member Rules on Transaction Reporting for Debt Securities (the "Amendments").

The Amendments were described in [IIROC Notice 18-0052 – Rules Notice – Request for Comments – DMR – Proposed Amendments to Transaction Reporting for Debt Securities](#) that was published on March 8, 2018, and available at <http://www.iiroc.ca>.

The effective date for the Amendments, as revised, is October 28, 2019.

In addition, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission (New Brunswick), Legal Registries Division, Department of Justice (Northwest Territories), Legal Registries Division, Department of Justice (Nunavut), the Manitoba Securities Commission, the Nova Scotia Securities Commission, the Office of the Superintendent of Securities, Service Newfoundland and Labrador, the Office of the Yukon Superintendent of Securities, and the Prince Edward Island Office of the Superintendent of Securities have approved or not objected to the Amendments.

**13.2 Marketplaces**

**13.2.1 Canadian Securities Exchange – Amendments to Trading System Functionality & Features – Notice and Request for Comment**

**CANADIAN SECURITIES EXCHANGE**

**SIGNIFICANT CHANGE SUBJECT TO PUBLIC COMMENT**

**AMENDMENTS TO TRADING SYSTEM FUNCTIONALITY & FEATURES**

**NOTICE AND REQUEST FOR COMMENT**

CNSX Markets Inc. (CSE or the Exchange) is publishing for comments proposed amendments to Exhibit E (*Operations of the Marketplace*) to Form 21-101F1, in accordance with the process for the Review and Approval of Rules and Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendix C to the Exchange's recognition order (the "Protocol").

Currently the CSE starts trading GMF eligible orders on CSE listed instruments as the CSE listed opening match begins. The proposed change is for CSE to start trading GMF eligible orders following the CSE listed opening match.

- GMF trading on CSE listed instruments will be enabled following the CSE listed opening match.
- GMF trading will end as trading on CSE listed instruments closes.
- GMF trading start and end times will not change for other market listed instruments.

A copy of the CSE Notice is published on our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

### 13.3 Clearing Agencies

#### 13.3.1 Fixed Income Clearing Corporation – Notice of Commission Order – Application for Exemptive Relief

##### FIXED INCOME CLEARING CORPORATION (FICC)

##### APPLICATION FOR EXEMPTIVE RELIEF

##### NOTICE OF COMMISSION ORDER

On March 19, 2019, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (**OSA**) exempting FICC from the requirement in subsection 21.2(0.1) of the OSA to be recognized as a clearing agency (**Order**), subject to terms and conditions as set out in the Order.

The Commission published FICC's application and draft exemption order for comment on January 24, 2019 on the OSC website at [http://www.osc.gov.on.ca/en/Marketplaces\\_ficc\\_20190124\\_application-for-exemption.htm](http://www.osc.gov.on.ca/en/Marketplaces_ficc_20190124_application-for-exemption.htm) and at (2019), 42 OSCB 925. A comment letter was received from TMX Group Limited (TMX). A copy of the comment letter is posted at [http://www.osc.gov.on.ca/documents/en/Marketplaces/com\\_20190222\\_tmx.pdf](http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20190222_tmx.pdf). We summarize below the main comments and Staff's responses to them. In issuing the Order, no changes were made to the draft order published for comment.

A copy of the Order is published in Chapter 2 of this Bulletin.

##### Comment

As a general comment, TMX states that while it does not oppose the FICC's application for exemption, the Commission should pause to consider how its rules-based approach to clearing agency regulation and granting such exemptions inadvertently undermines the interests of Canadian clearing agencies and their users.

More specifically, TMX commented that exempting foreign-based clearing agencies such as FICC combined with the Commission's embrace of prescriptive rules-based regulation of domestic financial market infrastructure providers creates a competitive disadvantage for Canadian clearing agencies. TMX notes the case of the Canadian Depository for Securities (CDS) and Canadian Derivatives Clearing Corporation (CDCC), two recognised clearing agencies that are required to adhere to NI 24-102 and CP 24-102 as well as highly prescriptive provincial recognition orders. As an example, TMX discusses the prescriptive requirements and approvals needed with regards to the CDS and CDCC rule amendments; while in contrast foreign based clearing agencies such as FICC are not burdened by the same regulatory rule approval process in their home jurisdiction.

In addition, TMX commented that if an entity designated as systemically important in its home jurisdiction and that intends on offering its full range of services in Ontario is exempt from recognition as a clearing agency, due consideration should be given to the appropriate level of oversight in the market it operates.

##### Response

The Commission's mandate is to provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk. The existence of different regulatory regimes is acknowledged in the CPMI-IOSCO's Principles for financial market infrastructures which requires authorities to cooperate with each other in promoting the safety and efficiency of financial market infrastructures (FMIs).

Consistent with past practices, we allow foreign-based clearing agencies (such as FICC) to enter the Ontario market under the exempted clearing agency status only when we are satisfied that doing so would not pose a significant risk to the Ontario capital market and that the foreign clearing agency is subject to a comparable regulatory oversight regime in their home jurisdiction and that the Commission has a cooperating relationship with their home regulator(s). Our approach to recognition or exemption of a foreign-based clearing agency is consistent with our approach to recognition or exemption of domestic clearing agencies. It is based largely on whether the clearing agency poses significant risk to the Ontario capital markets. To the extent the clearing agency does not pose a significant risk to the Ontario capital markets and is subject to a comparable regulatory oversight regime carried out by its home jurisdiction, we rely on the oversight of the home regulator, subject to certain terms and conditions to reduce regulatory overlap and duplication.

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, FICC's activities or regulatory status.

TMX stated that Canadian clearing agencies are sophisticated and well established. TMX continues to believe that a principles-based regulatory approach would more effectively leverage this expertise and experience, and create efficiencies in the process, while enabling regulators to maintain the necessary oversight over Canadian systemically important financial market infrastructures.

We will continue to be responsive to market evolution while ensuring that our mandate to provide protection to investors and to contribute to the stability of the financial system and the reduction of systemic risk is maintained.

## Chapter 25

# Other Information

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### 25.1 Consents

#### 25.1.1 Plymouth Realty Capital Corp. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

##### Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the British Columbia Business Corporations Act.

##### Statutes Cited

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

##### Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

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

**AND**

**IN THE MATTER OF  
PLYMOUTH REALTY CAPITAL CORP.**

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

**UPON** the application of Plymouth Realty Capital Corp. (the **Applicant**) to the Ontario Securities Commission (the Commission) requesting the Commission's consent to the Applicant continuing in another jurisdiction pursuant to section 181 of the OBCA (the **Continuance**);

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

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

1. The Applicant is an offering corporation under the OBCA.
2. The Applicant's common shares (**Common Shares**) are listed and posted for trading on the TSX Venture Exchange (the **TSXV**) under the symbol "PH". As of January 7, 2019, the Applicant's authorized share capital consists of an unlimited number of common shares, of which 6,225,000 were issued and outstanding.
3. The Applicant intends to apply to the Director pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), S.B.C. 2002, c. 57 (the **BCBCA**).
4. The principal reason for the Continuance is that the Applicant's head office and principal place of business are located, and all members of the Applicant's management reside, in British Columbia. The Continuance will also give the Applicant more flexibility under the provisions of the BCBCA in respect of financing opportunities and other corporate transactions which may be effected by the Applicant in the future.

5. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.
6. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**), the *Securities Act* (British Columbia), R.S.B.C. 1966, c. 418 (the **BCSA**) and the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (together with the BCSA, the **Legislation**). The Applicant intends to remain a reporting issuer in these jurisdictions following the Continuance.
7. The Applicant is not in default under any provision of the OBCA, the Act or the Legislation, including the regulations made thereunder.
8. The Applicant is not subject to any proceeding under the OBCA, the Act, or the Legislation.
9. The Applicant is not in default of any provision of the rules, regulations or policies of the Exchanges.
10. Following the Continuance, the Applicant's registered office, which is currently located in Ontario, will be relocated to British Columbia, and the Applicant intends to change its principal regulator from the Ontario Securities Commission to the British Columbia Securities Commission.
11. The Applicant's management information circular dated January 29, 2018 for its annual general and special meeting of shareholders, held on February 28, 2018 (the **Shareholders' Meeting**), described the proposed Continuance, the reasons for it and its implications as well as full particulars of the dissent rights of the Applicant's shareholders under section 185 of the OBCA.
12. The Applicant's shareholders authorized the Continuance at the Shareholders' Meeting by a special resolution that was approved by 99.64 % of the votes cast; no shareholders exercised dissent rights pursuant to section 185 of the OBCA.
13. Subsection 4(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

**THE COMMISSION CONSENTS** to the continuance of the Applicant as a corporation under the BCBCA.

**DATED** at Toronto, Ontario on this 14th day of March, 2019.

"Grant Vingoe"  
Commissioner  
Ontario Securities Commissioner

"Timothy Moseley"  
Commissioner  
Ontario Securities Commissioner

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