The Ontario Securities Commission

OSC Bulletin

June 6, 2019

Volume 42, Issue 23

(2019), 42 OSCB

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

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre – Inquiries, Complaints:

Office of the Secretary:

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

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

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

Fax: 416-593-2318

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

ISSN 0226-9325

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

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Multilateral CSA Staff Notice 91-306
Compliance Review Findings for Reporting Counterparties

June 6, 2019

1. Introduction

Staff of the Ontario Securities Commission (**OSC**) and of the Autorité des marchés financiers (**AMF**) (**Staff** or **we**)) are publishing this Notice to describe joint findings of reviews of compliance with derivatives reporting requirements in Ontario and Québec. These requirements are in OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the **OSC TR Rule**) and AMF *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (the **AMF TR Rule**), jointly referred to as the **TR Rules**.

The purpose of the TR Rules is to improve transparency in the over-the-counter (OTC) derivatives market. Derivatives data is essential for effective regulatory oversight of the derivatives market, including the ability to identify and address systemic risk and the risk of market abuse.

2. Focus of Compliance Reviews

These initial compliance reviews focused on reporting counterparties that are the most active[1] in the Ontario and Québec OTC derivatives markets and their compliance with requirements under the TR Rules.

3. Purpose of Compliance Reviews

The purpose of the compliance review is to:

- reinforce the importance of derivatives data reporting;
- assist reporting counterparties in better understanding their reporting obligations and the OSC's and AMF's expectations;
- assess levels of compliance with the reporting requirements of the TR Rules;
- identify obstacles to compliance with reporting requirements; and
- improve the quality of the data received by the OSC and the AMF.

4. Description of the Compliance Reviews

A joint OSC/AMF team conducted reviews between 2016 and 2018. Where appropriate, the reviews were coordinated and carried out with other regulators that have oversight of the reporting counterparties subject to the reviews.

The reviews consisted of an assessment of each reporting counterparty's compliance with OSC Rule 91-506 *Derivatives: Product Determination, AMF Regulation 91-506 respecting Derivatives Determination*, (jointly, the **Scope Rules**) and the TR

[1] "Most active" refers to entities with the largest number of reported trades as the reporting counterparty which collectively represented approximately 70% of outstanding notional submitted as of October 2018.

Rules. This entailed a review of the reporting counterparty's policies, processes and controls related to transaction reporting and a test of their reported data.

A one-month period was selected from which all OTC derivatives transactions were provided by the reporting counterparty to the OSC and/or the AMF (depending on if the review was made jointly with the OSC and the AMF, or separately) for comparison against data received from the trade repositories. A sample of transactions was selected for more detailed testing where Staff observed data quality issues. Analysis was performed on the completeness, and accuracy of these transactions and the timeliness of their reporting and involved reviewing original transaction confirmations and source system data.

After the analysis of the selected derivatives data, Staff identified reporting issues relating to particular transactions and communicated them to the reporting counterparties under review. The reporting counterparties then undertook a review of why the issues occurred and how they could be remedied in the future.

5. Description of Compliance Tests

As part of our testing, we focused on the following areas of compliance with the requirements of the TR Rules and Scope Rules:

Compliance: whether all derivatives transactions that are reportable under the Scope Rules are reported to a designated or recognized trade repository.

Timeliness: whether all new, amendment and exit messages are reported to a designated or recognized trade repository by the T+1 reporting deadline.

Completeness: whether the fields required to be reported to a trade repository pursuant to the TR Rules have been reported.

Accuracy: whether the details contained in original transaction confirmations or source system data which are required to be reported to a designated or recognized trade repository accurately reflect transaction details received by either the OSC or the AMF (or both in some cases).

Valuation: whether valuation data has been reported to a designated or recognized trade repository according to the requirements in the TR Rules.

Controls and oversight: the existence and effectiveness of key controls, processes, policies, and procedures in place to oversee compliance with the TR Rules.

6. Observations

Based on the sample of transactions reviewed, the majority of data required to be reported to a designated or recognized trade repository was accurate, complete and reported in a timely manner. The following section contains a summary of the material instances where submitted transaction data did not meet the requirements in the TR Rules. Generally, these observations were consistent across all reporting counterparties reviewed.

As stated in section 3, the purpose of these compliance reviews is to assess, identify, assist, reinforce and improve compliance with the TR Rules. However, depending on the deficiencies identified, their frequency of occurrence and the level of post-review remediation success, we may consider additional regulatory steps to address the non-compliance.

i. Non-reporting of derivatives transactions required to be reported:

Our focus when conducting these reviews was to ensure that all activity required to be reported was being captured. Without confidence that the entire universe of OTC derivatives activity required to be reported is being collected, we cannot fully rely on the results of our analytical work.

During our review, we observed situations where a derivative product that should have been reported to a trade repository was not reported for the following reasons:

a. The transaction was incorrectly deemed to be out-of-scope of the reporting requirement.

b. The transaction was incorrectly flagged as not reportable due to an internal system mapping error.

c. Due to an incorrect application of the International Swaps and Derivatives Association (**ISDA**) tie-breaker methodology in the case of the OSC TR Rule, or an incorrect application of Section 25 Reporting Counterparty under the AMF TR Rule, the reporting counterparty determined it was the non-reporting counterparty and did not have the obligation to report.

d. Reporting duties delegated to a third-party service provider were not fulfilled by the third party, and controls were not in place to effectively assess if such third-parties were properly reporting the transactions.

e. Transactions that were executed, novated to a clearing agency and then terminated within the reporting counterparty's system before reaching an executed status in the reporting systems, were not reported to a designated or recognized trade repository.

ii. Reporting of transactions that are not required to be reported:

We also observed the converse issue to item (i) above where transactions being reported were not required to be reported or were required to be reported but were reported by both counterparties. Over-reporting creates redundant data through duplication and information surplus on activity outside our area of interest. Transaction duplicates also create data quality issues that require additional filtering and validation before the data can be used for analysis.

The most common examples of over-reporting include the following:

a. Incorrect product mapping whereby physically settled commodity swaps and spot foreign exchange transactions are incorrectly reported.

b. Incorrect application of the ISDA tie-breaker methodology, in the case of the OSC TR Rule, and incorrect application of Section 25 of the AMF TR Rule, caused both counterparties to determine they were the reporting counterparty and report the same transaction using different unique transaction identifiers (**UTIs**).

c. When a transaction was cleared but the original transaction was not terminated, two transactions with two UTIs were reported where only one UTI should exist.

d. For certain cleared transactions, beta transactions were reported by both the reporting counterparty of the alpha trade and the clearing agency when only the clearing agency should report.

iii. Transactions reported with a non-unique transaction identifier:

We also observed that some transactions were reported using a transaction identifier that was not unique. The use of a non-unique transaction identifier creates data quality issues (multiple occurrences of duplicate UTIs in the reported data) that require additional filtering and validation before the data can be used for analysis.

The most common reasons for the reporting of non-unique transaction identifiers include the following:

a. The UTI generation logic used by the reporting counterparty has flaws.

b. The transactions are executed and recorded in disparate source systems resulting in the generation of duplicate UTIs.

iv. Primary economic terms are not reported in a timely manner:

Primary economic terms must be reported to a trade repository in real time if technologically practicable, and no later than one business day after the execution date of the transaction. This gives sufficient time for the reporting counterparty to gather and report all required information.

Despite this requirement, there were many examples of transactions not being reported to a trade repository within the required timeframe, and instead being reported days, weeks or months past the deadline.

The most common reasons for late reporting include the following:

a. Transactions were rejected by the trade repository and the reporting counterparty did not have adequate systems in place to be aware of the rejection, address the reason, and rereport the transaction in a timely manner.

b. The reporting counterparty encountered processing errors which prevented the creation of valid reporting messages to be reported to the trade repository.

*v. Issues reporting Legal Entity Identifiers (**LEI**):*

The OSC's and the AMF's key method of identifying counterparties and aggregating and analysing data is through the use of the LEI code. The LEI is a unique identifier used to connect OTC derivatives data to other data sets and create a broader picture of marketplace activity. OTC derivatives transactions reported without an LEI create gaps in our data, impede our ability to aggregate activity and positions, and require additional data mapping and validation effort.

As a result, we are very concerned when transactions are submitted with anything other than an active LEI code.

During our review, we noticed, with a high degree of frequency, the following examples where an active LEI was not accurately reported when it was required:

a. Both reporting and non-reporting counterparty fields contained the same LEI. These submissions create unreliable data that are unusable for analysis.

b. The reporting counterparty did not report the LEI of the non-reporting counterparty despite an LEI for the non-reporting counterparty being available in the Global LEI Foundation (**GLEIF**) database. In these cases, an internal identifier or other non-LEI value was reported in place of the LEI. The primary factor causing this observation was a lack of controls over (i) trading with counterparties without an LEI and (ii) the input of counterparty information, such as the LEI, into the reporting system.

c. Either the reporting or non-reporting counterparty LEI's have lapsed. A lapsed LEI is an LEI where the associated reference data (entity name, address of headquarters, address of legal formation, etc.) has not been updated for more than one year. Since the quality of the LEI data diminishes if the reference information attached to it is inaccurate, a lapsed LEI is a sign of potentially poorer data quality.

Despite these examples, there were occasions where an LEI was not reported for legitimate reasons, including:

a. When the non-reporting counterparty is not eligible to receive an LEI as in the case where the non-reporting counterparty is a natural person.

b. When the non-reporting counterparty is an entity from a jurisdiction in which there are laws preventing the disclosure of its identity in other jurisdictions (a masking jurisdiction) and the reporting counterparty has received exemptive relief from either the AMF or the OSC not to report these LEIs.

Expectations for obtaining and reporting counterparty LEIs

Staff expect, and the TR Rules require, that each local counterparty to a reportable transaction, if eligible, obtain an LEI and renew it annually to ensure the data is accurate.

For transactions reported in reliance on exemptive relief, Staff expect a decrease in masking for Financial Stability Board (**FSB**) member jurisdictions following the FSB's November 19, 2018 publication of the report *Trade reporting legal barriers, Follow-up of 2015 peer review recommendations* (**FSB Report**),[2] which details progress by FSB member jurisdictions to remove or address legal barriers to full reporting of OTC derivatives data to trade repositories.

Staff intend to give full effect to the recommendations and supplementary recommendations in the FSB Report. Accordingly, we will consider jurisdiction specific updates in the FSB Report in connection with any exemptive relief. Reporting counterparties are reminded that as a condition to exemptive relief, a reporting counterparty is required to make diligent efforts to correct any reporting in a timely basis, and further that masking relief generally ceases to be available three months after a reporting counterparty becomes aware that there is no longer a legal barrier to full reporting.

Local counterparties can obtain an LEI from several different Local Operating Units approved by the GLEIF to issue LEIs to Canadian entities. A list of these entities is available at the GLEIF web site (www.gleif.org).

vi. Issues reporting accurate Unique Product Identifiers (UPI):

The OSC and the AMF identify OTC derivatives products using a UPI code from which transactions can be aggregated into categories of similar products for analytical purposes. If products are misclassified or not classified using an industry-standard method of identifying derivatives products, we are unable to correctly assess market trends and characteristics.

[2] http://www.fsb.org/wp-content/uploads/P191118-4.pdf.

During our review, we noticed the following examples where the UPI was not accurately reported:

a. Transactions were frequently classified as being "exotic" despite belonging to a category of product where a method of classification was available that more appropriately categorized the transactions (e.g., bond forwards).

b. Transactions were classified as containing a basket of underlying assets when only one underlying asset existed.

Expectations for classification of products by UPI

We expect reporting counterparties to use the most relevant product classification identifier when describing the type of OTC derivative product traded. This will require communicating with the trade repositories to understand the list of product identification codes available. Trade repositories should work with reporting counterparties to categorise all product types suitable for classification to minimize the use of the exotic identifier.

vii. Incomplete or inaccurate underlying asset identifiers:

The underlying asset identifier is a critical data element in understanding trends and characteristics within the collected data. When the underlying asset is omitted, unclear or inaccurate, the transaction data is largely unusable or misleading.

During our review, we noticed the following examples where the underlying asset identifier was not accurately reported:

a. The underlying asset identifier was blank.

b. The underlying asset identifier was reported using an internal identification code rather than a universal asset identifier.

c. The underlying asset identifier was inaccurate. For example, the underlying asset was reported as a single security when the actual asset was a basket of assets.

d. The underlying asset identifier was incomplete. For example, the underlying asset was a basket of securities that did not match the list of reported underlying asset identifiers.

Expectations for reporting the contents of swap baskets

As detailed in the Committee on Payments and Market Infrastructure (**CPMI**) and the International Organization of Securities Commissions' (**IOSCO**) Technical Guidance reports on Unique Product Identifiers[3] and Critical Data Elements[4] (together, **CPMI IOSCO Technical Guidance**), we expect each underlying asset of a custom basket to be identified by a universal identifier that can be recognized by the OSC and the AMF. Specifically, where an underlying asset does not have a universal identification code, we expect that it be described using a recognizable name that sufficiently describes its generic characteristics (e.g., "private_loan_internal_ID123456").

viii. Inaccurate calculation of notional amounts:

The notional amount of an OTC derivative is a way of measuring its size and is used to better understand the level of activity in these markets. While there are several ways in which the notional amount can be calculated, our review revealed that in certain product categories, calculation methodologies were inconsistent. The OSC and the AMF are contemplating adopting international standards developed for the purpose of describing the preferred method for measuring notional amount.

In addition to inconsistent calculation methodologies, we also identified the following examples where the notional amount was not accurately reported:

a. The notional amount unit of measure was inconsistent between various sources systems which resulted in rounded notional amounts being reported to the trade repositories (e.g., 10,000,000 being reported as 10).

b. Inconsistent approaches to the calculation of notional amount for commodity and equity swaps. While guidance on how to calculate notional amount for certain products is limited, we expect reporting counterparties to adopt a consistent approach to these calculations within each asset class within their own systems.

[3] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf.
[4] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD611.pdf.

ix. Inaccurate and incomplete reporting of primary economic terms:

Many fields representing the primary economic terms of a new transaction were found to contain inaccurate or incomplete data when compared to the transaction confirmations. This section summarizes the most important fields:

a. Price: We found that reporting counterparties use many different measures for price and that price is reported inconsistently. For example, the price of an option was represented inconsistently as either a strike price or a premium amount.

b. Cleared: Many reported transactions did not specify whether a transaction was cleared or not due to incomplete information in the Cleared Y/N field. This lack of information creates uncertainty to the regulator when trying to determine the rate at which products are being cleared.

c. Premium: Certain option transactions were reported with a nil value for the premium amount rather than the premium amount per the transaction confirmation. Missing or incorrect premium values were also noted for caps, floors, and swaptions.

d. Floating leg: Transactions were reported where fields relating to the floating leg, such as notional currency, notional amount and floating rate, were not provided or were provided with dummy values.

e. Expiration date: Inaccurate expiration dates, when compared to the original confirmation or source system data, were reported.

Expectations for reporting the price of a derivative transaction

CPMI IOSCO Technical Guidance includes direction on the data elements used to report the price of a trade based on the product type. We expect reporting counterparties to follow this guidance and anticipate adopting them in the future.

x. Inaccurate valuation data:

The ongoing reporting of valuation data is a critical component of the OSC's and the AMF's market analysis and systemic risk measurement functions. As a result, we are focused on ensuring that all outstanding transactions are being revalued on a daily basis, as required by the TR Rules.

During our review, we noticed many examples of incorrect valuation reporting, including:

a. No valuation amount was reported for certain outstanding transactions.

b. A valuation of $0 was reported for outstanding transactions for multiple consecutive days which led to the discovery that the correct current valuation was not being reported.

c. The same valuation amount was reported for multiple consecutive days, which led to the discovery that the correct current valuation was not being reported.

d. Valuation messages were being reported late causing the prior day's valuation to be rolled-over in the files reported to the OSC and the AMF.

xi. Inadequate processes and controls:

Staff noted various shortcomings in oversight measures that either directly caused or failed to identify many of the data quality concerns outlined above. We noticed the following examples where internal processes could be improved to more effectively monitor compliance with the TR Rules:

a. Difficulties in the ability to retrieve previously reported transaction records due to system migrations, multiple system sources, or manual processes.

b. Lack of robust reconciliation processes to detect unreported transactions.

c. Failure to monitor automated steps in the reporting process from transaction origination to submission, such as the accurate generation of Financial products Markup Language (**FpML**) messages prior to submission to a trade repository.

d. Inadequate oversight of client onboarding processes causing downstream issues in the reported counterparty identifier data.

e. Technological limitations of internal systems that are not capable of accurately capturing and reporting the derivatives data for certain types of transactions.

f. Inadequate controls surrounding new products traded without the required reporting solution already put in place.

g. Incomplete documentation of processes and controls.

h. Insufficient oversight of the trade reporting process by the compliance and/or audit functions.

Expectations of practices for improving the quality of reported trade data:

Reporting counterparties should:

Coordinate with trade repositories to improve submission templates: In cases where submission templates and transactional data field specifications issued by trade repositories do not allow reporting counterparties to accurately capture all required fields, reporting counterparties are expected to notify the trade repositories of any concerns and work towards rectifying the templates and/or field specifications to reflect the terms of the transactions. For example, reporting counterparties should work closely with trade repositories to reduce the amount and types of transactions with the product identification classification of "exotic" and develop agreed upon methods to accurately report these types of products.

Perform substantive sample testing: Reporting counterparties were noted to primarily rely on internal controls to monitor compliance with the TR Rules. We recognize that implementation and monitoring of internal controls serves a critical function, however, it is also important to complement existing controls through substantive testing of transaction data. This type of testing, in which transactions are traced through the reporting life cycle, is essential to identify areas for improvement that may not be captured by controls alone.

Report errors or omissions: Upon discovery of a system or process breakdown, Staff expect reporting counterparties to evaluate the impact on previously reported data in addition to implementing necessary fixes to address the error on a go-forward basis. Reporting counterparties should appropriately oversee the resubmission of any live trade data upon the discovery of an error in the reported data. Reporting counterparties are expected to report errors or omissions in reported derivatives data to the relevant trade repository as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery. In instances where a significant error or omission has occurred impacting a substantial number of transactions, we would expect the reporting counterparty to notify the relevant authority, as soon as practicable, describing the general nature of the error or omission, number of transactions impacted, date and duration of error, steps taken to remedy the error or omission and any planned remediation steps.

Seek clarification from Staff for novel reporting issues: Given the complexity and breadth of the transactions being reported, additional guidance or coordination with Staff may be warranted to cover reporting intricacies not otherwise explicitly addressed. As a result, Staff encourage reporting counterparties to seek further clarification from Staff when necessary to proactively improve the quality of reported data and ensure novel reporting issues are addressed in a consistent manner.

7. Summary of Root Causes and Remedies

The main goal of the reviews is to identify incorrect data reporting, determine the source of the errors, fix the problem and, as a result, improve the quality of the data we receive and use in our analysis.

This section details some of the general root causes of the issues identified in the previous section and the types of remedies that have been implemented or recommended. All reporting counterparties should review these root causes and remedies when assessing the performance and accuracy of their own trade reporting systems and responsibilities.

i. Mapping issues:

On multiple occasions, the reporting counterparties identified mapping issues to be the root cause of incorrect product identifiers, underlying asset identifiers and prices. A mapped field exists when a combination of one or more data fields is transformed using a pre-defined sequence of calculations, into a final (mapped) value which is generated and submitted to the trade repository. A mapping issue can exist for many reasons, including data errors within mapping tables, coding issues and data entry issues. Once a mapping issue is identified and fixed, the incorrect reported data is typically resolved, and no further action is required.

ii. Control breakdowns:

We identified areas in reporting processes where more stringent controls would have prevented the reporting of internal client identifier codes and lapsed LEIs instead of active LEIs. In addition, instances were noted where control processes correctly flagged non-reported transactions as requiring remediation, but these processes were not vigorous enough for the errors to be addressed in a timely manner. Lastly, we identified scenarios where accuracy issues were identified by existing controls and corrected on a go-forward basis; however, data resubmissions were not made for live transactions previously reported with the inaccurate data.

iii. Oversight of third-party service providers:

We noted instances where some reporting obligations had been delegated to third-party service providers. An overall lack of oversight by reporting counterparties over these delegated responsibilities can be attributed to some of the reporting issues identified. In particular, some reporting counterparties do not have a line of sight to verify whether service providers report all reportable transactions to a trade repository. Additionally, we found reporting counterparties may be unable to assess whether the delegated data to be reported is accurate and reported within the required timeframes. Oversight measures are necessary as reporting counterparties may delegate reporting obligations but ultimately remain responsible for ensuring the timely and accurate reporting of derivatives data required by the TR Rules.

iv. Reconciliation issues:

Often, the root cause of a non-reported transaction was the absence of a reconciliation process to review transaction submissions. A reconciliation of transactions that should be received by the trade repository enables reporting counterparties to confirm that transactions are being reported by counterparties as well as to ensure that reported information is agreed to by both counterparties.

A reconciliation process to monitor the timeliness of data submissions would also have prevented situations where creation data for transactions was submitted several days beyond the timelines required by the TR Rules. Control measures are important to identify issues such as transactions executed but not yet reported, or transactions rejected by the trade repository and not resubmitted. Such a reconciliation allows reporting counterparties to identify issues in the timeliness of submissions and initiate further investigations to determine the cause of any delays.

v. TR Rule Interpretations:

Often, the source of the incorrect reported data was a misunderstanding of what is required under the TR and Scope Rules. Further clarification from the OSC and/or the AMF on how to report certain mandatory data fields, such as Price, Unique product identifier, Notional amount and Counterparty side will assist reporting counterparties to correctly report this data.

In some cases, however, an incorrect interpretation of the TR Rules resulted in incomplete data being submitted to the trade repository. Specifically, there were many instances where a reporting counterparty only submitted data flagged as mandatory by the trade repository submission templates, resulting in transactions missing many key economic fields. Reporting counterparties should not rely on a trade repository's mandatory fields and should submit all data required by the TR Rules.

Another frequent example of an incorrect interpretation of the TR Rules was the non-reporting of transactions between affiliates. Inter-affiliate transactions are required to be reported.

vi. Lack of validation processes at TRs:

Validation processes at the trade repositories would, theoretically, prevent some invalid data from being sent to the OSC and/or the AMF. We expect trade repositories to utilize data validation processes in their systems to the extent possible and we intend, in the near future, to provide guidance and requirements on the types of validations that should be introduced. For example, trade repositories may be required to reject submitted transactions that have incomplete relevant data fields.

8. Conclusions and Next Steps

Since the completion of these reviews, we have observed an improvement in the quality of the reported data. This is due, in large part, to dialogue between the regulators, trade repositories and reporting counterparties on how trade data should be reported, where processes can be improved and what regulators' expectations are. Continued co-ordination is necessary to improve the data quality even further.

With the CPMI and IOSCO guidance to standardize derivative transaction terms complete, it will be incorporated into reporting requirements either in the form of changes to the TR Rules or through changes in trade repository work flows.

Working with trade repositories to improve their data vetting and validation systems will reduce the amount of poor-quality data entering their systems and in turn ours. Building processes that reject transactions missing key pieces of data is a potential solution as is agreeing to use standardized forms or templates to ingest data for certain products on a consistent basis.

The OSC and the AMF will continue to perform these reviews, including focusing on foreign based reporting counterparties, to better understand the issues that these entities face when complying with our rule.

As is our normal process, depending on the deficiencies identified during a review, we may consider recommending further regulatory action to remediate the deficiencies.

Questions

Please refer your questions to any of the following:

Greg Toczylowski
Manager, Derivatives
Ontario Securities Commission
416-593-8215
gtoczylowski@osc.gov.on.ca

Dena Staikos
Manager, Compliance and Registrant Regulation
Ontario Securities Commission
416-593-8058
dstaikos@osc.gov.on.ca

Dileeni Abraham
Senior Financial Data Analyst, Derivatives
Ontario Securities Commission
416-596-4256
dabraham@osc.gov.on.ca

Jarrod Smith
Accountant, Compliance and Registrant Regulation
Ontario Securities Commission
416-263-3778
jsmith@osc.gov.on.ca

Yani Wu
Derivatives Analyst
Ontario Securities Commission
416-263-7670
ywu@osc.gov.on.ca

Corinne Lemire
Manager, Derivatives Oversight
Autorité des marchés financiers
514-395-0337 (4491)
Corinne.lemire@lautorite.qc.ca

Houcine Kabbaj
Senior Analyst, Derivatives Oversight
Autorité des marchés financiers
514-395-0337 (4487)

Eli Adzogan
Analyst, Derivatives Oversight
Autorité des marchés financiers
514-395-0337 (4493)

Andrée Dion,
Manager, Department of Securities Inspection
Autorité des marchés financiers
514-395-0337 (4761)

Stephane Turmel,
Coordinator, Department of Securities Inspection
Autorité des marchés financiers
514-395-0337 (4769)

1.1.2 OSC Staff Notice 43-706 – Pre-filing Review of Mining Technical Disclosure

OSC Staff Notice 43-706

Pre-filing Review of Mining Technical Disclosure

June 6, 2019

Increasing certainty for mining issuers

In November 2018 the Ontario Securities Commission (the **OSC**) created a burden reduction task force to refocus our efforts on reducing unnecessary regulatory burden. Consultations were launched on January 14, 2019 with the publication of OSC Staff Notice 11-784 *Burden Reduction*.

One of the issues that emerged from our consultations as a burden on reporting issuers in the mining sector is the uncertainty caused by the potential for technical disclosure issues to be identified during a short form prospectus offering. Given the typical timeline of a short form prospectus offering, any delay can be potentially disruptive and costly.

To reduce the execution risk for reporting issuers and dealers engaged in transactions under a short form prospectus and to expedite the prospectus review, we encourage public mining issuers to utilize the prospectus pre-filing process to request a review of the issuer's publicly filed technical disclosure in advance of filing a preliminary short form prospectus.

Pre-filing reviews of current disclosure

Pre-filing reviews may be requested by filing an application in accordance with Part 8 of National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*, where the OSC is the principal regulator of the reporting issuer.

The scope of the pre-filing review will include technical disclosure in documents of the reporting issuer previously filed on SEDAR and disclosure on the reporting issuer's website, including:

- the reporting issuer's current annual information form;
- news releases and material change reports;
- current technical reports; and
- investor presentations.

The focus of the review will be on any material issues that could affect the ability of the reporting issuer to obtain a receipt for a short form prospectus on a timely basis.

If the reporting issuer's disclosure record is not current or if material documents, such as a new annual information form or technical report, are expected to be filed prior to or with the preliminary short form prospectus, the pre-filing review may be deferred until those documents are filed.

Application for pre-filing review

Applications for pre-filing reviews should be submitted as a prospectus pre-file through the OSC's electronic filings portal[1] and:

- confirm that the reporting issuer is eligible to file a short form prospectus;
- include a list of the reporting issuer's material mineral properties and the associated current technical reports; and
- indicate the anticipated timing for filing the preliminary short form prospectus.

The prospectus pre-filing fee, currently $3,800, will be required at the time of the application. This payment will be credited against the filing fee for the preliminary short form prospectus.

[1] https://eforms1.osc.gov.on.ca/e-filings/pre-files/form.do?token=7de82153-df42-4c1a-9778-26b723efb13d

Applications for pre-filing reviews should be made at least 10 days prior to the anticipated filing date of the preliminary short form prospectus. Following receipt of an application, we will advise the reporting issuer of the expected timing for the review. Timing will be dependent on the reporting issuer's current disclosure and the volume of current prospectus and pre-filing reviews.

Questions:

Craig Waldie
Senior Geologist, Corporate Finance
416.593.8308
cwaldie@osc.gov.on.ca

James Whyte
Senior Geologist, Corporate Finance
416.593.2168
jwhyte@osc.gov.on.ca

1.1.3 Notice of Ministerial Approval of Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

NOTICE OF MINISTERIAL APPROVAL OF AMENDMENTS TO
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

On May 6, 2019, the Minister of Finance approved amendments made by the Ontario Securities Commission (**OSC** or the **Commission**) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Amendments**).

The Amendments were made by the Commission on March 5, 2019 and were published on the OSC website at http://www.osc.gov.on.ca and in the OSC Bulletin in (2019) 42 OSCB 2173 on March 14, 2019.

The Amendments come into force on June 12, 2019.

The text of the Amendments is reproduced in Chapter 5 of this OSC Bulletin.

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 First Global Data Ltd. et al. – ss. 127, 127.1

FILE NO.: 2019-22

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI, MAURICE AZIZ,
HARISH BAJAJ, and ANDRE ITWARU

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: Monday, June 24, 2019 at 10:00 a.m.

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

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the orders requested in the Statement of Allegations filed by Staff of the Commission on May 31, 2019.

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

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

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 31st day of May, 2019

"Grace Knakowski"
Secretary to the Commission

For more information

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

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI, MAURICE AZIZ,
HARISH BAJAJ, AND ANDRE ITWARU

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 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 the following orders:

   a) that trading in any securities or derivatives by the respondents, First Global Data Ltd. ("**FGD**"), Global Bioenergy Resources Inc. ("**GBR**"), Nayeem Alli, ("**Alli**") Maurice Aziz ("**Aziz**"), Harish Bajaj ("**Bajaj**") and Andre Itwaru ("**Itwaru**") (collectively, the "**Respondents**") cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

   b) that the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

   c) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

   d) that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

   e) that Alli, Aziz, Bajaj and Itwaru (collectively, the "**Individual Respondents**") resign any position that they hold as a director or officer of an issuer or a registrant, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

   f) that the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer or a registrant permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

   g) that the Individual Respondents be prohibited from becoming or acting as a registrant or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

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

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

   j) that the Respondents pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

   k) such other orders as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

OVERVIEW

2. Investor protection is fundamental to securities regulation. The Respondents engaged in improper capital raising activities and made untrue and misleading statements to Ontario investors, which put investors' financial interests at risk and compromised the integrity and reputation of Ontario's capital markets.

3. In addition, the Respondents' misconduct undermined the following cornerstone principles of securities regulation:

a) Registration: Registration requirements serve critical gate-keeping and investor protection functions by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading and distributing securities. GBR, Aziz and Bajaj engaged in unregistered trading when soliciting the investments, and put the financial interests of investors at risk through misrepresentations and fraud.

b) Prospectus Disclosure: Capital raising requires a prospectus providing full, true and plain disclosure of all material facts relating to the securities being issued, or reliance on an available exemption from the prospectus requirement. The Respondents participated in distributions of securities without a prospectus, or reliance on an applicable exemption.

c) Continuous Disclosure: Ontario securities law imposes continuous disclosure requirements on reporting issuers, including financial disclosure requirements. FGD, as a public company, filed interim financial reports and comparative financial statements that contained material misstatements.

4. In the spring of 2015, GBR, primarily through Aziz and Bajaj, began raising money from Ontario investors, for the stated purpose of investing in bitumen mining and/or biodiesel production purportedly being undertaken by an affiliated Colombian company, Global Bioenergy Resource SAS ("**GBRSAS**").

5. At the same time, FGD was in dire need of a capital infusion. In order to raise capital, in August of 2015, FGD entered into an agreement with GBRSAS (the "**Debenture Agreement**") pursuant to which GBRSAS, primarily through Aziz and Bajaj, agreed to assist FGD in raising funds through a debenture offering bearing interest at 14% per year, known as the FGD series "G" debentures (the "**FGD Debentures**"). GBRSAS agreed to provide its assets as security.

6. The Debenture Agreement further provided that a portion of the funds raised through the debenture offering would be lent by FGD to GBRSAS for the deployment of FGD's technology in return for promissory notes bearing interest at 16% per year (the "**Promissory Notes**").

7. During the period of approximately May to December of 2015 (the "**Solicitation Period**"), $4.4 million was raised through the distribution of the FGD Debentures to over 90 investors, the majority of whom were Ontario residents. This distribution occurred without a prospectus providing disclosure to investors, or an available exemption to the prospectus requirement. None of the FGD Parties or the GBR Parties (as defined below) were registered to trade or advise in securities in Ontario.

8. FGD and GBR made contradictory representations to investors regarding the intended use of their investment funds. FGD and GBR also made representations regarding the security backing the investment, which were untrue and amounted to prohibited representations. The conduct in respect of the GBR Parties soliciting the investments was fraudulent.

9. Particularly, subscription agreements and accompanying term sheets (collectively, the "**Subscription Documents**"), prepared by FGD, set out the terms of the FGD Debentures and represented that capital raised from the sale of the FGD Debentures would be used for FGD's working capital. In contrast, the GBR Parties conveyed to investors in person and in marketing materials that investor funds would be used to finance bitumen mining and biodiesel operations in Colombia purportedly owned and operated by GBRSAS and/or GBR. However, neither GBRSAS nor GBR had any direct ownership interests or business operations in bitumen mining or biodiesel.

10. The capital raised from the sale of the FGD Debentures was used in a manner contrary to the representations. Of the approximately $4.4 million raised, FGD retained approximately $1.5 million. The remaining approximately $2.9 million, or two-thirds, was provided to or for the benefit of GBRSAS. GBRSAS did not utilize any of the $2.9 million to deploy FGD's technology in Colombia. No payments of principal or interest were received by FGD in respect of the Promissory Notes, and FGD terminated the Debenture Agreement for non-performance.

11. Subscription Documents and marketing materials utilized during the Solicitation Period also stated that the FGD Debentures would be fully secured and guaranteed by a first charge against mining assets in Colombia purportedly owned and operated by GBRSAS. These representations were not true. The FGD Debentures were not secured by any assets in Colombia, or otherwise.

12. $4.4 million in FGD Debentures matured, none of the investors have been repaid and interest payments are in arrears.

13. GBR engaged in other improper capital raising activities and fraudulent conduct in 2015 through the solicitation of a $450,000 loan (the "**GBR Debenture**") from an Ontario investor who was not accredited ("**Investor X**"). An exorbitant rate of interest was promised to Investor X and it was represented to her that her investment would be secured by assets in Colombia (the same assets falsely represented to investors in the FGD Debentures as being the security for their investment). The investment was also not secured, has not been repaid and interest is in arrears.

14. In addition, FGD, as a public company, improperly recognized millions of dollars of debt as revenue in its comparative financial statements for fiscal 2016 and interim financial reports for each of the first three quarters of 2017.

15. By filing financial statements and related disclosures that contained material misstatements and were not prepared in accordance with Canadian generally accepted accounting principles for publicly accountable enterprises ("**GAAP**"), FGD compromised public confidence in the integrity of financial reporting and Ontario capital markets.

THE RESPONDENTS

16. Enforcement Staff's specific allegations in respect of the conduct described above involve two groups:

    i) the "**FGD Parties**" consisting of FGD, Alli and Itwaru; and

    ii) the "**GBR Parties**" consisting of GBR, Aziz and Bajaj;

    and three transactions (defined below):

    a) the FGD Debentures;

    b) the GBR Debenture; and

    c) the FGD Purported License Transactions.

17. The connection between the two groups results from a friendship between Alli, FGD's former Chief Financial Officer ("**CFO**"), and Aziz, a director of GBR at the material time.

(a) The FGD Parties

18. FGD is a Canadian company with its head office in Toronto, Ontario. FGD is a reporting issuer in Ontario, British Columbia and Alberta. Ontario is its principal regulator. FGD is listed on the TSX Venture Exchange, the Frankfurt Stock Exchange and the OTCQB.

19. FGD describes itself in press releases as an international financial technology company with two main lines of business: (a) mobile payments; and (b) cross border payments.

20. On May 4, 2018, the Commission issued a cease trade order in respect of FGD as a result of its failure to file financial reports and related disclosure documents and certificates (the "**CTO**"). The CTO continues to be in place.

21. Itwaru is a resident of Toronto, Ontario. He was the President, CEO and Chairman of the Board of FGD from November of 2012 until his resignation in January of 2019. He has never been registered with the Commission in any capacity.

22. Alli is a resident of Toronto, Ontario. Alli was appointed Chief Strategy Officer and a director of FGD on November 29, 2012. He became FGD's CFO on July 9, 2014. Alli resigned as FGD's CFO on or about October 2, 2017 but was re-appointed as "interim" CFO on November 27, 2017. Alli resigned as a director of FGD on November 27, 2017. On August 16, 2018, FGD announced that Alli was no longer with the company in any capacity. Alli has never been registered with the Commission.

(b) The GBR Parties

23. GBR is an Ontario corporation incorporated in August of 2015. GBR's office, during the material time, was in Richmond Hill, Ontario. GBR is not a reporting issuer and has never been registered with the Commission in any capacity.

24. GBRSAS is a Colombian corporation with offices in Bogota, Colombia. GBRSAS is not a reporting issuer and has never been registered with the Commission. GBRSAS is also known as, Global Bioenergy SAS, Global Bioenergy Resources SAS, Global Bio-Resources SAS and Global Bio Energy SAS (all such entities are referred to herein as GBRSAS).

25. GBRSAS was held out in various marketing materials prepared by the GBR Parties and used to solicit investments in the FGD Debentures, as having secured the mineral rights for the mining and export of high grade bitumen in Colombia and having built a fully functional biodiesel plant in Colombia.

26. In these marketing materials, the names “GBRSAS” (and the various iterations of that name identified above) and “GBR” were used interchangeably and inconsistently, suggesting that GBR and GBRSAS were essentially, one and the same, with GBR being the “Canadian Office” and GBRSAS being the “Colombian Office” for the purported Colombian mining and biodiesel rights and operations.

27. Aziz is an Ontario resident and a director of GBR. During the material time, Aziz held himself out as an officer and/or director of GBRSAS. Aziz has never been registered with the Commission. Aziz describes himself as being principally in the business of “business development”.

28. Bajaj is an Ontario resident and a director of GBR. During the material time, Bajaj held himself out as an officer and/or director of GBRSAS. Bajaj was registered as a Salesperson or Dealing Representative for a scholarship plan dealer from May 2004 to March 2014. Bajaj was not registered with the Commission in any capacity during the material time, and is not currently registered with the Commission.

BACKGROUND

(a) The FGD Debentures

29. In August of 2015, GBRSAS entered into the Debenture Agreement with FGD to assist FGD in raising funds through a debenture offering.

30. Pursuant to the Debenture Agreement, FGD agreed to provide GBRSAS with a portion of the funds raised through the FGD Debenture offering and with exclusive rights to deploy FGD’s technology in Colombia and elsewhere. In return, GBRSAS agreed to provide a guarantee to the investors of a first charge against all the assets of GBRSAS and the Promissory Notes to FGD in respect of the funds advanced.

31. Itwaru signed the Debenture Agreement on behalf of FGD and Aziz signed on behalf of GBRSAS. The Promissory Notes were signed by Itwaru or Alli on behalf of FGD and Aziz signed on behalf of GBRSAS.

32. The FGD Debentures were for a three-year term. They bore interest at the rate of 14% per year and offered a production-based royalty to be generated from the purported operating assets owned by GBRSAS in Colombia, payable to investors by FGD.

33. During the period of approximately May to December of 2015 (the “**Solicitation Period**”), Aziz and Bajaj, solicited investments for the Colombian bitumen mining and/or biodiesel operations. Ultimately, they raised $4.4 million through the sale of FGD Debentures to over 90 investors resident in Ontario (the “**Debenture Holders**”). Many of the Debenture Holders did not qualify as accredited investors.

34. The Subscription Documents were prepared by FGD, and Alli or Itwaru signed and accepted the subscriptions on behalf of FGD.

35. Aziz and Bajaj prepared and/or directed the preparation of marketing materials and then used those materials to solicit investments in the Colombian operations through the FGD Debentures.

36. Many investors were solicited by way of radio advertisements placed by Bajaj and/or GBR, were existing clients of Bajaj’s tax business, or were referrals from other Debenture Holders.

37. FGD has never received any interest or principal payments from GBRSAS pursuant to the Promissory Notes. The first Promissory Note, for $400,000, was executed by FGD and GBRSAS on August 25, 2015. The second Promissory Note, for $150,000, was executed on September 16, 2015. In accordance with their terms, interest was due on a monthly basis. Despite having received no interest payments, FGD loaned an additional approximately $2.4 million to or for the benefit of GBRSAS between October 23, 2015 and December 23, 2015.

38. On December 29, 2015, FGD terminated the Debenture Agreement for non-performance.

39. The FGD Debentures started maturing in August of 2018. None of them have been repaid and interest payments are in arrears.

(i) Unregistered Trading and Illegal Distribution

40. The FGD Debentures are “securities” as defined in subsection 1(1) of the Act.

41. The sales of the FGD Debentures were trades in securities not previously issued and were, therefore, distributions. A preliminary prospectus or prospectus was not filed with the Commission in connection with the FGD Debenture offering, nor were prospectus receipts obtained from the Director as required by subsection 53(1) of the Act. While each of the Debenture Holders completed a subscription agreement indicating that they were an accredited investor, this was not the case. Many of the Debenture Holders did not qualify as accredited investors nor did they qualify for any other exemption from the prospectus requirement set out in section 53 of the Act. Reports of exempt distributions, including Form 45-106F1, were not filed with the Commission.

42. None of the GBR Parties were registered with the Commission to trade in the FGD Debentures. By engaging in the conduct described above, GBR, Aziz and Bajaj engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct or negotiations, directly or indirectly, in furtherance of the sale or disposition of securities for valuable consideration without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

43. By engaging in the conduct described above, FGD, Alli, Itwaru, GBR, Aziz and Bajaj participated in a distribution of securities without filing a preliminary prospectus or prospectus or an applicable exemption from the prospectus requirement, contrary to section 53 of the Act.

(ii) False and Improper Representations to Investors

Working Capital and Use of Funds Representations

44. Investors were provided with subscription agreements and accompanying term sheets (collectively, the Subscription Documents) which set out the terms of the FGD Debentures and included a representation that the funds raised would be used for FGD's "general working capital" (the "**Working Capital Representation**").

45. Contrary to the Subscription Documents, which were presented to investors by Aziz and Bajaj, certain Debenture Holders were told by Aziz and/or Bajaj that the funds they had invested in the FGD Debentures would be used to finance GBRSAS and/or GBR's bitumen mining and/or biodiesel operations in Colombia (the "**Use of Funds Representations**"). These representations were untrue. Neither GBRSAS nor GBR had any direct ownership interests or business operations in bitumen mining or biodiesel.

46. Capital raised from the sale of the FGD Debentures was used as follows:

a) FGD retained approximately $1.5 million of the approximately $4.4 million raised;

b) FGD provided approximately $2.9 million to or for the benefit of GBRSAS. The funds were not used for bitumen mining and/or biodiesel operations purportedly owned by GBRSAS or GBR in Colombia; and

c) Approximately $300,000 was used to make interest payments on the FGD Debentures and the GBR Debenture. In other words, investors were paid interest owing to them in respect of the FGD Debentures and GBR Debenture from the capital already raised in the FGD Debenture offering.

Security and GBRSAS Operations Representations

47. It was further represented to the Debenture Holders, expressly or impliedly, including in the Subscription Documents, investor presentations, radio advertisements and/or in discussions with Aziz and/or Bajaj, that: (a) the FGD Debentures would be fully guaranteed and secured by assets owned by GBRSAS; (b) the operations related to GBRSAS' assets in Colombia were sufficient to generate a return on equity of 14% to make interest payments on the FGD Debentures; and (c) GBRSAS had control over those operations (collectively, the "**GBRSAS Security and Operations Representations**").

48. The GBRSAS Security and Operations Representations contained in the Subscription Documents were untrue. The FGD Debentures were not guaranteed or secured and GBRSAS did not have any direct ownership interests or business operations in bitumen mining or biodiesel. To the contrary, the owners of the assets in Colombia were not aware of the Debenture Agreement, did not pledge any assets in respect of the FGD Debentures and did not transfer title to those assets to GBRSAS.

49. In August of 2018, FGD issued its comparative financial statements for the year ended December 31, 2017, in which FGD disclosed that there was no security against the assets pledged for the FGD Debentures and that the corresponding receivable from GBRSAS had been written off.

(iii) Fraudulent Conduct – the GBR Parties

50. By engaging in the conduct described in paragraphs 44 through 49 above, GBR, Aziz and Bajaj, as officers and directors of GBR, *de facto* officers and/or directors of GBRSAS, and given their role in the solicitation process for the FGD Debentures and their dealings with principals of GBRSAS, knew or ought to have known, during the Solicitation Period, that the Working Capital, Use of Funds and GBRSAS Security and Operations Representations, were false or misleading.

51. In particular, Aziz and Bajaj knew or ought to have known, during the Solicitation Period, that:

a) some of the funds raised through the FGD Debenture offering had been directed towards coal mining projects in Colombia in respect of which GBRSAS had no asset or other ownership interest;

b) the assets represented to investors as having been pledged by GBRSAS as security were not owned by GBRSAS, nor were any other assets pledged;

c) no interest payments were made to FGD by GBRSAS pursuant to the Promissory Notes; and

d) funds raised from the FGD Debenture offering were used to make interest payments on the FGD Debentures and GBR Debenture.

52. Aziz and Bajaj failed to inform the Debenture Holders of any of the foregoing and continued to solicit sales in the FGD Debentures and receive finder's fees, commissions and/or other fees for doing so.

53. This conduct put investors' pecuniary interests at risk.

54. Accordingly, GBR, Aziz and Bajaj engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(b) of the Act.

(iv) Prohibited Representations – the GBR Parties

55. By engaging in the conduct described in paragraphs 44 through 49 above, GBR, Aziz and Bajaj, made untrue and/or misleading statements about matters relating to the FGD Debentures that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

56. Accordingly, each of GBR, Aziz and Bajaj breached subsection 44(2) of the Act.

(v) Authorizing, Permitting or Acquiescing in GBR's Breaches of the Act

57. Aziz and Bajaj, as officers and directors of GBR, authorized, permitted or acquiesced in the conduct engaged in by GBR which constituted the breaches of securities law described above.

58. As a result, Aziz and Bajaj are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act.

(vi) Prohibited Representations – the FGD Parties

59. The GBRSAS Security and Operations Representations contained in the Subscription Documents were untrue. Itwaru and Alli, as CEO and CFO of FGD respectively, knew or ought to have known this was the case and otherwise failed to take reasonable steps to confirm their accuracy during the Solicitation Period.

60. During the Solicitation Period, the FGD Parties failed to take reasonable or appropriate steps to ensure that GBRSAS owned the assets purportedly pledged to secure the FGD Debentures and/or that such assets had been pledged as security.

61. Alli and Itwaru continued to authorize the advancement of funds from FGD to or for the benefit of GBRSAS despite the fact that interest owing pursuant to the Promissory Notes was in arrears.

62. By engaging in the conduct described in paragraphs 47 through 49 and 59 through 61 above, FGD, made untrue and/or misleading statements about matters relating to the FGD Debentures that a reasonable investor would consider

relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

63. Accordingly, FGD breached subsection 44(2) of the Act.

(vii) Authorizing, Permitting or Acquiescing in FGD's Breaches of the Act

64. Alli and Itwaru, as officers and directors of FGD during the material time, authorized, permitted or acquiesced in the conduct engaged in by FGD which constituted the breaches of securities law described above.

65. As a result, Alli and Itwaru are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act.

(viii) Conduct Contrary to the Public Interest – the FGD Parties

66. By engaging in the conduct described in paragraphs 44 through 49 and 59 through 61 above, FGD, Alli and Itwaru's conduct was contrary to the public interest. In particular, contrary to the public interest, they failed to take reasonable or appropriate steps to ensure that the GBR Parties did not make false or misleading statements to investors or fail to provide investors with information necessary to prevent the statements made from being false or misleading.

(b) The GBR Debenture

67. In or around May of 2015, GBR, through Aziz, solicited an investor ("**Investor X**"), to loan funds to GBR allegedly to fund GBRSAS's purported mining operations in Colombia. Investor X initially met with Aziz and then attended an investor presentation at GBR's offices in Richmond Hill, Ontario.

68. Investor X loaned GBR $350,000 on or around July 2, 2015 and an additional $98,000 on or around August 13, 2015 (the investments are collectively referred to as, the GBR Debenture).

69. Investor X was not initially provided with any documents regarding her two investments made in July and August of 2015. However, on or about October 1, 2015, Investor X was provided with a GBR "Debenture Term Sheet" (the "**GBR Debenture Term Sheet**") purportedly confirming her $450,000 investment in GBR.

70. The GBR Debenture Term Sheet contained the following representations regarding the attributes of the GBR Debenture, which had already been conveyed to Investor X by GBR: (a) the GBR Debenture would pay simple interest at a rate of 4% per month; (b) Investor X's investment was 100% secured and was guaranteed by a first charge against all of the assets of GBRSAS (the same assets purportedly securing and guaranteeing the FGD Debentures); and (c) the first charge was, at a minimum, equal to 142% of the amount invested by Investor X. In addition, Investor X was told by GBR that she would be entitled to profit sharing in addition to interest (the "**GBR Debenture Representations**").

(i) Fraudulent Conduct – GBR and Aziz

71. Contrary to the GBR Debenture Representations:

a) Investor X has received only sporadic interest payments and such payments are in arrears;

b) Despite repeated demands, Investor X has not been repaid any of her principal; and

c) GBRSAS did not hold title to the assets purportedly pledged as security.

72. This conduct put Investor X's pecuniary interests at risk.

73. By engaging in the conduct described in paragraphs 67 through 72 above, GBR and Aziz engaged in or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(1)(b) of the Act.

(ii) Prohibited Representations – GBR and Aziz

74. As a result of the foregoing, GBR and Aziz made untrue or misleading statements about matters that a reasonable investor would consider relevant in deciding whether to enter into a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

75. As such, GBR and Aziz breached subsection 44(2) of the Act.

(iii) Authorizing, Permitting or Acquiescing in GBR's Breaches of the Act

76. Aziz, as an officer and director of GBR, authorized, permitted or acquiesced in the conduct engaged in by GBR which constituted the breaches of Ontario securities laws described above.

77. As a result, Aziz is deemed to have not complied with Ontario securities laws pursuant to section 129.2 of the Act.

(c) FGD Purported License Transactions

78. Between January of 2016 and November of 2017, FGD purportedly sold technology license agreements (the "**FGD Purported License Transactions**") to investors, many of whom are resident in Ontario. The documentation prepared in respect of the FGD Purported License Transactions stated that the funds were advanced in exchange for the issuance of exclusive licenses to market and deploy FGD's technology. Such was not the case. Rather, in many instances, no licences were ever issued, and no steps were intended to be taken, or were in fact taken, to market or deploy the technology. Investors loaned funds to FGD based on representations that such loans would be repaid with interest on agreed upon terms.

79. From 2016 until August of 2018, FGD reported the FGD Purported License Transactions as revenue in its interim financial reports for the quarters ending March 31, June 30 and September 30, 2017, and in its comparative financial statements for the year ended December 31, 2016 (the "**Financial Reports**"). Because certain of those transactions were, in fact, financial liabilities, the Financial Reports were not prepared in accordance with GAAP and contained material misstatements.

80. Following inquiries from Enforcement Staff, on August 2, 2018, FGD issued its comparative financial statements and Management Discussion and Analysis for the year ended December 31, 2017 and restated its comparative financial statements for the year ended December 31, 2016. On August 29 and November 29, 2018, FGD issued its interim financial statements and Management Discussion and Analysis for the interim periods ending March 31, June 30 and September 30, 2018, and restated its interim financial reports for the periods ending March 31, June 30 and September 30, 2017. The restatements corrected the misstatements relating to the FGD Purported License Transactions (collectively, referred to as the "**Restated Financial Reports**").

81. For the fiscal year ended December 31, 2016, the restatement resulted in a reported revenue of $3.5 million and a net loss of $3.5 million, down from a previously reported revenue of $6.2 million and a net loss of approximately $655,000. For the nine months ended September 30, 2017, the restatement resulted in reported revenue of $1.2 million, down from a previously reported revenue of $11.2 million, and a restated net loss of $8.9 million, from a previously reported net income of $150,000.

(i) Breaches of Ontario Securities Law by FGD Parties – Financial Reporting

82. Given the foregoing, FGD has filed financial reports that were not prepared in accordance with GAAP and contained material misstatements. Itwaru, as CEO, and Alli, as CFO, certified the Interim and Annual Filings that were not prepared in accordance with GAAP and were materially misstated.

83. Accordingly, FGD contravened subsections 77(1) and 78(1) and 122(1)(b) of the Act, and part 3.2(1)(a) of National Instrument 52-107 *Financial Disclosure*.

84. Itwaru and Alli, as officers and directors of FGD during the material time, authorized, permitted or acquiesced in the conduct engaged in by FGD which constituted the breaches of Ontario securities laws described above.

85. As a result, Itwaru and Alli are deemed to have not complied with Ontario securities laws pursuant to section 129.2 of the Act.

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

(a) The FGD Debentures

86. The specific allegations advanced by Enforcement Staff in respect of the FGD Debentures are:

a) During the Solicitation Period, GBR, Aziz and Bajaj engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct or negotiations, directly or indirectly, in furtherance of the sale or disposition of securities for valuable consideration without the

necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act;

b) During the Solicitation Period, FGD, Alli, Itwaru, GBR, Aziz and Bajaj participated in a distribution of securities without filing a preliminary prospectus or prospectus or an applicable exemption from the prospectus requirement, contrary to section 53 of the Act;

c) During the Solicitation Period, GBR, Aziz and Bajaj directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to paragraph 126.1(1)(b) of the Act;

d) During the Solicitation Period, FGD, GBR, Aziz and Bajaj made untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to subsection 44(2) of the Act;

e) Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law, contrary to section 129.2 of the Act;

f) Aziz and Bajaj authorized, permitted or acquiesced in GBR's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and

g) FGD's, Alli's, Itwaru's, GBR's, Aziz's and Bajaj's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

(b) The GBR Debenture

87. The specific allegations advanced by Enforcement Staff in respect of the GBR Debenture are:

a) Between May of 2015 and August of 2015, GBR and Aziz directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to paragraph 126.1(1)(b) of the Act;

b) Between May of 2015 and August of 2015, GBR and Aziz made numerous untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to subsection 44(2) of the Act;

c) Aziz authorized, permitted or acquiesced in GBR's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and

d) GBR's and Aziz's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

(c) FGD Purported License Transactions

88. The specific allegations advanced by Enforcement Staff in respect of the FGD Purported License Transactions are:

a) FGD failed to file interim financial reports for each of the quarters ending March 31, June 30 and September 30, 2017 made up and certified as required by the regulations and in accordance with GAAP, contrary to subsection 77(1) of the Act;

b) FGD failed to file the comparative financial statements for the year ended December 31, 2016 made up and certified as required by the regulations and in accordance with GAAP, contrary to subsection 78(1) of the Act;

c) FGD made statements in its interim financial reports for each of the quarters ending March 31, June 30 and September 30, 2017, and its comparative financial statements for the year ended December 31, 2016 that in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or failed to state a fact that was required or necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act;

d) FGD failed to prepare financial statements, included in a document filed by an issuer under National Instrument 51-102, in accordance with GAAP applicable to publicly accountable enterprises, contrary to part 3.2(1)(a) of National Instrument 52-107 *Financial Disclosure*;

e) Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and

f) FGD, Alli and Itwaru's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

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

DATED at Toronto, May 31, 2019.

Melissa MacKewn
Crawley MacKewn Brush LLP
Suite 800
179 John Street
Toronto, ON M5T 1X4
Tel: (416) 217-0840
E-mail: MMacKewn@CMBLaw.ca
Litigation Counsel for Staff of the Ontario Securities Commission

1.4 Notices from the Office of the Secretary

1.4.1 Mangrove Partners and TransAlta Corporation

FOR IMMEDIATE RELEASE
May 31, 2019

MANGROVE PARTNERS and
TRANSALTA CORPORATION, File No. 2019-13

TORONTO – The Commission issued its Reasons for Decision in the above noted matter.

A copy of the Reasons for Decision dated May 30, 2019 is available at www.osc.gov.on.ca/.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.2 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
May 31, 2019

FIRST GLOBAL DATA LTD., GLOBAL BIOENERGY RESOURCES INC., NAYEEM ALLI, MAURICE AZIZ, HARISH BAJAJ, AND ANDRE ITWARU, File No. 2019-22

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Sections 127 and 127.1 of the *Securities Act*.

A copy of the Notice of Hearing dated May 31, 2019 and Statement of Allegations dated May 31, 2019 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.3 Issam El-Bouji

FOR IMMEDIATE RELEASE
June 3, 2019

ISSAM EL-BOUJI, File No. 2018-28

TORONTO – The Commission issued its Reasons for Decision on Motion in the above noted matter.

A copy of the Reasons for Decision on Motion dated May 31, 2019 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.4 Alain Armand Theroux

FOR IMMEDIATE RELEASE
June 4, 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 Reasons and Decision and the Order dated June 3, 2019 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Citigroup Global Markets Inc.

Headnote

U.S. registered broker dealer exempted from dealer registration under paragraph 25(1) of the Act for provision of prime brokerage services – relief limited to trades in Canadian securities for institutional permitted clients – relief is subject to sunset clause.

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 8.5, 8.18, 8.21.

May 28, 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
CITIGROUP GLOBAL MARKETS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement under section 25(1) of the *Securities Act* (Ontario) (the **Act**) in respect of Prime Services (as defined below) relating to securities of Canadian issuers and that are provided in Canada to Institutional Permitted Clients (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (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 each of the other provinces and territories of Canada in which the Filer relies on the exemption found in section 8.18 [*International dealer*] of National Instrument 31-103 *Registration Requirements,*

Exemptions and Ongoing Registrant Obligations (**NI 31-103**) other than the province of Alberta (the **Passport Jurisdictions** and together with the **Jurisdiction**, the Jurisdictions).

Interpretation

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

For the purposes of this decision, the following terms have the following meanings:

"**Institutional Permitted Client**" means a "permitted client" as defined in section 1.1 of NI 31-103, except for: (a) an individual, (b) a person or company acting on behalf of a managed account of an individual, (c) a person or company referred to in paragraph (p) of that definition, unless that person or company qualifies as an Institutional Permitted Client under another paragraph of that definition, or (d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least $100 million as shown on its most recently prepared financial statements or qualifies as an Institutional Permitted Client under another paragraph of that definition.

U.S. means the United States of America.

Representations

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

1. The Filer is a corporation formed under the laws of the State of New York. The Filer's head office is located at 388 Greenwich Street, New York, New York, 10013, U.S. The Filer is a wholly owned indirect subsidiary of Citigroup Inc.

2. The Filer is registered as a broker-dealer with the United States Securities and Exchange Commission (**SEC**) and a member of the United States Financial Industry Regulatory Authority (**FINRA**), as well as a registered futures commission merchant (**FCM**) with the United States Commodity Futures Trading Commission (**CFTC**), and a member of the United States National Futures Association (**NFA**).

3. The Filer is a member of a number of major U.S. securities exchanges, including the New York Stock Exchange and the Nasdaq Stock Market.

4. The Filer is a full service U.S. broker-dealer that provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange sales, emerging markets activities, securities lending and derivatives dealing for government, corporate and financial institutions.

5. "Prime Services" provided by the Filer principally consist of the following: (a) settlement, clearing and custody of trades; (b) financing of long inventory; (c) securities borrowing and/or lending pursuant to a securities lending agreement or delivering securities on behalf of a client pursuant to a margin agreement, in each case, to facilitate client short sales; and (d) reporting of positions, margin and other balances and activity. For greater clarity, Prime Services do not include execution of trades in securities.

6. The Filer provides, or wishes to provide, Prime Services in the Jurisdictions to Institutional Permitted Clients (the Prime Services Clients) in respect of securities of Canadian and non-Canadian issuers.

7. In the case of a Prime Services Client that is an investment fund subject to Part 6 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), the custodianship requirements in Part 6 of NI 81-102 would only permit the Filer to provide the Prime Services to the investment fund as a sub-custodian of the investment fund in respect of portfolio assets held outside Canada, and the Filer would provide Prime Services to investment funds in compliance with the applicable securities laws, including Part 6 of NI 81-102 and the custody requirements set out in NI 31-103.

8. Prime Services Clients seek Prime Services from the Filer in order to separate the execution of a trade from the clearing, settlement, custody and financing of a trade. This allows the Prime Services Client to use many executing brokers, without maintaining an active, ongoing custody account with each executing broker. It also allows the Prime Services Client to consolidate settlement, clearing, custody and financing of securities in an account with the Filer.

9. The Filer's Prime Services Clients directly select their executing brokers. The Filer does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades. Prime Services Clients send trade orders to the executing broker who carries out the trade. The executing broker will be an

appropriately registered dealer or a person or company relying on an exemption from dealer registration that permits such executing broker to execute the trade for the Prime Services Client.

10. The Filer provides the Prime Services after the execution of the trade, but any commitment to provide financing or to lend or borrow securities in relation to a trade may be made prior to the execution of the trade. The executing broker will communicate trade details to a Prime Services Client and the Filer or the Filer's clearing agent, as applicable. A Prime Services Client will also communicate trade details to the Filer. For trades executed on a Canadian marketplace, the Filer will typically need to clear and settle the trades through a participant of the Canadian depository, clearing and settlement hub, CDS Clearing and Depository Services Inc.

11. The Filer exchanges money or securities and holds the money or securities in an account for each Prime Services Client. If the Filer is clearing and settling the trade through a clearing agent, the Filer's clearing agent exchanges money or securities and holds the money or securities in an omnibus account for the Filer, which in turn maintains a record of the position held for the Prime Services Client on its books and records.

12. On or following settlement, the Filer provides the other Prime Services as set out in paragraph 5.

13. The Filer enters into written agreements with all of its Prime Services Clients for the provision of Prime Services.

14. On September 2, 2011, in CSA Staff Notice 31-327 *Broker-Dealer Registration in the Exempt Market Dealer Category*, the Canadian Securities Administrators (**CSA**) stated that they had concerns with firms applying for registration in and with firms registered in the category of exempt market dealer (**EMD**) who were carrying on brokerage activities, including trading listed securities. In light of these regulatory concerns, firms applying for registration were instead registered in the restricted dealer category with terms and conditions. The interim restricted dealer registrations were time limited and were intended to allow applicants to engage in limited activities while the CSA reviewed the activities of firms registered in the category of EMD or restricted dealer.

15. On February 7, 2013, in CSA Staff Notice 31-333 *Follow-up to Broker-Dealer Registration in the Exempt Market Dealer Category*, the CSA stated that they would be publishing amendments to NI 31-103 that would prohibit exempt market dealers from trading in a security if the security is listed, quoted or traded on a marketplace and if the trade in the security does not require reliance on a further exemption from the prospectus requirement (the **Rule Amendments**). The CSA stated that restricted dealers conducting brokerage activities in accordance with the terms and conditions of their registration would have their registration and any related exemptive relief extended to the date the Rule Amendments came into effect.

16. The Rule Amendments came into effect on July 11, 2015. Since the implementation of the Rule Amendments, only investment dealers that are dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or firms relying on an applicable exemption from the dealer registration requirement are permitted to engage in trading in a security if the security is listed, quoted or traded on a marketplace and if the trade in the security does not require reliance on a further exemption from the prospectus requirement.

17. The Filer is relying, or will rely on, the "international dealer exemption" under section 8.18 [*International Dealer*] of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon.

18. The Filer is not registered under NI 31-103, is in the business of trading in securities, and in the absence of the Exemption Sought, cannot provide the full range of Prime Services in the Jurisdictions in respect of securities of Canadian issuers without registration, except in limited circumstances as permitted under section 8.5 [*Trades through or to a registered dealer*], under the exemptions found in paragraphs (a), (b) and (f) of subsection 8.18(2) [*International dealer*], and under section 8.21 [*Specified debt*] of NI 31-103.

19. The Filer is subject to regulatory capital requirements under the U.S. *Securities Exchange Act of 1934* (the **1934 Act**), specifically SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEC Rule 15c3-1**) and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEC Rule 17a-5**). The Filer has been approved by the SEC pursuant to SEC Rule 15c3-1 to use the alternative method of computing net capital contained in Appendix E to SEC Rule 15c3-1, and therefore files such supplemental and alternative reports as may be prescribed by the SEC. The Alternative Net Capital (**ANC**) method provides large broker-dealers meeting specified criteria, such as the Filer, with an alternative to use mathematical models such as the value at risk model to calculate capital requirements for market and derivatives related credit risk. The Filer, which uses the ANC method, must document and implement a comprehensive internal risk management system which addresses market, credit, liquidity, legal and operational risk at the firm.

20. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital when a loss is probable and the amount can be reasonably estimated. Accordingly, the Filer will, in the event that it provides a guarantee of any debt of a third party, take a deduction from net capital when both of the preceding conditions exist. The Filer does not guarantee the debt of any third party.

21. SEC Rule 15c3-1 is designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IIROC are subject, and the Filer is in compliance with SEC Rule 15c3-1 and is in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* (**SEC Rule 17a-11**). The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.

22. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 (the **FOCUS Report**), which is the financial and operational report containing a net capital calculation, and a compliance report annually with the SEC and FINRA pursuant to SEC Rule 17a-5(d). The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities, including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* (Form 31-103F1). The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filer is up-to-date in its submissions of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

23. The Filer is subject to regulations of the Board of Governors of the U.S. Federal Reserve Board (**FRB**), the SEC and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T and under applicable SEC rules and under FINRA Rule 4210. The Filer is in compliance in all material respects with applicable U.S. Margin Regulations.

24. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended (**SEC Rule 15c3-3**). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account titled "Special Reserve Account for the Exclusive Benefit of Customers" of the Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements dealer members of IIROC are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.

25. The Filer is a member of the Securities Investors Protection Corporation (**SIPC**) and, subject to the eligibility criteria of SIPC, Prime Services Clients' assets held by the Filer are insured by SIPC against loss due to insolvency.

26. The Filer is in compliance in all material respects with U.S. securities laws. The Filer is not in default of Canadian securities legislation in any jurisdiction in Canada.

27. The Filer submits that the Exemption Sought would not be prejudicial to the public interest because:

    (a) the Filer is regulated as a broker-dealer under the securities legislation of the U.S. and is subject to the requirements listed in paragraphs 19 to 25;

    (b) the availability of and access to Prime Services is important to Canadian institutional investors who are active market participants;

    (c) the proposed client base of the Filer under the Exemption Sought will be limited to Institutional Permitted Clients;

    (d) the OSC has entered into a memorandum of understanding with the SEC regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the U.S. and Canada; and

(e) the OSC has entered into a memorandum of understanding with FINRA to provide a formal basis for the exchange of regulatory information and investigative assistance.

28. The Filer is a "market participant" as defined under subsection 1(1) of the Act. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the Act, which include the requirement to keep such books, records and other documents as (a) are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and (d) as may be prescribed by the regulations for the purposes of detecting, identifying or mitigating systemic risks related to the capital markets, and to deliver such records to the OSC if required.

29. At the request of the Alberta Securities Commission, the Filer will not rely on subsection 4.7(1) of MI 11-102 to passport this decision into Alberta.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted so long as the Filer:

(a) has its head office or principal place of business in the U.S.;

(b) is registered as a broker-dealer under the securities legislation of the U.S., which permits the Filer to provide the Prime Services in the U.S.;

(c) is a member of FINRA;

(d) is a member of SIPC;

(e) is subject to requirements over regulatory capital, lending of money, extension of credit, provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;

(f) limits its provision of Prime Services in the Jurisdictions in respect of securities of Canadian issuers to Institutional Permitted Clients;

(g) does not execute trades in securities of Canadian issuers with or for Prime Services Clients, except as permitted under applicable Canadian securities laws;

(h) does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades;

(i) notifies the OSC of any regulatory action initiated after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the OSC Appendix "A" hereto within ten days of the commencement of any such action; provided that the Filer may also satisfy this condition by filing with the OSC within ten days of the date of this decision, a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to U.S. federal securities laws that is identified in the FINRA BrokerCheck system, and any updates to such disclosure that may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD "Regulatory Action Disclosure Reporting Page";

(j) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

(k) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;

(l) submits to the OSC immediately a copy of any notice filed under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;

(m) complies with the filing and fee payment requirements applicable to a registrant under OSC Rule 13-502 Fees;

(n) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time; and

(o) pays the increased compliance and case assessment costs of the principal regulator due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the principal regulator.

This decision shall expire five years after the date hereof.

This decision may be amended by the OSC from time to time upon prior written notice to the Filer.

"Garnet W. Fenn"
Vice-Chair or Commissioner
Ontario Securities Commission

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

APPENDIX A

NOTICE OF REGULATORY ACTION[1]

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

   Yes _____ No _____

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

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

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

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

   If yes, provide the following information for each action:

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

[1] Terms defined for the purposes of Form 33-109F6 *Firm Registration* to National Instrument 33-109 *Registration Information Requirements* 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 affiliates 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 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

2.1.2 Fidelity Investments Canada ULC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to open-ended mutual fund trusts for extensions of the lapse date of their prospectus – Filer will incorporate offering of the mutual funds under the same offering documents as related family of funds when they are renewed – Extension of lapse date will not affect the currency or accuracy of the information contained in the current prospectus.

Applicable Legislative Provisions

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

May 28, 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
FIDELITY INVESTMENTS CANADA ULC
(the Filer)

AND

IN THE MATTER OF
THE FUNDS LISTED
IN SCHEDULE "A" HERETO
(the August Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the August Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limit for the renewal of the simplified prospectus of the August Funds dated August 31, 2018 (the **August Funds Prospectus**) be extended to the time limit that would apply if the lapse date of the August Funds Prospectus was November 1, 2019 (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 each of the provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under the laws of Alberta and has its head office in Toronto, Ontario.

2. The Filer is registered as follows: (i) as a portfolio manager and mutual fund dealer in each of the Jurisdictions; (ii) as an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iii) as a commodity trading manager under the *Commodity Futures Act* (Ontario).

3. The Filer is the trustee and investment fund manager of the August Funds.

4. Each of the August Funds is an open-end mutual fund trust established under the laws of the Province of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

5. Neither the Filer nor any of the August Funds is in default of securities legislation in any of the Jurisdictions.

6. The August Funds currently distribute securities in the Jurisdictions under the August Funds Prospectus.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the August Funds Prospectus is August 31, 2019 (the **Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the August Funds would have to cease on the Lapse Date unless: (i) the August Funds file a *pro forma* simplified prospectus at least 30 days prior to the Lapse Date; (ii) the final prospectus is filed no later than 10 days after the Lapse Date; and (iii) a receipt for the final simplified prospectus is obtained within 20 days of the Lapse Date.

8. The Filer is the investment fund manager of certain other mutual funds as listed in Schedule B (the **Fidelity Funds**), that currently distribute their securities under a simplified prospectus with a lapse date of November 1, 2019 (the **Fidelity Funds Prospectus**).

9. The August Funds share many common operational and administrative features with the Fidelity Funds and combining them in the same simplified prospectus will allow investors to more easily compare the features of the August Funds and the Fidelity Funds.

10. It would be impractical to alter and modify all the dedicated systems, procedures and resources required to prepare the renewal simplified prospectus, annual information form and fund facts for the Fidelity Funds (the **Fidelity Funds Renewal Prospectus Documents**), and unreasonable to incur the costs and expenses associated therewith, so that the Fidelity Funds Renewal Prospectus Documents can be filed earlier with the renewal simplified prospectus, annual information form and fund facts documents of the August Funds (the **August Funds Renewal Prospectus Documents**).

11. If the Exemption Sought is not granted, it will be necessary to renew the August Funds Prospectus twice within a short period of time in order to consolidate the August Funds Prospectus with the Fidelity Funds Prospectus.

12. The Filer may make minor changes to the features of the Fidelity Funds as part of the Fidelity Funds Renewal Prospectus Documents. The ability to file the August Funds Renewal Prospectus Documents with the Fidelity Funds Renewal Prospectus Documents will ensure that the Filer can make the operational and administrative features of the August Funds and the Fidelity Funds consistent with each other.

13. There have been no material changes in the affairs of each of the August Funds since the date of the August Funds Prospectus. Accordingly, the August Funds Prospectus and current fund facts document(s) of each of the August Funds represent current information regarding the August Funds.

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

15. New investors of the August Funds will receive delivery of the most recently filed fund facts document(s) of the applicable August Fund(s). The August Funds Prospectus will still be available upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the August Funds Prospectus or the respective fund facts document(s) of each of the August Funds, and therefore will not be prejudicial to the public interest.

Decision

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

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

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

SCHEDULE A

The August Funds

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

SCHEDULE B

The Fidelity Funds

Fidelity Canadian Disciplined Equity® Fund
Fidelity Canadian Growth Company Fund
Fidelity Canadian Large Cap Fund
Fidelity Canadian Opportunities Fund
Fidelity Dividend Fund
Fidelity Greater Canada Fund
Fidelity Dividend Plus Fund
Fidelity Special Situations Fund
Fidelity True North® Fund
Fidelity American Disciplined Equity® Fund
Fidelity American Disciplined Equity® Currency Neutral Fund
Fidelity American Equity Fund
Fidelity U.S. Focused Stock Fund
Fidelity Small Cap America Fund
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Currency Neutral Fund
Fidelity U.S. Dividend Registered Fund
Fidelity U.S. All Cap Fund
Fidelity Event Driven Opportunities Fund
Fidelity AsiaStar® Fund
Fidelity China Fund
Fidelity Emerging Markets Fund
Fidelity Europe Fund
Fidelity Far East Fund
Fidelity Global Fund
Fidelity Global Disciplined Equity® Fund
Fidelity Global Disciplined Equity® Currency Neutral Fund
Fidelity Global Dividend Fund
Fidelity Global Large Cap Fund
Fidelity Global Concentrated Equity Fund
Fidelity Global Concentrated Equity Currency Neutral Fund
Fidelity Global Small Cap Fund
Fidelity International Disciplined Equity® Fund
Fidelity International Disciplined Equity® Currency Neutral Fund
Fidelity International Concentrated Equity Fund
Fidelity International Concentrated Equity Currency Neutral Fund
Fidelity Japan Fund
Fidelity Frontier Emerging Markets Fund
Fidelity NorthStar® Fund
Fidelity NorthStar® Currency Neutral Fund
Fidelity International Growth Fund
Fidelity Global Consumer Industries Fund
Fidelity Global Financial Services Fund
Fidelity Global Health Care Fund
Fidelity Global Natural Resources Fund
Fidelity Global Real Estate Fund
Fidelity Technology Innovators Fund (formerly Fidelity Global Technology Fund)
Fidelity Global Telecommunications Fund
Fidelity Canadian Asset Allocation Fund
Fidelity Canadian Balanced Fund
Fidelity Monthly Income Fund
Fidelity Income Allocation Fund
Fidelity Global Asset Allocation Fund
Fidelity Global Monthly Income Fund
Fidelity Global Monthly Income Currency Neutral Fund
Fidelity Tactical Strategies Fund
Fidelity U.S. Monthly Income Fund
Fidelity U.S. Monthly Income Currency Neutral Fund
Fidelity Tactical High Income Fund

Fidelity Tactical High Income Currency Neutral Fund
Fidelity NorthStar® Balanced Fund
Fidelity NorthStar® Balanced Currency Neutral Fund
Fidelity American Balanced Fund
Fidelity American Balanced Currency Neutral Fund
Fidelity Conservative Income Fund
Fidelity Income Portfolio
Fidelity Global Income Portfolio
Fidelity Balanced Portfolio
Fidelity Global Balanced Portfolio
Fidelity Growth Portfolio
Fidelity Global Growth Portfolio
Fidelity Balanced Managed Risk Portfolio
Fidelity Conservative Managed Risk Portfolio
Fidelity ClearPath® 2005 Portfolio
Fidelity ClearPath® 2010 Portfolio
Fidelity ClearPath® 2015 Portfolio
Fidelity ClearPath® 2020 Portfolio
Fidelity ClearPath® 2025 Portfolio
Fidelity ClearPath® 2030 Portfolio
Fidelity ClearPath® 2035 Portfolio
Fidelity ClearPath® 2040 Portfolio
Fidelity ClearPath® 2045 Portfolio
Fidelity ClearPath® 2050 Portfolio
Fidelity ClearPath® 2055 Portfolio
Fidelity ClearPath® 2060 Portfolio
Fidelity ClearPath® Income Portfolio
Fidelity Canadian Bond Fund
Fidelity Corporate Bond Fund
Fidelity Canadian Money Market Fund
Fidelity Canadian Short Term Bond Fund
Fidelity Tactical Fixed Income Fund
Fidelity American High Yield Fund
Fidelity American High Yield Currency Neutral Fund
Fidelity U.S. Money Market Fund
Fidelity Floating Rate High Income Fund
Fidelity Floating Rate High Income Currency Neutral Fund
Fidelity Multi-Sector Bond Fund
Fidelity Multi-Sector Bond Currency Neutral Fund
Fidelity Strategic Income Fund
Fidelity Strategic Income Currency Neutral Fund
Fidelity Investment Grade Total Bond Fund
Fidelity Investment Grade Total Bond Currency Neutral Fund
Fidelity Global Bond Fund
Fidelity Global Bond Currency Neutral Fund
Fidelity U.S. Dividend Private Pool
Fidelity U.S. Growth and Income Private Pool
Fidelity Conservative Income Private Pool
Fidelity Global Asset Allocation Private Pool
Fidelity Global Asset Allocation Currency Neutral Private Pool
Fidelity Premium Fixed Income Private Pool
Fidelity Premium Money Market Private Pool
Fidelity Premium Tactical Fixed Income Private Pool
Fidelity Canadian Equity Investment Trust
Fidelity Canadian Focused Equity Investment Trust
Fidelity Canadian Money Market Investment Trust
Fidelity Canadian Real Return Bond Index Investment Trust
Fidelity Canadian Short Term Fixed Income Investment Trust
Fidelity Concentrated Canadian Equity Investment Trust
Fidelity Concentrated Value Investment Trust
Fidelity Convertible Securities Investment Trust
Fidelity Dividend Investment Trust
Fidelity Emerging Markets Debt Investment Trust

Fidelity Emerging Markets Equity Investment Trust
Fidelity Emerging Markets Local Currency Debt Investment Trust
Fidelity Floating Rate High Income Investment Trust
Fidelity Founders Investment Trust
Fidelity Global Bond Currency Neutral Investment Trust
Fidelity Global Bond Investment Trust
Fidelity Global Credit Ex-U.S. Investment Trust
Fidelity Global Dividend Investment Trust
Fidelity Global Equity Investment Trust
Fidelity Global Growth and Value Investment Trust
Fidelity Global High Yield Investment Trust
Fidelity Global Innovators™ Investment Trust
Fidelity Global Intrinsic Value Investment Trust
Fidelity Global Real Estate Investment Trust
Fidelity High Income Commercial Real Estate Investment Trust
Fidelity Insights Investment Trust
Fidelity International Equity Investment Trust
Fidelity International Growth Investment Trust
Fidelity North American Equity Investment Trust
Fidelity U.S. Bond Investment Trust
Fidelity U.S. Dividend Investment Trust
Fidelity U.S. Equity Investment Trust
Fidelity U.S. Money Market Investment Trust
Fidelity U.S. Multi-Cap Investment Trust
Fidelity U.S. Small/Mid-Cap Equity Investment Trust

2.1.3 Claret Asset Management Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the investment fund self-dealing restrictions in the Securities Act (Ontario) to allow existing pooled funds to implement a multi-tier fund-of-fund structure involving investments in pooled funds under common management – Two existing pooled funds domiciled in Canada being reorganized into four-tier fund-on-fund structures, respectively, providing exposure to the investment portfolio of a Cayman Master Fund under common management domiciled in the Cayman Islands.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as amended, ss. 111(2)(b), 111(4).

April 30, 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
CLARET ASSET MANAGEMENT CORPORATION
(the "Filer")

DECISION

Background

The Ontario Securities Commission has received an application from the Filer for a decision under applicable securities legislation (the "**Legislation**") for exemptive relief from subsections 111(2)(b) and 111(4) of the *Securities Act* (Ontario), which prohibits (i) an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial securityholder; and (ii) an investment fund, its management company or its distribution company from knowingly holding an investment described in (i) (the "**Requested Relief**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) The Ontario Securities Commission is the principal regulator (the "**Principal Regulator**") for the purposes of this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in Alberta.

Interpretation

Unless expressly defined herein, terms in this decision have the respective meanings given to them in National Instrument 14-101 *Definitions* and MI 11-102.

Representations

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

Filer

1. The Filer is a corporation established under the laws of Canada with its head office in Montréal, Québec.

2. The Filer currently is registered as a portfolio manager in Alberta, British Columbia, Ontario, Prince Edward Island and Québec, an investment fund manager in Ontario and Québec, a commodity trading manager in Ontario and a derivatives portfolio manager in Québec.

3. The Filer currently is registered as an investment adviser with the United States Securities and Exchange Commission (SEC).

4. The Filer is not a reporting issuer in any jurisdiction and is not in default of securities legislation of any jurisdiction of Canada.

5. The Filer is, or will be, the portfolio manager and investment fund manager of each of the Claret "Outside the box" Fund (the "Initial Top Fund"), the Global Multi-Asset, the Canadian Feeder Fund (as defined below) and the Cayman Master Fund (together, the "Funds"). Certain directors and officers of the Filer will act as directors or officers of the general partner of the Canadian Feeder Fund and / or the Cayman Master Fund which will be set up as entities created under the laws of the Cayman Islands or the laws of other foreign jurisdictions as determined by the Filer from time to time.

6. None of the Funds currently prepares and provides an offering memorandum or other similar disclosure document to its potential investors.

7. Each of the Initial Top Fund and the Global Multi-Asset is an investment fund that is established under the laws of Ontario.

8. Each of the Canadian Feeder Fund and the Cayman Master Fund will be established under the laws of the Cayman Islands.

9. The Filer has complete discretion to invest the assets of each Fund and is responsible for executing all portfolio transactions. The Filer enters into discretionary management agreement with each of its clients ("managed account client"). The Filer, subject to compliance with applicable securities laws and pursuant to Section 8.6 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103"), may act as a distributor of securities of the Funds not otherwise sold through another registered dealer.

10. The securities of each Fund are, or will be, distributed pursuant to one or more available exemptions from the prospectus requirement of applicable securities legislation. None of the Funds is, or is expected to be, a reporting issuer in any province or territory of Canada or other jurisdiction and none are, or are expected to be, subject to National Instrument 81-102 – Investment Funds ("NI 81-102").

11. Except for the shares or classes of shares sold by the Cayman Master Fund to the Canadian Feeder Fund, which can only be purchased by the Canadian Feeder Fund, all of the other classes of shares of the Cayman Master Fund will be sold outside of Canada pursuant to available prospectus exemptions and applicable laws.

12. Subject to the terms of this Decision, the Filer, or an affiliate of the Filer, may be entitled to receive management fees and incentive allocations with respect to one or more classes of securities of the Funds.

13. On November 28, 2018, the Filer obtained a decision from the Autorité des marchés financiers, and other provincial securities regulators having jurisdictions acting as principal regulator for this purpose, permitting inter-fund trades and in-specie transactions.

14. Pursuant to subparagraph 13.5(2)(a)(ii) of NI 31-103, the written consent of each managed account client is obtained before the purchase by a Fund of a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director (as defined for the purpose of subparagraph 13.5(2)(a)(ii) of NI 31-103); and such fact is duly disclosed to the client.

Claret "Outside the box" Fund

15. The Claret "Outside the box" Fund was formed on August 1, 2014 and is governed by an amended and restated master trust agreement dated January 1, 2019, governed by the laws of the province of Ontario, made between the Filer, as trustee, and the Filer, as manager (the "Master Trust Agreement").

16. The investment objective of the Initial Top Fund is to provide long-term capital growth by using diverse investment strategies separately or concurrently arising from the Filer's ongoing research to invest in a portfolio of securities of issuers traded on global markets. The investment strategies may include, but are not limited to, traditional long/short, market-neutral, global macro or any strategy deemed appropriate by the Filer. The Initial Top Fund may invest in listed equity securities, debt securities, exchange-traded futures contracts, over the counter ("OTC") futures contracts and other OTC derivatives cleared through a recognized clearing house and, from time to time, OTC derivatives which are not cleared through a recognized clearing house. The Initial Top Fund may also invest in restricted securities of public issuers which are distributed in private transactions pursuant to prospectus exemptions and, from time to time, in securities of private issuers. The Initial Top Fund may achieve leverage through a number of ways, including cash borrowing, short selling and derivatives transactions. The aggregate gross exposure resulting from the use of leverage may vary depending on the investment strategy and type of borrowing. The Initial Top Fund may invest cash temporarily uninvested in money market instruments. The Initial Top Fund may make short sales of securities or maintain a short position in any security to attain its investment objectives.

Claret Global Multi-Asset Fund

17. The Claret Global Multi-Asset Fund ("Global Multi-Asset Fund") was formed on May 9, 2016 and is governed by the Master Trust Agreement.

18. The investment objective of the Global Multi-Asset Fund is to provide positive absolute returns by investing in a variety of mostly systematic investment strategies arising from the Filer's ongoing research. The investment strategies may include, but shall not be limited to, different time frames (Short, Medium or Long Term), styles (Trend-Following, Mean Reversion, Relative Value, Momentum, Spread Trading, etc…) and asset classes (Currencies, Fixed Income, Equities and Commodities). The Global Multi-Asset Fund may invest globally in listed equity securities, debt securities, exchange-traded products, exchange-traded futures contracts, OTC forward contracts and other OTC derivatives cleared through a recognized clearing house and, from time to time, OTC derivatives which are not cleared through a recognized clearing house. The Global Multi-Asset Fund may also invest in restricted securities of public issuers which are distributed in private transactions pursuant to prospectus exemptions and, from time to time, in securities of private issuers. Leverage is an integral part of the Global Multi-Asset Fund's investment strategy. The Global Multi-Asset Fund may achieve leverage through a number of ways, including cash borrowing, short selling and derivatives transactions. The aggregate gross exposure resulting from the use of leverage may vary depending on the investment strategy and type of borrowing and may be multiples of the Global Multi-Asset Fund's net asset value ("NAV"). The Global Multi-Asset Fund may invest cash temporarily uninvested in money market instruments. The Global Multi-Asset Fund may make short sales of securities or maintain a short position in any security to attain its investment objectives.

19. The Global Multi-Asset Fund will not, directly or indirectly, hold more than 10% of its NAV in "illiquid" assets (as defined in NI 81-102).

Cayman Master Fund and Canadian Feeder Fund

20. As part of its international expansion, the Filer intends to establish another investment fund created under the laws of the Cayman Islands as an exempted company (the "Cayman Master Fund"), with the same investment objective as the Global Multi-Asset Fund.

21. The Cayman Master Fund will not, directly or indirectly, hold more than 10% of its NAV in "illiquid" assets (as defined in NI 81-102).

22. The Filer intends to establish a limited partnership or an exempt company in the Cayman Islands that will be interposed between the Global Multi-Asset Fund and the Cayman Master Fund for tax reasons (the "Canadian Feeder Fund").

Multi-Fund Structure

23. The Filer has determined it is in the best interests of the Initial Top Fund to invest more than 20% of its NAV in units of the Global Multi-Asset Fund to achieve economies of scale by consolidating the pool of assets held by the Global Multi-Asset Fund with the similar pool of assets held by the Initial Top Fund, while maintaining the Global Multi-Asset Fund and the Initial Top Fund as separate trusts. Implementing diversification in the Initial Top Fund by investing in the Global Multi-Asset Fund will provide economies of scale, allow the Initial Top Fund to achieve its investment objective in a cost-efficient manner, and will not be detrimental to the interests of other securityholders of the Global Multi-Asset Fund.

24. In addition, the Filer believes that, in the future, there may be circumstances where the Filer determines it would be in the best interests of the Global Multi-Asset Fund to invest more than 20% of its NAV in securities of one or more of the Canadian Feeder Fund and the Cayman Master Fund for diversification and tax optimization purposes.

25. To achieve the above, the Filer proposes to cause the Initial Top Fund to adopt a multi-fund structure with two tiers at the onset, and four tiers upon the creation of the Cayman Master Fund under which the Initial Top Fund will be a substantial security holder of the Global Multi-Asset Fund, which will in turn be a substantial security holder of the Canadian Feeder Fund, which will in turn invest all or substantially all of its assets in the Cayman Master Fund.

26. The Canadian Feeder Fund will be a limited partnership flow-through vehicle or exempt company established in the Cayman Islands that will be interposed between the Global Multi-Asset Fund and the Cayman Master Fund for tax reasons. The only investor in the Canadian Feeder Fund will be the Global Multi-Asset Fund. The Canadian Feeder Fund will not be sold to other investors. The purpose of the Canadian Feeder Fund will be to preserve certain aspects of the tax treatment to Canadian investors and therefore ensure that the Canadian investors will not experience any negative impact from a Canadian tax perspective due to the proposed multi-fund structure in place.

27. The Filer expects that the increased economies of scale that may be achieved through the multi-fund structure may provide additional benefits to security holders of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund, including more favourable pricing and transaction costs on portfolio trades and increased access to investments where there is a minimum subscription or purchase amount.

28. The multi-fund structure will enable the Filer to maintain the Initial Top Fund, the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund as separate legal structures for tax and marketing reasons. The Cayman Master Fund allows the Filer to access foreign investors and offer them an investment vehicle in a form that is familiar to them.

29. The multi-fund structure will allow the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund to achieve their investment objectives in a cost-efficient manner and will not be detrimental to the interests of their security holders or of those of the Cayman Master Fund.

30. The Funds will have matching valuation dates and will be valued no less frequently than on a monthly basis.

31. Securities of the Funds will have matching redemption dates and will be redeemable no less frequently than on a monthly basis.

32. An investment by the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund, in the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund, as applicable, will be effected at an objective price. An objective price for this purpose will be the NAV per security of the applicable class or series of the applicable Fund.

33. All of the investments by the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund in securities of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund, as applicable, described above are referred to herein as Fund-on-Fund Investments. The Filer believes that Fund-on-Fund Investments provide an efficient and cost-effective manner of pursuing portfolio diversification on behalf of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund rather than through the direct purchase of securities.

The Requested Relief

34. The Funds will be related mutual funds (under applicable securities legislation) by virtue of the common management by the Filer. The amounts invested by the Initial Top Fund in the Global Multi-Asset Fund, and, in the future, by the Global Multi-Asset Fund in the Canadian Feeder Fund, and by the Canadian Feeder Fund in the Cayman Master Fund, as applicable, may exceed 20% of the outstanding voting securities of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund. As a result, each of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund, could become a substantial security holder of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund, as applicable.

35. In the absence of the Requested Relief, the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund would be precluded from purchasing and holding securities of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund, due to the investment restrictions contained in the Legislation. Specifically, the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund would be prohibited from becoming substantial security holders of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund.

36. Since the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund do not offer their securities under a simplified prospectus and are therefore not subject to NI 81-102, they are unable to rely on the exemption codified for retail fund-on-fund investments under subsection 2.5(7) of NI 81-102 and accordingly seek the Requested Relief under this decision.

37. The direct and indirect investments, as applicable, of each of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund in one or more of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund, as applicable.

Decision

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

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

(a) securities of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund are distributed in Canada solely pursuant to exemptions from the prospectus requirements in NI 45-106;

(b) the Global Multi-Asset Fund and the Canadian Feeder Fund will invest all or substantially all of their assets in the Canadian Feeder Fund and the Cayman Master Fund, respectively;

(c) the investment by the Initial Top Fund in the Global Multi-Asset Fund, and by the Global Multi-Asset Fund in the Canadian Feeder Fund, and by the Canadian Feeder Fund in the Cayman Master Fund, respectively, is or will be, as applicable, compatible with the fundamental investment objectives of the Initial Top Fund, the Global Multi-Asset Fund, and the Canadian Feeder Fund, respectively;

(d) an investment by each of the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund, in any of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund, will be effected at an objective price, calculated in accordance with section 14.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**");

(e) the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund will not purchase or hold securities of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund, as applicable, unless, at the time of the purchase of securities of the applicable Fund, none of the Global Multi-Asset Fund, the Canadian Feeder Fund, or the Cayman Master Fund holds more than 10% of its net assets in securities of other investment funds, which must be managed by a party at arm's length with the Filer and any affiliate;

(f) the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund will not invest in any of the Global Multi-Asset Fund, the Canadian Feeder Fund, or the Cayman Master Fund, unless such Fund complies with the provisions of NI 81-106 that apply to a "mutual fund in Ontario" as defined in the Act, to the extent such requirements apply to it;

(g) no management fees or incentive fees are payable by any of the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund that, to a reasonable person, would duplicate a fee payable for the same service by any of the Global Multi-Asset Fund, the Canadian Feeder Fund or the Cayman Master Fund in which each of them directly or indirectly invests its assets;

(h) no sales fees or redemption fees are payable by any of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund, in relation to its purchases or redemptions of securities of any of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund;

(i) the Filer does not cause the securities of any of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund held by the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund, as applicable, to be voted at any meeting of holders of such securities, except that the Filer may arrange for such securities to be voted by the beneficial holders of securities of the Initial Top Fund, the Global Multi-Asset Fund or the Canadian Feeder Fund, as applicable, who are not the Filer or its affiliate, or an officer, director or substantial securityholder of the Filer or its affiliate;

(j) when purchasing and/or redeeming securities of any of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund, the Filer will, as portfolio adviser of the Funds, act honestly, in good faith and in the best interests of the Funds, and will exercise the care and diligence that a reasonably prudent person would exercise in comparable circumstances;

(k) the interim and annual financial statements of each of the Initial Top Fund, the Global Multi-Asset Fund and the Canadian Feeder Fund will disclose the top 25 positions of the Cayman Master Fund, each expressed as a percentage of NAV of the Cayman Master Fund as at the end of the financial reporting period;

(l) the offering memorandum, where available, or other disclosure document of the Initial Top Fund and the Global Multi-Asset Fund, respectively, will be provided to investors in the Initial Top Fund and the Global Multi-Asset Fund, as applicable, prior to the time of investment, and will disclose:

i) that the Initial Top Fund or the Global Multi-Asset Fund, as applicable, will directly or indirectly hold a substantial investment in one or more of the Global Multi-Asset Fund, the Canadian Feeder Fund and the Cayman Master Fund;

ii) that the Filer is the investment fund manager and/or portfolio adviser of each Fund in the multi-fund structure of the Initial Top Fund and the Global Multi-Asset Fund, as applicable;

iii) the investment objective and investment strategies of each Fund in which the Initial Top Fund and the Global Multi-Asset Fund, as applicable, directly or indirectly invest their assets;

iv) the fees, expenses and any performance or special incentive distributions payable by any of the Funds in which the Initial Top Fund and the Global Multi-Asset Fund, as applicable, directly or indirectly invest their assets;

v) that investors are entitled to receive from the Filer or its affiliate, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of each Fund in which the Initial Top Fund and the Global Multi-Asset Fund, as applicable, directly or indirectly invest their assets;

vi) that investors are entitled to receive from the Filer or its affiliate, on request and free of charge, the annual and interim financial statements of each Fund in which the Initial Top Fund and the Global Multi-Asset Fund, as applicable, directly or indirectly invest their assets;

(m) each existing securityholder of the Initial Top Fund and the Global Multi-Asset Fund receives, within one month from the date of this decision, the offering memorandum or disclosure document providing the disclosure contemplated in paragraph (l); and

(n) the Filer will annually inform investors in the Initial Top Fund and the Global Multi-Asset Fund, respectively, of their right to receive from the Filer, on request and free of charge, a copy of the offering memorandum, where available, or other similar disclosure document, and the annual and interim financial statements, of each Fund in which the Initial Top Fund and the Global Multi-Asset Fund directly or indirectly invest their assets.

"M. Celia Williams"
Commissioner
Ontario Securities Commission

"Garnet W. Fenn"
Commissioner
Ontario Securities Commission

2.1.4 YTM Capital Asset Management Ltd. and YTM Capital Fixed Income Alternative Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from short selling restrictions in NI 81-102 to permit an alternative mutual fund to short sell "government securities", as defined in NI 81-102, up to 300% of NAV – relief sought in order to short securities in connection with fund's hedging strategy – features of government bonds mitigate many of the risks associated with short selling strategies – relief also granted to future alternative mutual funds managed by the Filer with similar short selling strategies.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds – ss. 2.6.1, 2.6.2, 19.1.

May 21, 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
YTM CAPITAL ASSET MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
YTM CAPITAL FIXED INCOME ALTERNATIVE FUND
(the Initial Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Initial Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Initial Fund and any alternative mutual funds established in the future for which the Filer or an affiliate of the Filer acts as investment fund manager and which employ short selling strategies similar to the Initial Fund (the **Future Funds** and together with the Initial Fund, the **Funds** or individually, a **Fund**) from the following provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) in order to permit the Fund to short sell "government securities" as that term is defined in NI 81-102, up to a maximum of 300% of a Fund's net asset value (**NAV**) (the **Exemption Sought**):

(a) subparagraph 2.6.1(1)(c)(v) of NI 81-102, which restricts the Funds from selling a security short if, at the time, the aggregate market value of the securities sold short by the Fund exceeds 50% of the Funds' NAV; and

(b) section 2.6.2 of NI 81-102, which states that the Funds may not borrow cash or sell securities short if, immediately after entering into a cash borrowing or short selling transactions, the aggregate value of cash borrowing combined with the aggregate market value of the securities sold short by the Funds would exceed 50% of the Funds' NAV.

(together, the **Short Selling Restrictions**).

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

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

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

Interpretation

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

Representations

The decision is based on the following facts represented by the Filer on behalf of itself and the Fund:

The Filer

1. The Filer is a corporation established under the laws of Canada. The Filer's head office is located in Oakville, Ontario.

2. The Filer is the investment fund manager, trustee and portfolio manager of the Initial Fund. The Filer, or an affiliate, will be the investment fund manager and portfolio manager of the Future Funds. The Filer also acts as the investment fund manager and portfolio manager of an investment fund, the YTM Capital Credit Opportunities Fund (**CCOF**), the securities of which are sold pursuant to exemptions from applicable prospectus requirements in securities legislation.

3. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, as a portfolio manager in Ontario, and as an exempt market dealer in Ontario.

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

The Funds

5. The Funds are or will be open-ended public alternative mutual funds governed by NI 81-102.

6. The Funds are or will be organized as trusts established under the laws of the Province of Ontario.

7. The Funds will distribute units in each of the Jurisdictions pursuant to a simplified prospectus, annual information form and fund facts, prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

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

9. The Initial Fund's investment objective is to seek to provide maximum risk adjusted returns over the long term and to preserve capital, by investing primarily in fixed-income securities, cash, and by entering into derivatives arrangements. It will use alternative strategies including engaging in physical short sales, cash borrowing for investment purposes, and using derivatives, in the process creating leverage. The maximum aggregate exposure created by leverage is 300% of the Fund's net asset value, unless otherwise permitted by securities legislation.

The Short Hedging Strategy

10. In order to hedge against interest rate risk in the Initial Fund and isolate levered corporate credit exposure, the Initial Fund proposes to short sell liquid government fixed income securities at the same time that the Initial Fund invests in corporate fixed income securities (the **Short Hedging Strategy**). The Short Hedging Strategy is effective because there a high degree of correlation between the movement of government and corporate fixed income securities caused by changes in interest rates, creating a hedge against losses in value of the long corporate position. This relationship is a fundamental part of the fixed-income market such that dealers quote the price of corporate bond based on the incremental yield of the corporate bond over an equivalent term government bond.

11. The Filer believes that the Short Hedging Strategy provides investors with the potential for low volatility and compelling returns. A similar strategy has proven to be highly successful with CCOF.

12. The Short Selling Restrictions would restrict the Initial Fund to short selling government fixed income securities to no more than 50% of the Fund's NAV. However, NI 81-102 would permit the Initial Fund to obtain the additional leveraged short exposure through the use of specified derivatives, up to an aggregate exposure of 300% of the Fund's NAV.

13. The Filer is of the view however, that it would be in the Initial Fund's best interest to permit it to physically short sell government securities, up to 300% of the Fund's NAV, instead of being forced to achieve that degree of leverage through either specified derivatives alone, or a combination of physical short selling and specified derivatives, for the following reasons:

    (a) While derivatives can be used to create similar investment exposure as the Short Hedging Strategy up to 300% of the Initial Fund's NAV, the use of derivatives is less effective, is more complex, and is riskier than the Short Hedging Strategy. Derivatives provide credit exposure that is less targeted than the Short Hedging Strategy with a longer duration that increases risk, often without commensurately higher returns. In addition, implementing derivatives necessitates incremental transactional steps. These steps increase both operational risk and counterparty risk, as well as cost.

    (b) The risk of covering short government securities positions in a rising market is largely mitigated by several factors: (i) the strong correlation between the government security sold short and the corporate fixed income security held long by the Initial Fund which provides a hedge against short cover risk; (ii) government securities are highly liquid and more than one issuance of government securities can be used to hedge interest rate risk; (iii) government securities have markedly lower price volatility than equity securities; (iv) unlike equity securities, government securities have an effective upper value limit; and (v) financial institutions that facilitate short selling are regulated and implement effective risk controls on short sellers.

Generally

14. The Future Funds will employ an investment strategy similar to the Short Hedging Strategy in that each will contemplate short-selling government securities concurrently with investing in long positions in corporate fixed income securities.

15. The only securities sold short by the Funds in excess of 50% of a Fund's NAV will be "government securities" as that term is defined in NI 81-102. The Funds will otherwise comply with the provisions governing short selling by an alternative mutual fund under sections 2.6.1 and 2.6.2 of NI 81-102.

16. Each Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed 300% of the Fund's NAV, in compliance with section 2.9.1 of NI 81-102 (the **Aggregate Leverage Limit**).

17. The Funds will implement the following controls when conducting a short sale:

    (a) the Fund will assume the obligation to return to the Borrowing Agent (as defined in NI 81-102) the securities borrowed to effect the short sale;

    (b) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    (c) the Filer will monitor the short positions of the Fund at least as frequently as daily;

    (d) the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and will otherwise be in accordance industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

    (e) the Fund maintains appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records; and

    (f) the Filer and the Fund keep proper books and records of short sales and all of its assets deposited with Borrowing Agents as security.

18. Each Fund's prospectus (the **Prospectus**) will contain adequate disclosure of the Fund's short selling activities, including the material terms of the Exemption Sought.

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:

1. The only securities which a Fund will sell short in an amount that exceeds 50% of the Fund's NAV will be securities that meet the definition of "government security" as that term is defined in NI 81-102.

2. Each short sale made by a Fund will otherwise comply with all of the short sale requirements applicable to alternative mutual funds in sections 2.6.1 and 2.6.2 of NI 81-102.

3. A Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed the Aggregate Leverage Limit.

4. Each short sale will be made consistent with the Fund's investment objectives and investment strategies.

5. The Fund's Prospectus will disclose that the Fund is able to short sell "government securities" (as defined in NI 81-102) in an amount up to 300% of the Fund's NAV, including the material terms of this decision.

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

2.1.5 IDM Mining Ltd.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents – relief granted.

Applicable Legislative Provisions

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

April 30, 2019

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

AND

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

AND

IN THE MATTER OF
IDM MINING LTD.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Nova Scotia; and

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

Interpretation

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

Representations

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

1. the Filer is incorporated under the *Business Corporations Act* (British Columbia) (the BCBCA);

2. the Filer's head office is located in Vancouver, British Columbia;

3. the Filer's authorized share capital consists of an unlimited number of common shares (Common Shares);

4. on March 28, 2019, all of the Common Shares were acquired by Ascot Resources Ltd. by way of a plan of arrangement under the BCBCA;

5. the Common shares were delisted from the TSX Venture Exchange on April 2, 2019;

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

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

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

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

10. the Filer is not in default of securities legislation in any jurisdiction, other than the obligation to file by April 1, 2019 its interim financial statements and related management's discussion and analysis for the interim period ended January 31, 2019 as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of interim filings as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the Filings); and

11. consequently, the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default for failure to file the Filings.

Order

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

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

John Hinze
Director, Corporate Finance
British Columbia Securities Commission

2.1.6 Pembroke Private Wealth Management Ltd. and GBC Corporate Bond Fund (previously named "The Pembroke Corporate Bond Fund")

Headnote

National Policy 11-203 – Relief granted from 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of National Instrument 81-102 Investment Funds to permit a mutual fund, that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months, to include in their sales communications performance data for the period when the fund was not a reporting issuer – relief also granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document, to permit the mutual fund to include in its fund facts for series O, the past performance data for the period when the fund was not a reporting issuer.

National Policy 11-203 – relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1, to permit a mutual fund to include in annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual financial statements that pertain to time periods when the fund was not a reporting issuer.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.6(1)(a)(i), 15.6(1)(d) and 19.1.
National Instrument 81-101 Investment Fund Prospectus Disclosure, s. 2.1.
Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.
Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-0106F1 Contents of Annual and Interim Management Report of Fund Performance and Items 3(1) and 4 of Part C of Form 81-106F1.

TRANSLATION

May 01, 2019

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

AND

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

AND

IN THE MATTER OF
PEMBROKE PRIVATE WEALTH MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
THE GBC CORPORATE BOND FUND
(previously named "The Pembroke Corporate Bond Fund")
(the Fund)

DECISION

Background

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

a) Sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of *Regulation 81-102 respecting Investment Funds*, CQLR, c. V-1.1, r. 39 (**Regulation 81-102**) to permit the Fund to include performance data in sales communications notwithstanding that

i) the performance data will relate to a period prior to the Fund offering its securities under a simplified prospectus; and

ii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months,

b) Section 2.1 of *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*, CQLR, c. V-1.1, r.38 (**Regulation 81-101**) to meet the requirements from Form 81-101F3 Contents of Fund Facts Document (**Form 81-101F3**), and

c) Items 5(2), 5(3) and 5(4) and Instructions (1) and (5) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of Regulation 81-102 to permit the Fund to include in its fund facts the past performance data of the Fund notwithstanding that:

i) such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus; and

ii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months,

d) Section 4.4 of *Regulation 81-106 respecting Investment Fund Continuous Disclosure*, CQLR, c. V-1.1, r. 42 (**Regulation 81-106**) from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance (**Form 81-106F1**); and

e) Items 3.1(7) and 4.1(1) in respect of the requirement to comply with section 15.3(2) of Regulation 81-102, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include, in its annual and interim management reports of fund performance (**MRFPs**), past performance data notwithstanding that such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus,

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

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

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

b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon by the Filer in the following jurisdictions: Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Saskatchewan and Newfoundland and Labrador (the **Notified Passport Jurisdictions**);

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*, CQLR, c. V-1.1, r. 3 and Regulation 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 Fund is an open-ended mutual fund trust created under the laws of Ontario on January 1, 2009.

2. The Filer is a corporation incorporated under the laws of Canada having its head office in Montreal, Quebec.

3. The Filer is registered under securities legislation in Quebec, Ontario and Newfoundland & Labrador as an investment fund manager and in Quebec, Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan and Newfoundland & Labrador as a dealer in the category of mutual fund dealer. The Filer is the investment fund manager, promoter and trustee of the Fund.

4. Canso Investment Counsel Ltd. (**Canso**), a registered portfolio manager in each of the Jurisdictions and the Notified Passport Jurisdictions, has been appointed as the portfolio manager of the Fund. Since the Fund commenced operations, Canso has been the portfolio manager of the Fund.

5. Units of the Fund were previously only distributed to investors in the Jurisdictions and Notified Passport Jurisdictions on a prospectus-exempt basis in accordance with *Regulation 45-106 respecting Prospectus Exemptions*, CQLR, V-1.1, r. 21.

6. In order to commence distributing its units pursuant to a simplified prospectus, the Fund filed on February 27, 2019 a preliminary simplified prospectus and annual information form, as well as fund facts. A receipt for the final simplified prospectus (the **Prospectus**) and annual information form of the Fund was issued on April 8, 2019. The Fund has become a reporting issuer in each of the Jurisdictions and the Notified Passport Jurisdictions and has become subject to the requirements of Regulation 81-102. The Fund has also become subject to the requirements of Regulation 81-106.

7. The Filer and the Fund are not in default of securities legislation in any of the Jurisdictions and the Notified Passport Jurisdictions.

8. Since the Fund commenced operations as a mutual fund, it has complied with its obligation to prepare and send audited annual and unaudited interim financial statements to all holders of its securities in accordance with Regulation 81-106.

9. Since the Fund commenced operations, it has complied with the investment restrictions and practices contained in Regulation 81-102, including not using leverage in the management of its portfolio.

10. Since the Fund commenced operations, the Fund has not paid any management fees to the Filer and such fees have been paid directly by investors in the Fund. This will still be the case now that the Fund is a reporting issuer.

11. The Fund will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:

    a) the Fund's investment objectives will not change, other than to provide additional detail as required by Regulation 81-101;

    b) the day-to-day administration of the Fund in respect of its units will not change other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which impact the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Prospectus; and

    c) the intention of the Filer is to absorb expenses of the Fund to maintain the existing management expense ratio (**MER**) of the Fund at approximately the same level of the Fund prior to becoming a reporting issuer. Any such expense absorption may be discontinued in the future, however the Filer does not expect any material increase in MER once the absorption stops.

12. The Filer proposes to present the performance data of the Fund in sales communications and fund facts for a period prior to it becoming a reporting issuer.

13. Without the Exemption Sought, the sales communications and fund facts pertaining to the Fund cannot include performance data that relates to a period prior to the Fund becoming a reporting issuer.

14. Without the Exemption Sought, sales communications pertaining to the Fund would not be permitted to include performance data until the Fund has distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months.

15. The Filer proposes to include in the fund facts for the Fund, past performance data in the chart required by items 5(2), 5(3) and 5(4) under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return" related to periods prior to the Fund becoming a reporting issuer in a jurisdiction.

16. Without the Exemption Sought, the MRFP of the Fund cannot include financial highlights and performance data that relates to a period prior to the Fund becoming a reporting issuer.

17. The past performance data and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information that can assist existing and prospective investors in making an informed decision whether to purchase units of the Fund.

Decision

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

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

a) any sales communication and any fund facts that contain performance data of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:

   i) that the Fund was not a reporting issuer during such period;

   ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

   iii) performance data of the Fund for 10, 5, 3 and one year periods;

b) the information contained under the heading “Fund Expenses Indirectly Borne by Investors” in Part B of the simplified prospectus of the Fund based on the MER for the Fund for the financial year ended December 31, 2019 be accompanied by disclosure that:

   i) the information is based on the MER of the Fund for its last completed financial year when its units were offered privately during part of such financial year;

   ii) the MER of the Fund may increase as a result of the Fund offering its units under the simplified prospectus;

c) any MRFP that includes performance data of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:

   i) that the Fund was not a reporting issuer during such period;

   ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

   iii) that the financial statements of the Fund for such period are posted on the Fund’s website and are available to investors upon request;

   iv) performance data of the Fund for 10, 5, 3 and one year periods;

d) the Filer posts the financial statements of the Fund for the past 10 years on the Fund’s website and makes those financial statements available to investors upon request.

Hugo Lacroix
Acting Superintendent Securities Markets

2.1.7 HEXO Corp. and Newstrike Brands Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for wholly-owed subsidiary (Subsidiary) of parent company (Parent) for a decision under section 13.1 of National Instrument 51-102 Continuous Disclosure Obligations(NI 51-102) exempting Subsidiary from the requirements of NI 51-102; for a decision under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109) exempting Subsidiary from the requirements of NI 52-109; for a decision under National Instrument 55-104 Insider Reporting Requirements and Exemptions (NI 55-104) exempting insiders of Subsidiary from the insider reporting requirements; for a decision under section 121(2)(a)(ii) of the Securities Act (Ontario) (Act) exempting insiders of Subsidiary from the insider reporting requirements of the Act; and for a decision under National Instrument 55-102 System for Electronic Disclosure by Insiders exempting insiders of Subsidiary from the requirement to file an insider profile; Subsidiary is a reporting issuer and has convertible securities outstanding; convertible securities entitle securityholders to acquire common shares of Parent; convertible securities do not qualify as "designated exchangeable securities" under exemption in section 13.3 of NI 51-102; and relief granted on conditions substantially similar to the conditions contained in section 13.3 of NI 51-102.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 107 and 121(2)(a)(ii).
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.3.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 55-102 System for Electronic Disclosure by Insiders, s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1.

May 31, 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
HEXO CORP. (HEXO),
NEWSTRIKE BRANDS LTD. ((NEWSTRIKE), AND
TOGETHER WITH HEXO, THE FILERS)

DECISION

Background

The securities regulatory authority in Ontario (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

- Newstrike be exempt from the continuous disclosure obligations under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Requirements**);
- Newstrike be exempt from the requirements for certification of disclosure in annual and interim filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (the **Certification Requirements**);
- the insiders of Newstrike be exempt from the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (**NI 55-102**) in respect of securities of Newstrike (the **Insider Profile Requirements**); and

- the insiders of Newstrike be exempt from the insider reporting requirements under National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and related Legislation in respect of securities of Newstrike (the **Insider Reporting 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;

(b) the Filers have 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, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and

(c) the decision is the decision of the principal regulator and evidences that decision of the securities regulatory authority or regulator in each of the other Jurisdictions.

Interpretation

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

Representations

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

Newstrike

2. Newstrike was incorporated on September 24, 2004 under the *Business Corporations Act* (Ontario) (the **OBCA**).

3. The head office of Newstrike is located at 390 Bay Street, Suite 612, Toronto, Ontario M5H 2Y2.

4. Newstrike is a reporting issuer under the securities legislation of each of the provinces of Canada, other than Quebec.

5. Newstrike is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (**SEDAR**) (**NI 13-101**).

6. The authorized share capital of Newstrike consists of an unlimited number of common shares (the **Newstrike Shares**). As of March 13, 2019, there were 557,246,090 Newstrike Shares issued and outstanding.

7. As of March 13, 2019, there were also issued and outstanding:

(i) options to purchase an aggregate of 35,073,041 Newstrike Shares (the **Newstrike Options**);

(ii) 69,701,500 warrants to purchase Newstrike Shares at an exercise price of $1.75 with an expiry date of February 16, 2020 issued pursuant to a warrant indenture (the **February 2020 Warrant Indenture**) between Newstrike and TSX Trust Company (**TSX Trust**) dated February 16, 2018 (the **February 2020 Warrants**);

(iii) 34,550,000 warrants to purchase Newstrike Shares at an exercise price of $1.00 with an expiry date of June 19, 2023 issued pursuant to a warrant indenture (the **June 2023 Warrant Indenture**) between Newstrike and TSX Trust dated June 19, 2018 (the **June 2023 Warrants**, and together with the February 2020 Warrants, the **Listed Newstrike Warrants**); and

(iv) 9,445,140 unlisted warrants to purchase an aggregate of 9,445,140 Newstrike Shares (the **Unlisted Newstrike Warrants**, and together with the Listed Newstrike Warrants, the **Newstrike Warrants**).

8. As of March 13, 2019, the Newstrike Shares were listed on the TSX Venture Exchange (TSXV) under the symbol “HIP” and the February 2020 Warrants and June 2023 Warrants were listed on the TSXV under the symbols “HIP.WT” and “HIP.WT.A”, respectively.

HEXO

9. HEXO was incorporated on October 29, 2013 under the OBCA.

10. The head office of HEXO is located at 204-290 Boulevard Saint-Joseph, Gatineau, Québec, J8Y 3W9.

11. HEXO is a reporting issuer in all jurisdictions of Canada.

12. HEXO is an electronic filer under NI 13-101.

13. The authorized share capital of HEXO consists of an unlimited number of common shares (**HEXO Shares**) and an unlimited number of Special Shares issuable in series. As of March 13, 2019, there were 210,436,205 HEXO Shares issued and outstanding.

14. As of March 13, 2019, there were also issued and outstanding:

    (i) options to purchase an aggregate of 19,222,727 HEXO Shares; and

    (ii) warrants to purchase an aggregate of 31,343,067 HEXO Shares.

15. The HEXO Shares are listed on the TSX under the symbol "HEXO".

The Plan of Arrangement

16. HEXO entered into a definitive agreement (the **Arrangement Agreement**) with Newstrike on March 13, 2019, which provided the terms and conditions under which HEXO would acquire all of the issued and outstanding Newstrike Shares.

17. The acquisition was implemented by way of a court-approved plan of arrangement under the OBCA (the **Arrangement**). Under the Arrangement, in exchange for each Newstrike Share, HEXO issued to shareholders of Newstrike (the **Newstrike Shareholders**) 0. 06332 of a HEXO Share (the **Share Consideration**), subject to the terms of the Arrangement. As a result of the Arrangement, Newstrike became a wholly-owned subsidiary of HEXO.

18. On April 15, 2019, Newstrike obtained an interim order from the Ontario Superior Court of Justice (Commercial List) (the **Court**) specifying certain requirements and procedures for a special meeting of the Newstrike Shareholders for the purpose of approving the Arrangement (**Newstrike Meeting**).

19. On May 17, 2019, Newstrike Shareholders approved the Arrangement with an affirmative vote of approximately 97.6% of the votes validly cast at the Newstrike Meeting.

20. On May 23, 2019, Newstrike received final approval of the Court for the Arrangement.

21. The Arrangement was completed on May 24, 2019.

22. Under the Arrangement, among other things, the following occurred:

    (i) HEXO acquired all of the issued and outstanding Newstrike Shares not already owned by HEXO in exchange for the payment to Newstrike Shareholders of the Share Consideration; and

    (ii) each Newstrike Option was deemed to be exchanged for an option to purchase 0.06332 of a HEXO Share (each a **Replacement HEXO Option**) in accordance with the Arrangement and each such Newstrike Option was cancelled.

23. Upon completion of the Arrangement, the Newstrike Warrants remain outstanding as warrants of Newstrike that upon exercise entitle the holder thereof to receive the Share Consideration.

24. On May 30, 2019, the TSX issued its final bulletin approving the listing of all HEXO Shares issued or to be issued as a result of the Arrangement (including those HEXO Shares to be issued upon exercise of HEXO Replacement Options and Newstrike Warrants).

25. HEXO has reserved 9,208,032 HEXO Shares for issuance upon the exercise of the outstanding HEXO Replacement Options and the Newstrike Warrants.

26. In connection with the Arrangement, Newstrike mailed to the Newstrike Shareholders a management information circular (**Circular**) containing prospectus-level disclosure of the business and affairs of each of Newstrike and HEXO and information on the Arrangement, a copy of which has been posted on SEDAR under Newstrike's profile.

27. Newstrike also mailed the Circular to holders of the Newstrike Warrants and holders of the Newstrike Options, providing them with prior notice of the Arrangement and the impact on such securities.

28. As a result of the Arrangement, the only securities of Newstrike that are listed for trading on a published market are the Listed Newstrike Warrants.

29. On May 29, 2019, the Newstrike Shares were delisted from the TSXV.

30. As required by the terms of the February 2020 Warrant Indenture and the June 2023 Warrant Indenture, HEXO and Newstrike have entered into supplemental warrant indentures with TSX Trust with respect to the Listed Newstrike Warrants. HEXO is bound by the terms and covenants thereof and upon exercise of such Listed Newstrike Warrants, holders will also be entitled to receive the Share Consideration

31. As required by the terms of the warrant indentures and any supplemental indentures and/or certificates representing, as applicable, the Unlisted Newstrike Warrants, HEXO is bound by the terms and covenants thereof and upon exercise of such Unlisted Newstrike Warrants, holders will also be entitled to receive the Share Consideration.

32. As a result of the Arrangement, the only securities of Newstrike that are held by persons other than HEXO are the outstanding Newstrike Warrants which are exercisable for, or convertible into the Share Consideration.

33. Newstrike cannot rely on the exemption available in section 13.3 of NI 51-102 for issuers of exchangeable securities because the Newstrike Warrants are not "designated exchangeable securities" as defined in NI 51-102 as none of the holders of the Newstrike Warrants will have voting rights in respect of HEXO in their capacity as warrantholders.

34. Certain of the warrant indentures governing the Newstrike Warrants include a covenant that Newstrike will use commercially reasonable efforts to maintain its status as a reporting issuer not in default of the requirements of the securities laws of the Provinces of Canada, other than Quebec, for a period of time from the date of the indenture and will make all requisite filings and otherwise take all requisite steps under the securities laws.

35. None of the warrant indentures governing the Newstrike Warrants requires Newstrike to deliver to holders of the Newstrike Warrants any continuous disclosure materials of Newstrike.

36. Each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer.

37. Newstrike has no intention of accessing the capital markets in the future by issuing any further securities to the public and has no intention of issuing any securities to the public other than those that are outstanding on completion of the Arrangement.

38. It is information relating to HEXO, and not to Newstrike, that is of primary importance to holders of the Newstrike Warrants as the Newstrike Warrants shall be exercisable for/convertible into only the Share Consideration. In addition, as Newstrike is a wholly-owned subsidiary of HEXO, HEXO will consolidate Newstrike with HEXO for the purposes of financial statement reporting. As such, the disclosure required by the Continuous Disclosure Requirements applicable to Newstrike would not be meaningful or of any significant benefit to the holders of the Newstrike Warrants and would impose a significant cost on Newstrike.

Decision

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

1. The decision of the Decision Maker under the Legislation is that the Continuous Disclosure Requirements do not apply to Newstrike provided that:

    (a) HEXO is the beneficial owner of all of the issued and outstanding voting securities of Newstrike;

    (b) HEXO is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;

    (c) Newstrike does not issue any securities, and does not have any securities outstanding, other than:

        (i) the Newstrike Warrants;

(ii) securities issued to and held by HEXO or an affiliate of HEXO;

(iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and

(iv) securities issued under exemptions from the prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus Exemptions*;

(d) Newstrike files in electronic format:

(i) if HEXO is a reporting issuer in the local jurisdiction, a notice indicating that Newstrike is relying on the continuous disclosure documents filed by HEXO and setting out where those documents can be found in electronic format; or

(ii) copies of all documents HEXO is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by HEXO of those documents with a securities regulatory authority or regulator;

(e) HEXO concurrently sends to all holders of the Newstrike Warrants all disclosure materials that would be required to be sent to holders of similar warrants of HEXO in the manner and at the time required by securities legislation;

(f) HEXO immediately issues in Canada and files any news release that discloses a material change in its affairs; and

(g) Newstrike immediately issues in Canada a news release and files a material change report in accordance with the Part 7 of NI 51-102 for all material changes in respect of the affairs of Newstrike that are not also material changes in the affairs of HEXO.

2. The further decision of the Decision Maker under the Legislation is that the Certification Requirements do not apply to Newstrike provided that:

(a) Newstrike is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);

(b) Newstrike files in electronic format under its SEDAR profile either: (i) copies of HEXO's annual certificates and interim certificates at the same time as HEXO is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on HEXO's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) Newstrike is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Newstrike and HEXO are in compliance with the conditions set out in paragraph 1 above.

3. The further decision of the Decision Maker under the Legislation is that the Insider Profile Requirements and Insider Reporting Requirements do not apply to any insider of Newstrike in respect of securities of Newstrike provided that:

(a) if the insider is not HEXO;

(i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning HEXO before the material facts or material changes are generally disclosed; and

(ii) the insider is not an insider of HEXO in any capacity other than by virtue of being an insider of Newstrike;

(b) HEXO is the beneficial owner of all of the issued and outstanding voting securities of Newstrike;

(c) if the insider is HEXO, the insider does not beneficially own any Newstrike Warrants other than securities acquired through the exercise of the Newstrike Warrants and not subsequently traded by the insider;

(d) HEXO is a reporting issuer in a designated Canadian jurisdiction;

(e) Newstrike has not issued any securities and does not have any securities outstanding, other than:

(i) the Newstrike Warrants;

(ii) securities issued to and held by HEXO or an affiliate of HEXO;

(iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions;

(iv) securities issued under exemptions from the prospectus requirement in Section 2.35 of NI 45-106; and

(f) Newstrike is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Newstrike and HEXO are in compliance with the conditions set out in paragraph 1 above.

As to the Exemption Sought (other than from the statutory Insider Reporting Requirements):

"Winnie Sanjoto"
Manager, Corporate Finance

As to the Exemption Sought from the statutory Insider Reporting Requirements:

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Cecilia Williams"
Commissioner
Ontario Securities Commission

2.1.8 SEB S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – 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 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.

Applicable Legislative Provisions

National Instrument 45-106 Prospectus Exemptions.
National Instrument 45-102 Resale of Securities.
Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53 and 74(1).

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
SEB S.A.
(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 (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 Classic Units**) of a temporary *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors, named "SEB RELAIS 2019" (the **2019 Classic Fund**); and

      (ii) units (together with the 2019 Classic Units, the **Temporary Classic Units**, and together with the 2019 Classic Units and the Principal Classic Units (as defined below), the **Units**) of future temporary FCPEs organized in the same manner as the 2019 Classic Fund (together with the 2019 Classic Fund, the **Temporary Classic Funds**),

   made pursuant to an Employee Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdiction and in the province of British Columbia (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Temporary Classic Units, the **Canadian Participants**);

   (b) trades of ordinary shares of the Filer (the **Shares**) by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants (the term "**Classic Fund**" used herein means,

prior to the Merger (as defined below), a Temporary Classic Fund and following the Merger, the permanent FCPE named "SEB INTERNATIONAL" (the **Principal Classic Fund**); and

2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Offering Relief**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Classic Fund and Natixis Investment Managers International (the **Management Company**) in respect of:

   (a) trades in Units made pursuant to an Employee Offering to or with Canadian Employees; and

   (b) trades in Shares by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants.

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.

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.

"Related entity" has the same meaning given to such term in section 2.22 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

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 Legislation or the securities legislation of any other jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris.

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 of the Filer 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 **SEB Group**). Each of the Local Related Entities 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 Legislation or the securities legislation of any other jurisdiction of Canada. The principal office of the SEB Group in Canada is located in Ontario, and the greatest number of employees of Local Related Entities is employed in Ontario as compared to any other jurisdiction in Canada.

3. As of the date hereof, "Local Related Entities" only includes Groupe SEB Canada Inc. 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, 11, 22 and 28 which may change (save for references to the 2019 Classic Fund and the 2019 Employee Offering which will be varied such that they are read as references to the relevant Temporary Classic Fund 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 National Instrument 45-102 *Resale of Securities* (**NI 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 acquired through a Temporary Classic Fund, which will be merged with the Principal Classic Fund following completion of the Employee Offering (the **Classic Plan**), subject to the decision of the supervisory boards of the FCPEs and the approval of the French AMF (as defined below).

7. Only persons who are employees of an entity forming part of the SEB 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 Classic Fund was established for the purpose of implementing the 2019 Employee Offering. The Principal Classic Fund was established for the purpose of implementing the Employee Offering generally. There is no current intention for any of the 2019 Classic Fund or the Principal Classic Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any Temporary Classic Fund 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 Classic Fund and the Principal Classic Fund are registered with the French *Autorité des marchés financiers* (the **French AMF**). It is expected that each Temporary Classic Fund established for Subsequent Employee Offerings will be a French FCPE and registered with, and approved by, the French AMF.

10. Under the Classic Plan, each Employee Offering will be made as follows:

    (a) Canadian Participants will subscribe for the relevant Temporary Classic Units, and the relevant Temporary Classic Fund will then subscribe for Shares on behalf of Canadian Participants at a subscription price that is 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**) by the chief executive officer of the Filer, less a specified discount to the Reference Price.

    (b) Canadian Participants will make a contribution to the Classic Plan (the **Employee Contribution**), and the Local Related Entities that employ the Canadian Participants will also contribute on behalf of such Canadian Participants an amount into the Classic Plan (the **Employer Contributions**). The Temporary Classic Fund will apply the cash received from the Employee Contributions and the Employer Contributions to subscribe for Shares from the Filer.

    (c) Initially, the Shares subscribed for will be held in the relevant Temporary Classic Fund and the Canadian Participants will receive Units of the relevant Temporary Classic Fund.

    (d) After completion of an Employee Offering, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the approval of the supervisory board of the FCPEs and the French AMF). The Temporary Classic Units held by Canadian Participants will be replaced with units of the Principal Classic Fund (the **Principal Classic Units**) on a pro rata basis and the Shares will be held in the Principal Classic Fund (such transaction being referred to as the **Merger**). The Filer is relying on the exemption from the prospectus requirement pursuant to section 2.11 of NI 45-106 in respect of the issuance of Units of the Principal Classic Fund to Canadian Participants in connection with the Merger.

    (e) The Units will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions provided for under French law (such as a release on death or termination of employment).

    (f) Canadian Participants may select one of the two following options for treatment of dividends paid to the Classic Fund in respect of Shares represented by their Units: (a) for dividends to be used to purchase additional Shares, in which case new Units (or fractions thereof) of the Classic Fund will be issued to such Canadian Participants, or (b) for dividends to be paid out to such Canadian Participants.

    (g) At the end of the relevant Lock-Up Period, a Canadian Participant may (i) request the redemption of Units in the Classic Fund in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (ii) continue to hold Units in the Classic Fund and request the redemption of those Units at a later date in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

    (h) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of Units in the Classic Fund in consideration for a cash payment equal to the then market value of the underlying Shares.

    (i) As indicated in paragraph 10(b) above, the Local Related Entity employing a Canadian Participant will also contribute on behalf of such Canadian Participant an amount into the Classic Plan based on predetermined matching contribution rules.

11. For the 2019 Employee Offering, for each subscription of Shares that a Canadian Participant makes into the Classic Plan, the Local Related Entity employing such Canadian Participant will contribute 25% of the reference price (**Matching Share**) into the Classic Plan, for the benefit of, and at no cost to, such Canadian Participant, up to a maximum of 10 Matching Shares. For clarity, the maximum number of Matching Shares SEB Group can contribute in respect of a Canadian Participant is 3 additional Shares. For each Subsequent Employee Offering, the matching contribution rules may change.

12. The subscription price for an Employee Offering will not be known to Canadian Employees until after the end of the applicable subscription 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 Classic Plan and thereby not participate in the relevant Employee Offering.

13. Under French law, an FCPE is a limited liability entity. The portfolio of the Classic Fund will consist almost entirely of Shares and may also include cash in respect of dividends paid on the Shares which may be reinvested in Shares as discussed above and cash or cash equivalents pending investments in the Shares and for the purposes of Unit redemptions.

14. 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. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of any other jurisdiction of Canada.

15. Only Qualifying Employees will be allowed to hold Units issued pursuant to an Employee Offering.

16. The Management Company's portfolio management activities in connection with an Employee Offering and the Classic Fund are limited to purchasing Shares from the Filer, selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

17. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Classic Fund. The Management Company's activities do not affect the underlying value of the Shares.

18. None of the Filer or its Local Related Entities or the Management Company or any of their employees, directors, officers, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or Units.

19. Shares issued pursuant to an Employee Offering will be deposited in the Classic Fund through CACEIS BANK (the **Depositary**), a large French commercial bank subject to French banking legislation. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Classic Fund to exercise the rights relating to the securities held in its portfolio.

20. The Management Company and the Depositary are obliged to act exclusively in the best interests of the unitholders (including Canadian Participants) and are jointly and severally liable to them for any violation of the rules and regulations governing FCPEs, any violation of the rules of the FCPE, or for any self-dealing or negligence.

21. Participation in an Employee Offering is voluntary, and the Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

22. The total amount invested by a Canadian Employee pursuant to an Employee Offering cannot exceed 25% of his or her gross annual compensation for 2018. The Employer Contribution will not be factored into the maximum amount that a Canadian Employee may contribute.

23. For the 2019 Employee Offering, annual compensation includes the employee's gross base salary, bonus and/or overtime paid between January 1, 2018 and December 31, 2018.

24. The Shares and the Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or the Units so listed. As there is no market for Shares in Canada, and 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, a foreign stock exchange outside of Canada.

25. Neither the Filer nor its Local Related Entities are in default of securities legislation of any jurisdiction of Canada. The Management Company is not currently in default of securities legislation of any jurisdiction of Canada.

26. The Unit value of the Principal Classic Fund will be calculated and reported to the French AMF on a regular basis.

27. All management charges relating to the Principal Classic Fund will be paid from the assets of the Principal Classic Fund or by the Filer, as provided in the regulations of the Principal Classic Fund.

28. Canadian Employees will receive an information package which will include a summary of the terms of the relevant Employee Offering and a description of Canadian income tax consequences of subscribing for and holding the Units of the Principal Classic Fund and the redemption of such Units at the end of the applicable Lock-Up Period. Canadian Employees will have access to or may request a copy of the Filer's French *Document de Reference* filed with the French AMF in respect of the Shares and a copy of the rules of the relevant Temporary Classic Fund and the Principal Classic Fund. Canadian Employees will also have access to the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement, at least once per year.

29. For the 2019 Employee Offering, there are approximately 62 Canadian Employees resident in Canada, with the greatest number resident in Ontario (61), and the remainder in British Columbia, who represent, in the aggregate, less than 0.2% of the number of employees in the SEB Group worldwide.

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 Offering Relief is granted provided that:

(a) for 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:

  (i) the issuer of the security was a foreign issuer on the distribution date, as such term is defined in section 2.15(1) of NI 45-102 and section 2.8(1) of OSC Rule 72-503 *Distributions Outside Canada*;

  (ii) the issuer of the security

    (A) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or

    (B) is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and

  (iii) the first trade is made:

    (A) through an exchange, or a market, outside of Canada, or

    (B) to a person or company outside of Canada;

(b) for any Subsequent Employee Offering under this decision completed within five years from the date of this decision, provided that the following conditions are met:

  (i) the representations other than those in paragraphs 3, 11, 22 and 28 remain true and correct in respect of that Subsequent Employee Offering, and

  (ii) the conditions set out in paragraph (a) apply, with the necessary adaptations, to any such Subsequent Employee Offering; and

(c) in 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.

Dated this 31st day of May, 2019

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Cecilia Williams"
Commissioner
Ontario Securities Commission

2.1.9 Next Edge Capital Corp. and Next Edge AHL Fund

Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – Relief granted to permit the Fund from subsections 2.1(1), 2.2(1) and paragraphs 2.5(2)(a) and (b) of National Instrument 81-102 Mutual Funds to gain exposure to, and purchase and hold, another investment fund subject to certain conditions. The bottom fund will comply with NI 81-102, except as permitted by Former NI 81-104 and in accordance with the Requested Relief obtained by the Fund. The relief permits the Fund to continue its existing strategy while not permitting it to rely on the new cash borrowing and short selling provisions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1), 2.5(2)(a), 2.5(2)(c), 9.3 and 19.1.

May 29, 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
NEXT EDGE CAPITAL CORP.
(the Filer)

AND

IN THE MATTER OF
NEXT EDGE AHL FUND
(the Top Fund)

DECISION

Background

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

(i) to revoke and replace the Previous Decision (as defined below); and

(ii) to grant exemptive relief pursuant to Part 19 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), from subsection 2.1(1.1), 2.2(1) and 2.5(2)(a.1) of NI 81-102 to permit the Top Fund to purchase and hold securities of Man AHL DP Limited (the Bottom Fund), which has adopted the investment restrictions contained in NI 81-102 and is managed in accordance with these restrictions, except as was otherwise permitted by National Instrument 81-104 *Commodity Pools* (**Former NI 81-104**) prior to the implementation of the Alternative Mutual Fund Amendments (as defined below), and in accordance with any exemptions therefrom obtained by the Top Fund,

(collectively, the **Requested Relief**)

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

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

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

Interpretation

Terms defined in NI 81-102, National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is the trustee and investment fund manager of the Top Fund.

2. The Filer is registered as an Investment Fund Manager in Ontario, Québec and Newfoundland and Labrador, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

3. The Filer's head office is located in Toronto, Ontario.

4. None of the Filer, the Top Fund or the Bottom Fund is in default of any securities legislation in any of the Jurisdictions.

The Top Fund and the Previous Decision

5. The Top Fund is a mutual fund to which NI 81-102 applies. Prior to the implementation of the Alternative Mutual Fund Amendments, the Top Fund was a commodity pool as such term is defined in Former NI 81-104, in that the Top Fund adopted fundamental investment objectives that permit the Top Fund to gain exposure to or use or invest in specified derivatives in a manner that is not permitted under NI 81-102.

6. Following the implementation of the Alternative Mutual Fund Amendments, the Top Fund is an alternative mutual fund as such term is defined in NI 81-102, in that the Top Fund adopted fundamental investment objectives that permit it to invest in specified derivatives in a manner not permitted for other mutual funds under NI 81-102.

7. The Top Fund is a reporting issuer in each of the Jurisdictions and units of the Top Fund (the **Units**) are currently qualified for distribution in each of the Jurisdictions under the current prospectus of the Top Fund dated November 2, 2018 (the **Current Prospectus**).

8. The Top Fund's investment objective is to provide holders of Units (the **Unitholders**) with the opportunity to realize capital appreciation through investment returns that have a low correlation to traditional forms of stock and bond securities. The Top Fund is intended to provide added diversification and enhance the risk/reward profile of conventional investment portfolios.

9. The Top Fund obtains exposure to the returns of a diversified portfolio of financial instruments across a range of global markets including, without limitation, stocks, bonds, currencies, short-term interest rates, energy, metals and agricultural commodities (the **Underlying Assets**) managed by AHL Partners LLP (the **Investment Manager**) using a predominantly trend-following trading program (the **AHL Diversified Programme**). The AHL Diversified Programme is implemented and managed by AHL, a division of the Investment Manager.

10. The Bottom Fund will acquire and maintain the Underlying Assets. The return to the Top Fund will be based on the performance of the Bottom Fund, which, in turn, will be based on the performance of the Underlying Assets.

11. The Top Fund does not intend to list the Units on any stock exchange.

12. The Filer obtained a previous decision dated November 22, 2013 (the **Previous Decision**) exempting the Top Fund from subsections 2.1(1), 2.2(1) and 2.5(2)(a) and (c) of NI 81-102 to permit the Top Fund to purchase and hold securities of Man AHL DP Limited (the **Bottom Fund**), an exempted company with limited liability incorporated in the Cayman Islands, acquires and maintains the Underlying Assets.

13. The Top Fund obtains exposure to the Underlying Assets by purchasing and holding securities of Bottom Fund, which has adopted the investment restrictions contained in NI 81-102 and is managed in accordance with these restrictions, except as otherwise permitted by Former NI 81-104. The return to the Top Fund is based on the performance of the Bottom Fund, which, in turn, is based on the performance of the Underlying Assets.

14. Prior to the alternative mutual fund amendments (the "**Alternative Mutual Fund Amendments**") published with the *CSA Notice of Amendments – Modernization of Investment Fund Product Regulation – Alternative Mutual Funds (2018)*, 41 OSCB #40 (Supp-2) dated October 4, 2018, Former NI 81-104 did not contain an aggregate exposure limit on leverage obtained through specified derivatives transactions for commodity pools. The Alternative Mutual Fund Amendments moved most of the regulatory framework currently applicable to commodity pools under Former NI 81-104 into NI 81-102 and rename these funds as "alternative mutual funds".

15. The aggregate exposure limits announced in the Alternative Mutual Fund Amendments prevents alternative mutual funds and non-redeemable investment funds under NI 81-102, including the Top Fund, from obtaining aggregate exposure to cash borrowing, short selling and specified derivatives transactions in excess of 300% of the fund's net asset value after the Alternative Mutual Fund Amendments are proclaimed in force.

16. The new restrictions on aggregate exposure have a significant impact on the Top Fund that has operated in accordance with applicable regulatory requirements without limitations on the Bottom Fund's aggregate exposure through specified derivatives in their investment strategies prior to the implementation of the Alternative Mutual Fund Amendments.

17. For non-redeemable investment funds, the transition provisions under NI 81-102 allow for grandfathering of existing funds that may be unduly impacted by the changes, provided the non-redeemable investment fund was established before October 4, 2018, unless the fund has filed a prospectus for which a receipt was issued after that date.

18. Unlike for non-redeemable investment funds, NI 81-102 does not contain transition provisions that would allow for grandfathering of former commodity pools under the Alternative Mutual Fund Amendments.

19. The Requested Relief is required to permit the Top Fund to continue to purchase and hold securities of the Bottom Fund in order to obtain exposure to the Underlying Assets managed in accordance with the AHL Diversified Programme. The Top Fund will obtain exposure to the Underlying Assets managed in accordance with the AHL Diversified Programme in substantially the same manner as it did prior to the implementation of the Alternative Mutual Fund Amendments.

The Bottom Fund and the Underlying Assets

20. The Bottom Fund is an exempted company with limited liability incorporated in the Cayman Islands on September 5, 2013 that acquires and maintains the Underlying Assets.

21. Man Fund Management (Guernsey) Limited (the **AHL DP Manager**) is the manager and services manager of the Bottom Fund. The Underlying Assets are actively managed by the Investment Manager. The Investment Manager is authorized and regulated in the United Kingdom by the Financial Conduct Authority and is a member of Man Group plc (**Man Group**).

22. In managing the Underlying Assets, the Investment Manager employs the AHL Diversified Programme. The Bottom Fund has adopted and is subject to the investment restrictions contained in NI 81-102. The Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by Former NI 81-104 and subject to receipt of any exemptions therefrom obtained by the Bottom Fund or the Top Fund.

23. The Bottom Fund is a reporting issuer under the *Securities Act* (Ontario) and the *Securities Act* (Québec) and subject to the continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). The financial statements and other reports required to be filed by the Bottom Fund are available through SEDAR.

24. The Bottom Fund is a mutual fund because holders of its securities are entitled to receive, on demand, an amount computed by reference to the NAV of the Bottom Fund. However, the Bottom Fund will not distribute any securities under its non-offering prospectus. Accordingly, the Bottom Fund will be a mutual fund to which NI 81-106 applies, but will not be subject to the requirements of either NI 81-102 or Former NI 81-104.

25. Though not subject to NI 81-102, the Bottom Fund has adopted fundamental investment objectives that permit it to invest in physical commodities or specified derivatives in a manner permitted under NI 81-102, subject to receipt of any exemptions therefrom obtained by the Bottom Fund or the Top Fund including pursuant to the Requested Relief.

26. The Bottom Fund has adopted the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by Former NI 81-104, and in accordance with any exemptions therefrom obtained by the Bottom Fund or the Top Fund.

27. The Investment Manager monitors the Bottom Fund's compliance with its investment restrictions for the Underlying Assets.

28. The investment by the Top Fund in securities of the Bottom Fund will comply with the requirements of NI 81-102, except as was otherwise permitted by Former NI 81-104.

29. As of the date that the Requested Relief is granted, the Filer will no longer rely on the Previous Decision.

Requested Relief

30. The investment objectives and strategies of the Top Fund and the Bottom Fund permit each of the Top Fund and the Bottom Fund to have aggregate exposure to specified derivatives transactions subject to the investment restrictions contained in NI 81-102, except as otherwise permitted by Former NI 81-104 and subject to receipt of any exemptions therefrom obtained by the Bottom Fund or the Top Fund.

31. The granting of the Requested Relief will not expose the Top Fund or its Unitholders to additional risks as the Top Fund will continue to have the same investment exposure as it did prior to the implementation of the Alternative Mutual Fund Amendments and the Top Fund will not engage in any new borrowing or short selling of securities.

32. The investment by the Top Fund in securities of the Bottom Fund represents the business judgement of responsible persons uninfluenced by considerations other than the best interest of the Top Fund and the Unitholders, respectively.

Decision

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

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

1. the Top Fund is an alternative mutual fund subject to NI 81-102 that filed a long form prospectus as a commodity pool under Former NI 81-104 prior to the Alternative Mutual Fund Amendments;

2. the Bottom Fund is an investment fund that complies with the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by Former NI 81-104 and in accordance with any exemptions therefrom obtained by the Top Fund, and the Top Fund will not engage in any new borrowing or short selling of securities;

3. the Bottom Fund is a reporting issuer subject to National Instrument 81-106 *Investment Fund Continuous Disclosure*;

4. no securities of the Bottom Fund are distributed in Canada other than to the Top Fund;

5. the investment by the Top Fund in securities of the Bottom Fund is made in compliance with each provision of NI 81-102, except subsection 2.1(1.1), 2.2(1) and 2.5(2)(a.1) of NI 81-102;

6. the specified derivatives transactions entered into by the Top Fund and the Bottom Fund will be consistent with the fundamental investment objectives and investment strategies of the Top Fund;

7. the Top Fund's simplified prospectus, annual information form and fund facts documents will contain adequate disclosure to ensure that unitholders of the Funds are fully aware of the specified derivatives transactions entered into by the Top Fund and the Bottom Fund and the risks associated therewith; and

8. this decision shall expire upon the change in the fundamental investment objectives and investment strategies of the Top Fund or the Bottom Fund.

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

2.2 Orders

2.2.1 Josephine Mining Corp. – s. 144

Headnote

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

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
JOSEPHINE MINING CORP.

ORDER
(Section 144 of the Act)

WHEREAS the securities of Josephine Mining Corp. (the **Applicant**) are currently subject to a cease trade order made by the Director of the Ontario Securities Commission (the **Commission**) dated May 26, 2015 pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further cease trade order made by the Director on June 8, 2015 pursuant to paragraph 2 of subsection 127(1) of the Act (collectively, the **Ontario Cease Trade Order**) directing that all trading in the securities of the Applicant, whether direct or indirect, cease until the Ontario Cease Trade Order is revoked by the Director;

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated on June 4, 2007 in British Columbia under the *Business Corporations Act* (British Columbia).

2. The Applicant's registered and records office is located at PO Box 49290, 1000 – 595 Burrard Street, Vancouver, BC, V7X 1S8 and its head office is located at 4127 S. Stonington Lane, Spokane, WA, 99223.

3. The Applicant is a junior exploration company focused on mineral properties but has had no mining exploration activities since 2014.

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

5. The Applicant's authorized share capital consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preferred shares. As of the date hereof, there are 25,551,010 Common Shares issued and outstanding.

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

7. The Common Shares under the trading symbol "JMC", were transferred to the NEX board of the TSX Venture Exchange on August 21, 2015, and ultimately delisted from trading on March 23, 2016. Other than the foregoing, the

Common Shares have not been listed on any other stock exchange. The Common Shares are not currently listed on any other stock exchange or market in Canada or elsewhere.

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

9. The Applicant is also subject to a cease trade order of the BCSC issued on May 8, 2015 (the **BC Cease Trade Order**) and a cease trade order of the Alberta Securities Commission (the **ASC**) issued on August 7, 2015 (the **Alberta Cease Trade Order**, collectively with the Ontario Cease Trade Order and the BC Cease Trade Order, the **Cease Trade Orders**).

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

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

    (i) all audited annual financial statements, accompanying MD&A and related NI 52-109 certificates for the financial years ended December 31, 2015 to December 31, 2016;

    (ii) all unaudited interim financial statements, accompanying MD&A and related NI 52-109 certificates for the interim periods ended March 31, 2016 through September 30, 2017; and

    (iii) the statements of executive compensation for the financial years ended December 31, 2015 to December 31, 2016.

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

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

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

13. The Applicant has not filed:

    (i) audited annual financial statements, accompanying MD&A and related NI 52-109 certificates for the financial years ended December 31, 2014 through December 31, 2016;

    (ii) unaudited interim financial statements, accompanying MD&A and related NI 52-109 certificates for the interim periods ended March 31, 2016 through September 30, 2018; and

    (iii) the statements of executive compensation for the financial years ended December 31, 2014 through December 31, 2016,

    (collectively, the **Outstanding Filings**) and has requested the Commission to exercise its discretion in accordance with sections 6 and 7 of National Policy 12-202 *Revocation of Certain Cease Trade Orders* and elect not to require the Applicant to file the Outstanding Filings.

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

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

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

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

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

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

20. Other than the Cease Trade Orders, the Applicant has not previously been subject to a cease trade order issued by any securities regulatory authority.

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

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

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

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

DATED at Toronto, Ontario on this 27th day of May 2019.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 Katanga Mining Limited – s. 144(1)

Headnote

Section 144 of the Securities Act (Ontario) – Revocation of management cease trade order – Issuer is up-to-date with its current continuous disclosure filing obligations under Ontario securities law, other than with respect to certain historical annual and interim financial statements and management's discussion and analysis that the Issuer has not refiled – Issuer has refiled, among other things, audited annual financial statements for each of the last four years and management's discussion and analysis for each of the last three years – Impracticable to refile historical filings and such filings would be of limited or no use to investors.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
CERTAIN DIRECTORS AND OFFICERS OF
KATANGA MINING LIMITED

ORDER
(Subsection 144(1))

WHEREAS on August 15, 2017, a Director (the "**Director**") of the Ontario Securities Commission (the "**Commission**") made an order under paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act* (Ontario) (the "**Act**") and subsection 127(4.1) of the Act that the persons and companies listed in Schedule A (the "**Respondents**") cease trading in, and acquisitions of, whether direct or indirect, the securities of Katanga Mining Limited (the "**Corporatio**n") until two full business days following the receipt by the Commission of all filings that the Corporation is required to make under Ontario securities law, or further order of the Director (the "**Katanga MCTO**");

AND WHEREAS the Director made the Katanga MCTO upon hearing evidence that: (a) the Corporation had announced the need to restate its consolidated financial statements for the years ended December 31, 2016, 2015 and 2014 and related management discussion and analysis ("**MD&A**") and all interim consolidated financial statements and interim MD&A since December 31, 2014 and had not done so as of the date of the Katanga MCTO; (b) the Corporation had failed to file its interim financial statements for the six-month period ended June 30, 2017 and related MD&A by the required filing date under Ontario securities law; and (c) each of the Respondents had, or may have had, access to material information with respect to the Corporation that had not been generally disclosed;

AND WHEREAS the Corporation has applied to the Commission for a revocation of the Katanga MCTO pursuant to subsection 144(1) of the Act;

AND UPON the Corporation having represented to the Commission that:

1. The Corporation is a corporation existing under the *Business Corporations Act* (Yukon), with a registered office located at Suite 300, 204 Black Street, Whitehorse, Yukon Y1A 2M9 and a head office located at Obmoos 4, Zug, CH-6301, Switzerland.

2. The Corporation is a reporting issuer or equivalent in each of the provinces and territories of Canada, and its common shares are listed on the Toronto Stock Exchange and trade under the symbol "KAT".

3. The Corporation has restated its consolidated annual financial statements for the years ended December 31, 2016 and 2015, and for the quarterly periods ending March 31, 2017 and 2016 (the "**Restatement**").

4. The Restatement resulted in a delay in filing the Corporation's restated consolidated financial statements for the year ended December 31, 2016 and restated financial statements for the period ending March 31, 2017, and for the quarterly periods ending June 30, 2017 and September 30, 2017 and related filings (collectively, the "**Delayed Filings**") by the required filing dates under Ontario securities law.

5. On November 20, 2017, the Corporation completed the filing of its Delayed Filings and is up-to-date with its current continuous disclosure filing obligations under Ontario securities law, other than with respect to the Prior Unamended Filings (as defined below).

6. On December 18, 2018, the Commission approved a global settlement agreement between Staff of the Commission and the Corporation and certain of its former directors and officers relating to an investigation by Staff into certain of the Corporation's historical disclosures.

7. The Corporation has not re-filed: (a) annual audited financial statements for the years prior to 2015; (b) MD&A for the years prior to 2016; and (c) interim financial statements and MD&A for interim periods prior to 2017 (collectively, the "Prior Unamended Filings").

8. The Corporation believes that it will be impracticable to amend the Prior Unamended Filings to rectify deficiencies therein due or related to the Restatement, due to, among other factors, identified material weaknesses in the Corporation's internal controls over financial reporting, turnover in its finance personnel, changes in accounting systems, documentation weaknesses, and the passage of time generally.

9. The Corporation believes that, if the Prior Unamended Filings were amended, the information that would be contained therein would in large part repeat the disclosure contained in the Delayed Filings and would be of limited or no use to investors, and that the Delayed Filings and all financial statements, MD&A and related materials filed since the Delayed Filings include all financial and other information needed for current investor understanding of the Corporation.

10. Although the Corporation has not amended the Prior Unamended Filings, the Corporation's annual financial statements for the years ended December 31, 2016 and 2015, include certain restated comparative consolidated financial information for each of the eight most recently completed quarters ended on, and prior to, December 31, 2016. In addition, the Corporation's consolidated financial statements for each of the quarters ended March 31, 2017, June 30, 2017 and September 30, 2017 include comparative restated financial results for each of the corresponding quarterly periods in 2016.

11. Given that the Corporation has not amended its Prior Unamended Filings, the Katanga MCTO does not expire pursuant to its terms.

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Katanga MCTO;

IT IS ORDERED, pursuant to subsection 144(1) of the Act, that the Katanga MCTO be and is hereby revoked.

DATED at Toronto, Ontario this 27th day of May, 2019.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

SCHEDULE A

Gabriel Audebert
Johnny Blizzard
Liam Gallagher
Deon Garbers
Tim Henderson
Jacques Lubbe
Aristotelis Mistakidis
Terry Robinson
Hugh Stoyell
Robert Wardell

2.2.3 SEMAFO (Holding) Limited (formerly, Savary Gold Corp.) – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
SEMAFO (HOLDING) LIMITED
(formerly, Savary Gold Corp.)
(the "Applicant")

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the "**Commission**") for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA;

2. The Applicant has no intention to seek public financing by way of an offering of securities; and

3. On May 24, 2019 the Applicant was granted an order (the "**May 24 Order**") pursuant to subclause 1(10)(a)(ii) of the Securities Act (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction in Canada in accordance with the simplified procedure set out in National Policy 11-206 – *Process for Cease to be a Reporting Issuer Applications*. The representations set out in the May 24 Order continue to be true.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public.

DATED at Toronto, Ontario this 28th of May 2019.

"Lawerence P Haber"	Garnet W. Fenn"
Commissioner	Commissioner
Ontario Securities Commission	Ontario Securities Commission

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

FILE NO.: 2019-9

IN THE MATTER OF
ALAIN ARMAND THEROUX

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

June 3, 2019

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

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing, to consider a request by Staff of the Enforcement Branch of the Commission (**Staff**) for an order imposing sanctions against Alain Armand Theroux (**Theroux**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, C S.5 (the **Act**);

ON READING the Guilty Plea Proceedings before the Ontario Court of Justice (**OCJ**) dated April 19, 2018, and the Reasons for Sentence of the OCJ dated July 24, 2018, with respect to Theroux, and on reading the materials filed by Staff and the materials filed by the representative for Theroux;

IT IS ORDERED THAT:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Theroux shall cease permanently, except that this order does not preclude Theroux from trading in securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which he has a beneficial ownership, provided that he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

2. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Theroux shall be prohibited permanently, except that this order does not preclude Theroux from purchasing securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which he has a beneficial ownership, provided that he carries out any permitted acquisitions through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

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

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

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

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

"D. Grant Vingoe"

2.2.5 LeadFX Inc.

Headnote

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

Applicable Legislative Provisions

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

May 31, 2019

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

AND

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

AND

IN THE MATTER OF
LEADFX INC.
(the "Filer")

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, 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 order, unless otherwise defined.

Representations

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

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

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

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

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

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

Order

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

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

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.4 Rulings

2.4.1 Wells Fargo Securities, LLC – s. 38 of the CFA and s. 6.1 of Rule 91-502 Trades in Recognized Options

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.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (Rule 91-502), exempting the Applicant and its Representatives from the proficiency requirements in section 3.1 of Rule 91-502 for trades in commodity futures options on exchanges located outside Canada.

Statutes Cited

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

Rules Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1 and 6.1.

May 31, 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
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED
(the OSA)

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
WELLS FARGO SECURITIES, LLC

RULING & EXEMPTION
(Section 38 of the CFA and Section 6.1 of Rule 91-502)

UPON the application (the **Application**) of Wells Fargo Securities, LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirements 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 Canada (**Non-Canadian Exchanges**) where the Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients (as defined below);

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with trades in

Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicant acts in respect of the trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling; and

(c) a decision of the Director, pursuant to section 6.1 of Rule 91-502, exempting the Applicant and its salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with trades in Exchange-Traded Futures (collectively, the **Requested Relief**);

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

(i) "**CEA**" means the U.S. *Commodity Exchange Act*;

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

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

"**Exchange Act**" means the U.S. *Securities Exchange Act of 1934*;

"**Exchange-Traded Futures**" means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and that is cleared through one or more clearing corporations located outside of Canada;

"**FINRA**" means the Financial Industry Regulatory Authority in the U.S.;

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

"**NFA**" means the National Futures Association in the U.S.;

"**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 U.S. Securities and Exchange Commission;

"**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;

"**U.S**." means the United States of America; and

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

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

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

1. The Applicant is a limited liability company incorporated under the laws of the State of Delaware. Its head office is located at 550 South Tryon Street, Charlotte, North Carolina, 28202, U.S.

2. The Applicant provides execution and clearing services on derivatives exchanges located in the U.S. and Europe. The Applicant is indirectly wholly-owned by Wells Fargo & Co.

3. Wells Fargo Securities Canada, Ltd. is an affiliate of the Applicant and is an indirect wholly-owned subsidiary of Wells Fargo & Co. Wells Fargo Securities Canada, Ltd. is registered under the OSA as a dealer in the category of investment dealer and is a dealer member of the Investment Industry Regulatory Organization of Canada. Wells Fargo Securities Canada, Ltd. is not registered as a dealer under the CFA and does not act as a broker for trades in Exchange-Traded Futures.

4. The Applicant relies on the international dealer exemption (the **IDE**) in section 8.18 of NI 31-103 in Ontario and all other Canadian provinces and territories and therefore is not registered under the OSA.

5. The Applicant currently relies on discretionary relief similar to the Requested Relief, which is set to expire on May 30, 2019.

6. The Applicant is a broker-dealer registered with the SEC, a member of FINRA, a registered futures commission merchant (**FCM**) with the CFTC and a member of the NFA.

7. The Applicant is also a member of the Chicago Mercantile Exchange (CME), Chicago Board of Trade (CBOT), New York Mercantile Exchange (NYMEX), Commodity Exchange, Inc. (COMEX), Eris Exchange, Minneapolis Grain Exchange (MGEX), NASDAQ Futures Exchange (NFX), LCH, ICE Futures U.S., ICE Clear U.S., ICE Futures Europe, ICE Clear Europe, BATS Y-Exchange, Inc. (BATS-YX), BATS Z-Exchange, Inc. (BATS-ZX), Boston Options Exchange Group, LLC (BOX), Chicago Board Options Exchange (CBOE), CBOE Futures Exchange (CFE), Chicago Stock Exchange (CHX), EDGA Exchange, Inc. (EDGA), EDGX Exchange, Inc. (EDGX), International Securities Exchange, LLC (ISE), NASDAQ OMX, BX (BX), NASDAQ OMX PHLX, LLC (PHLX), NASDAQ Stock Exchange, (NQX), NYSE Arca, NYSE MKT, LLC, National Stock Exchange (NSX), and New York Stock Exchange.

8. The Applicant is not in default of securities legislation in any jurisdiction in Canada or under the CFA, subject to the matter to which this Decision relates. The Applicant is in compliance in all material respects with U.S. securities and commodity futures laws.

9. Pursuant to its registrations and memberships, the Applicant is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S. Rules of the CFTC and NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, account-opening requirements, anti-money laundering checks, trading limits, counterparty credit due diligence, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules require the Applicant to treat Permitted Clients materially the same as its U.S. customers with respect to transactions made on U.S. exchanges. With respect to transactions made on U.S. exchanges, in order to protect customers in the event of the insolvency or financial instability of the Applicant, the Applicant is required to ensure that customer securities and monies be separately accounted for, segregated at all times from its own securities and monies (including the securities and monies of its affiliates) and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the CEA and the rules promulgated by the CFTC thereunder (collectively, the "**WFS Approved Depositories**"). The Applicant is further required to obtain acknowledgements from any WFS Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the Applicant's obligations or debts.

10. The Applicant wishes to continue to offer certain of its Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures through the Applicant.

11. The Applicant will execute and clear trades in Exchange-Traded Futures on behalf of Permitted Clients in Ontario in the same manner that it executes and clears trades on behalf of its U.S. clients, all of which are "Eligible Contract Participants" as defined in the CEA. The Applicant will follow the same know-your-customer and segregation of assets procedures that it follows in respect of its U.S. clients. Permitted Clients will be afforded the benefits of compliance by the Applicant with the requirements of the CEA and the regulations thereunder, and the Exchange Act and the regulations thereunder. Permitted Clients in Ontario will have the same contractual rights against the Applicant as U.S. clients of the Applicant.

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

13. The Applicant will solicit trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

14. Permitted Clients of the Applicant will only be offered the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges.

15. The Exchange-Traded Futures to be traded by Permitted Clients will include, but will not be limited to, Exchange-Traded Futures for equity index, interest rate, foreign exchange, bond, energy, agricultural and other commodity products.

16. Permitted Clients of the Applicant will be able to execute Exchange-Traded Futures orders through the Applicant by contacting the Applicant's global execution desk. Permitted Clients may also be able to self-execute Exchange-Traded Futures orders electronically via an independent service vendor and/or other electronic trading routing. Permitted

Clients may also be able to execute Exchange-Traded Futures orders through third party brokers and then "give up" the transaction for clearance through the Applicant.

17. The Applicant may execute a Permitted Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange or engage another broker to assist in the execution of orders. The Applicant will remain responsible for all executions when the Applicant is listed as the executing broker of record on the relevant Non-Canadian Exchange.

18. The Applicant may perform both execution and clearing functions for trades in Exchange-Traded Futures or may direct that a trade executed by it be cleared through a carrying broker if the Applicant is not a clearing member of the Non-Canadian Exchange on which the trade is executed and cleared. Alternatively, the Permitted Client of the Applicant will be able to direct that trades executed by the Applicant be cleared through clearing brokers not affiliated with the Applicant in any way (each a **Non-WFS Clearing Broker**).

19. If the Applicant performs only the execution of a Permitted Client's Exchange-Traded Futures order and "gives-up" the transaction for clearance to a Non-WFS Clearing Broker, such clearing broker will also be required to comply with the rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non- WFS Clearing Broker will represent to the Applicant, 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 Exchange-Traded Futures order will be executed and cleared. The Applicant will not enter into a give-up agreement with any Non-WFS Clearing Broker located in the U.S. unless such clearing broker is registered with the CFTC and/or the SEC, as applicable.

20. 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 that are submitted to the exchange in the name of the Non-WFS Clearing Broker or the Applicant or, on exchanges where the Applicant is not a member, in the name of another carrying broker. The Permitted Client of the Applicant is responsible to the Applicant for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Applicant, the carrying broker or the Non-WFS Clearing Broker is in turn responsible to the clearing corporation/division for payment.

21. Permitted Clients that direct the Applicant to give up transactions in Exchange-Traded Futures for clearance and settlement by Non-WFS Clearing Brokers will execute the give-up agreements described above.

22. Permitted Clients will pay commissions for trades to the Applicant. In the event that the Applicant needs to utilize a Non-WFS Clearing Broker for clearing or execution services in relation to such trades, the Applicant will generally pay commissions to the Non-WFS Clearing Broker.

23. 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, Non-Canadian Exchanges have been recognized or registered under the CFA.

24. If the Applicant 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.

25. Section 3.1 of Rule 91-502 provides that no person shall trade as agent in, or give advice in respect of, a recognized option, as defined in section 1.1 of Rule 91-502, unless he or she has successfully completed the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

26. All Representatives of the Applicant who trade options in the U.S. have passed the National Commodity Futures Examination (Series 3), being the relevant futures and options proficiency examination administered by FINRA.

AND UPON the Commission and Director being satisfied that it would not be prejudicial to the public interest to grant the exemptions requested;

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

(a) each client effecting trades in Exchange-Traded Futures is a Permitted Client;

(b) any Non-WFS Clearing Broker, has represented and covenanted to the Applicant that it is appropriately registered or exempt from registration under the CFA;

(c) the Applicant only executes and clears trades in Exchange-Traded Futures for Permitted Clients on Non-Canadian Exchanges;

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

(i) has its head office or principal place of business in the U.S.;

(ii) is registered as a FCM with the CFTC;

(iii) is a member firm of the NFA;

(iv) engages in the business of a FCM in Exchange-Traded Futures in the U.S.;

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

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

(ii) a statement that the Applicant's head office or principal place of business is located in Charlotte, North Carolina, U.S.;

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

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

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

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

(g) the Applicant notifies the Commission of any regulatory action after the date of this ruling in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action; provided that this condition shall not be required to be satisfied for so long as Wells Fargo Securities Canada, Ltd. remains an investment dealer in good standing under Ontario securities laws;

(h) if the Applicant does not rely on the IDE by December 31st of each year, the Applicant 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 Applicant relied on the IDE;

(i) by December 1st of each year, the Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*; and

(j) this Decision will 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 Applicant acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

May 31, 2019

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Cecilia Williams"
Commissioner
Ontario Securities Commission

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant or its Representatives in respect of trades in Exchange-Traded Futures, provided that:

(a) the Applicant and its Representatives maintain their respective registrations and memberships with the CFTC and NFA which permit them to trade and clear commodity futures options in the U.S.; and

(b) this Decision will 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.

June 3, 2019

"Dena Staikos"
Manager,
Compliance and Registrant Regulation Branch
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;

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

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

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

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

Dated: _____

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

_____
(Name of signatory)

_____
(Title of signatory)

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

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

APPENDIX B

NOTICE OF REGULATORY ACTION[1]

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

Yes _____ No _____

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

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

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

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

If yes, provide the following information for each action:

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

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

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates 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 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

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Mangrove Partners and TransAlta Corporation – ss. 104, 127

IN THE MATTER OF
MANGROVE PARTNERS

AND

IN THE MATTER OF
TRANSALTA CORPORATION

REASONS FOR DECISION
(Sections 104 and 127 of the *Securities Act*, RSO 1990, c S.5)

Citation: *Mangrove Partners (Re)*, 2019 ONSEC 18
Date: 2019-05-30
File No. 2019-13

Hearing:	April 15, 2019	
Decision:	May 30, 2019	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Appearances:	Michael Barrack R. Seumas M. Woods Darren J. Reed	For Mangrove Partners
	Kent E. Thomson Derek Ricci Tristram Mallett	For TransAlta Corporation
	Katrina Gustafson Naizam Kanji Jason Koskela Hanchu Chen	For Staff of the Ontario Securities Commission
	Timothy Robson Tracy Clark Danielle Mayhew	For Staff of the Alberta Securities Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] These reasons relate to a decision to decline to exercise the jurisdiction of the Ontario Securities Commission (the OSC or the **Commission**) to hear an application based upon an insufficient nexus between Ontario and the issues in the application where another commission is engaged in the matter.

II. BACKGROUND

[2] In this proceeding, Mangrove Partners (**Mangrove**) applies for a joint hearing before the Alberta Securities Commission (the **ASC**) and the OSC in relation to the 2019 annual and special meeting (the **2019 ASM**) of shareholders of TransAlta Corporation (**TransAlta**) scheduled for April 26, 2019. At the center of Mangrove's complaints is a proposed $750 million transaction (the **Brookfield Transaction**) between TransAlta and Brookfield BRP Holdings (Canada) Inc. (**Brookfield**) pursuant to the terms of an Investment Agreement dated March 22, 2019 (the **Investment Agreement**). Mangrove seeks an order cease trading any TransAlta securities issued pursuant to the Investment Agreement, pending the satisfaction of various conditions.

[3] The applicant, Mangrove, is a Cayman Islands company managed from New York. Mangrove states that it provides investment management services to investment vehicles intended for sophisticated individual and institutional investors. It describes its business as focusing on identifying underfollowed investments and inefficient markets and reviewing the quality of companies' board stewardship.

[4] The respondent, TransAlta, is incorporated under the *Canada Business Corporations Act* (**CBCA**).[1] TransAlta states that it owns and operates hydro, wind, solar, natural gas and coal-fired facilities throughout Canada. Its base of operations and head and registered office are in Calgary, Alberta. TransAlta's common shares trade on the Toronto Stock Exchange (**TSX**) and the New York Stock Exchange. It is a reporting issuer in each Canadian province and its principal regulator is the ASC.

[5] On January 18, 2019, Mangrove disclosed that it was the beneficial owner of 9.4% of TransAlta's common shares. After this disclosure, Mangrove and TransAlta met on several occasions with representatives of TransAlta and other shareholders to discuss TransAlta's strategy.

[6] At a meeting on March 7, 2019, Mangrove informed TransAlta that it had entered into a cooperation agreement with another investor and associated entities. Mangrove indicated at this meeting that TransAlta would benefit from adding new directors to be suggested by Mangrove and the other investor, with which Mangrove was now a joint actor. On March 15, 2019, Mangrove filed a Schedule 13D with the U.S. Securities and Exchange Commission disclosing that,

[1] RSC 1985, c C-44.

together, Mangrove and its joint actor owned 28,534,296 common shares of TransAlta, or 10% of the issued and outstanding common shares. Mangrove's discussions with TransAlta continued until Friday, March 22, 2019.

[7] On March 25, 2019, TransAlta announced that it had entered into the Investment Agreement, which involved Brookfield's purchase of two classes of TransAlta securities for an aggregate amount of $750 million. Brookfield's investment included two tranches of TransAlta securities, $350 million in the form of non-voting exchangeable debentures and $400 million in the form of redeemable preferred shares, each bearing a 7% coupon or preferred dividend and each exchangeable, after December 31, 2024, under specified circumstances into equity of a new entity that would hold TransAlta's hydro generation assets located in Alberta (the **Hydro Assets**). The Hydro Assets at the time the Investment Agreement was entered into represented approximately 90% of TransAlta's total hydroelectric power production capacity. This exchange would occur based upon a 13x multiple of the average annual earnings formula specified for these assets. Through this exchange and a top-up option based upon the same multiple, subject to specified conditions, Brookfield could eventually own as much as 49% of the equity in the entity holding the Hydro Assets.

[8] The Investment Agreement also required Brookfield to buy additional TransAlta common shares so that it would own at least 9%, and potentially up to 19.9%, of the common shares, but not more, subject to certain conditions. Brookfield agreed to comprehensively vote its shares in accordance with the recommendations of TransAlta's board of directors (the **Board**) until 36 months after the initial closing of the $350 million tranche of securities.

[9] Under these arrangements, Brookfield received a 1% structuring fee and was entitled to receive an additional 2% fee on the closing of the first tranche of its investment. Brookfield would also be entitled to two nominees on the Board and to participate in a newly formed operating committee, with Brookfield being compensated for its employees' participation in this committee.

[10] The Investment Agreement also included a provision that would ultimately allow for the termination of the Investment Agreement if two non-management nominees were elected to the Board at the 2019 ASM, although TransAlta would be required to pay the 2% fee notwithstanding that Brookfield would not be making its investment. This provision permitting termination would allow TransAlta to consider other alternatives to the Brookfield Transaction, including the status quo. In that sense, this feature could be viewed as allowing the election of dissident directors as a referendum on TransAlta's decision to proceed with the Brookfield Transaction.

[11] On March 25, 2019, TransAlta also announced the support of its largest shareholder, RBC Global Asset Management Inc. (**RBC GAM**), for the management slate of directors. RBC GAM held 12.4% of TransAlta's outstanding common shares. The support agreement signed with RBC GAM was irrevocable until the conclusion of the 2019 ASM.

[12] On April 1, 2019, TransAlta filed its Management Information Circular for the 2019 ASM. On the same day, Mangrove delivered a complaint letter to the ASC and the OSC (the **Commissions**) about the process by which TransAlta entered into the Investment Agreement and the features of the Agreement that it claimed entrenched existing management. On April 4, 2019, following Mangrove's review of the circular, Mangrove delivered a second complaint letter on April 4, 2019, which raised additional questions and issues outlined below.

[13] On April 5, 2019, TransAlta delivered a letter to the Commissions responding to the allegations made in Mangrove's complaint letters.

III. PROCEDURAL HISTORY

A. Mangrove's Application and Request for a Joint Hearing

[14] On April 8, 2019, Mangrove filed an Application seeking relief from both the ASC and the OSC. In its Application, Mangrove requested a joint hearing before the Commissions. Mangrove submitted that each of the ASC and the OSC had jurisdiction over the matters at issue in the Application, given, among other things, where TransAlta is based, its listing on the TSX, the Ontario residency of RBC GAM, and the places where the conduct at issue occurred. I accepted the Application as constituting a motion, in part, for a joint hearing pursuant to Rule 30(2) of the *OSC Rules of Procedure and Forms* (the **Rules**),[2] but instructed the registrar to advise the parties that such a motion requires supporting materials based on the OSC's criteria for joint hearings.

[15] The substantive relief requested in Mangrove's Application included an order cease trading any TransAlta securities issued pursuant to the Investment Agreement, pending the satisfaction of various conditions. Those requested conditions included the following:

[2] (2017) 40 OSCB 8988, r 30(2).

a. a vote of disinterested TransAlta shareholders on the Investment Agreement;

b. TransAlta's disclosure of specific details about the Investment Agreement, the RBC GAM support agreement, any other offers to acquire an interest in the Hydro Assets, and the Board's conduct surrounding those events, along with an analysis of the implications of the requested disclosures for the purposes of the shareholder vote;

c. a postponement of the 2019 ASM to no earlier than June 1, 2019;

d. the issuance of a new circular for the 2019 ASM; and

e. TransAlta's release of RBC GAM and any other shareholders who may have provided voting commitments from all voting commitments for the 2019 ASM.

[16] Mangrove's Application also sought an interim order, if necessary, requiring TransAlta to postpone the 2019 ASM.

B. TransAlta Raises a Jurisdictional Issue and Mangrove Amends its Application

[17] TransAlta delivered a preliminary response to the Application by way of a letter to both Commissions, dated April 10, 2019. TransAlta's letter stated that the principal focus of the letter was the narrow jurisdictional question of whether Mangrove met the statutory requirements to bring its Application at all. TransAlta also reserved its right to argue that, in the absence of any uniquely Ontario issues raised by Mangrove's complaints, there was no reason for the OSC to be involved in the dispute and no justification for a joint hearing to be conducted. TransAlta stated an intention to contest the need for the OSC's involvement if a hearing was ultimately convened.

[18] The next day, April 11, 2019, Mangrove filed an Amended Application with both Commissions. Mangrove's amendments requested the following additional relief from the OSC, alone:

a. an order cease trading TransAlta's issuance of any series 1 first preferred shares pursuant to the Investment Agreement, until TransAlta had either

i. obtained a receipt for a final prospectus for the issuance of those preferred shares, or

ii. obtained minority approval for the issuance of those preferred shares in accordance with Rule 56-501 – Restricted Shares; and

b. an order that the prospectus exemptions under Ontario securities law do not apply to the securities issued, or to be issued, pursuant to the Investment Agreement in Ontario.

C. First Attendance Before the OSC

[19] On April 12, 2019, the parties appeared before the OSC for a first attendance to address scheduling issues relating to the Application. Following submissions, the OSC issued an Order scheduling a hearing to consider two preliminary motions:

a. TransAlta's anticipated motion (filed on April 13, 2019) contending that the OSC should decline to hear the Application because there was an insufficient nexus between Ontario and the issues raised in the Application (the **Nexus Motion**); and

b. Mangrove's motion seeking a joint hearing before the ASC and the OSC (the **Joint Hearing Motion**, and together with the Nexus Motion, the **Motions**).

[20] Considering the short period of time before the 2019 ASM, the parties agreed to an abridged schedule for the exchange of written motion materials over the following weekend. This allowed for the Motions to be argued before the OSC on the next business day, April 15, 2019.

[21] It was also agreed that ASC Staff would be heard on the Motions in addition to OSC Staff, which participated as of right.

D. Other Motions Not Heard by the OSC

[22] The Order resulting from the first attendance before the OSC also addressed the scheduling of two other preliminary motions:

a. a motion by Mangrove seeking the production of documents from TransAlta; and

b. any motion for intervenor status by non-parties seeking to participate in the proceeding.

[23] Intervenor motions were ordered to be heard in writing. In the event that the OSC decided to exercise its jurisdiction to hear the Application, a further joint hearing with the ASC was scheduled to commence shortly thereafter to address Mangrove's motion for the production of documents and the scheduling of the next steps in the proceeding.

[24] Although written materials were delivered for both the motion for production and a motion for intervenor status, neither motion was ultimately heard or determined by the OSC due to the results of the Motions.

IV. ISSUES

[25] On April 15, 2019, I heard submissions on the Motions, which raised the following issues:

a. whether the OSC should exercise its jurisdiction to hear Mangrove's Application; and

b. if the OSC exercises its jurisdiction, whether the Application should proceed as a joint hearing of both the ASC and the OSC.

[26] After reading and hearing submissions from Mangrove, TransAlta, OSC Staff and ASC Staff, I issued an Order declining to exercise the OSC's jurisdiction to hear Mangrove's Application. These are the reasons for that Order.

V. ANALYSIS

A. Introduction

[27] Neither of the Motions questions whether the OSC possesses jurisdiction to hear the Application. The OSC's jurisdiction under s. 127(1) of the *Ontario Securities Act* (the **Act**)[3] over a transaction where it is in the public interest to intervene was recognized by all parties. In this case, the foundation for the OSC's jurisdiction is clear, given that TransAlta's securities are listed on the TSX, it is a reporting issuer in Ontario and it has Ontario investors.

[28] Instead, the various factors concerning the presence of a nexus with Ontario are relevant to a consideration of whether there are compelling circumstances warranting the exercise of that jurisdiction, concurrently with the ASC, bearing in mind the principle of promoting harmonization and co-ordination of securities regulation regimes, as set out in s. 2.1, paragraph 5, of the Act.

[29] As noted above, the parties in this case were clear that the preliminary issue was whether the OSC should participate in a joint hearing with the ASC, provided that the ASC Panel also decided to participate in a joint hearing with the OSC. I therefore did not consider the issue of whether the OSC should hold a separate hearing on any of the elements of the Application. My decision to decline to hear the Application, and these reasons for that decision, should not be read as suggesting that in this case there was an insufficient nexus for the OSC to hear the Application outside of the context of a joint hearing. It was an important consideration that the ASC was prepared to hear preliminary matters arising from the Application in short order following the OSC's hearing of the Motions.

B. The Law on Joint Hearings

[30] In Ontario, the OSC can order a joint hearing pursuant to s. 3.5(2) of the Act and Rule 30 of the Rules. Rule 30 provides as follows:

(1) **Joint hearings with other securities administrators** A panel may hold a hearing in or outside Ontario jointly with another body that is authorized by statute or regulate trading in securities, commodities or derivatives.

(2) **Request for a joint hearing** A request for a joint hearing shall be made by motion using the form in Appendix B and shall state the reasons for the request.

[31] This rule regarding joint hearings came into effect in its present form on October 31, 2017. The prior rule referred to such hearings as "simultaneous hearings" and enumerated factors to be considered including whether: (1) the issues and arguments are substantially the same in the jurisdictions; (2) there are urgent business reasons; and (3) the issue is novel, such that the public interest favours a simultaneous hearing to promote consistency across jurisdictions.[4]

[3] RSO 1990, c S.5.
[4] *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168, r 13.1.

[32] The factors relevant to holding a joint hearing must also be evaluated in light of the principle set out in s. 2.1 of the Act that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[33] Contrary to TransAlta's submissions at the hearing, a "joint" or "simultaneous" hearing does not involve multiple commissions pooling their panels such that they issue a joint decision or pool their decision-making authority. Each panel is separately constituted and renders its own decision after a hearing that is made more efficient since the panels hear the evidence and submissions at the same time within the scope of the joint hearing. In the interest of promoting co-ordination, but not requiring a common decision, panels in joint hearings typically announce at the outset of such a hearing that they will deliberate separately and, if useful, may also hold common deliberations among the panels. However, each panel remains independent and will reach its own decision. The Act does not allow for a delegation of decision-making authority such that a "joint decision" of the commissions can be assured. This was true before and remains true after the adoption of Rule 30. In OSC proceedings there is no difference in decision-making processes between a "simultaneous hearing" and a "joint hearing" and these terms are interchangeable.

C. No Compelling Circumstances Warranting the Exercise of Jurisdiction

[34] The sole respondent in the Application, TransAlta, is a CBCA corporation with its head office in Calgary. The ASC has a long regulatory history as the principal regulator of TransAlta. The Hydro Assets, which are at the core of this dispute, are located in Alberta. Personnel of TransAlta based in Calgary were central participants in the negotiation of the Investment Agreement and in discussions with Mangrove. The ASC possesses very similar public interest jurisdiction to that possessed by the OSC under s. 127(1) of the Act.[5]

[35] The factors pointing to an assertion of Ontario jurisdiction (*e.g.* TSX listing, Ontario reporting issuer status and Ontario investors) would be present in many cases and if adopted as a basis for an expansive assertion of involvement in a joint hearing would result in the OSC being involved in many disputes involving TSX-listed companies where an applicant seeks to utilize s. 127(1). The OSC's involvement in that range of disputes, in addition to other commissions with stronger connections, would be unnecessary and unduly costly.

[36] Additional factors, including the presence in Ontario of certain non-respondents: Brookfield, as the other party to the Investment Agreement, and RBC GAM, as a significant shareholder supporting both the Brookfield Transaction and the management Board slate, are not as compelling as the Alberta factors. The Ontario connections are routine enough that their use to tip the balance in favour of an assertion of jurisdiction where another commission with stronger connections is engaged would likely require the same result in many potential cases involving TSX-listed companies.

[37] To the extent that issues arise under OSC Rule 56-501 – *Restricted Shares* in connection with Mangrove's Amended Application, the underlying public policy concerns can potentially be addressed under the ASC's public interest jurisdiction, through a complaint to the OSC Director as specified in Part 4 of Rule 56-501,[6] or through a much more limited application to the OSC regarding those issues. Mangrove also raised the possibility of a potential hearing and review of a decision of the TSX related to the issuance of a new class of stock, which was said to arise from the voting agreement included with the Investment Agreement. However, no such decision and application for a hearing and review was before me, and there was no compelling reason to abridge the process by circumventing the usual requirement that the TSX first have an opportunity to make a decision. It is therefore premature to consider this possibility.

[38] In deciding not to assert jurisdiction by way of a joint hearing, the OSC stated the following in *AbitibiBowater Inc (Resolute Forest Products) (Re)*:[7]

> In our view, a simultaneous hearing should only be held in compelling circumstances. Such hearings may not advance the harmonization and co-ordination of securities regulatory regimes and they may create added costs and complexity for the parties …. The issues raised by the Application are not so fundamentally important to Ontario investors or Ontario capital markets, or so notorious, as to outweigh the considerations referred to [elsewhere in our reasons]. Our decision with respect to this question may have been different if the applicable Ontario securities laws were not substantially the same as the securities laws of the Province of Québec or if Ontario investors or capital markets were being affected in a fundamentally different or unique way.

[5] *Securities Act*, RSA 2000, c S-4, s 198.
[6] OSC Staff stated at the Hearing that the Rule 56-501 element of the Application was being treated as a complaint to the OSC Director that would involve a separate process to address this issue.
[7] 2012 ONSEC 12, (2012) 35 OSCB 3645 at para 56 [***AbitibiBowater***].

[39] The Panel in *AbitibiBowater* founded its decision on the strictures provided by the Supreme Court in *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*[8] regarding the use of the Commission's discretion to appropriately limit the application of its public interest authority, stating:[9]

> The Supreme Court of Canada recognized in Asbestos (SCC) that there are circumstances in which it is appropriate for the Commission not to assert its jurisdiction where other Canadian securities regulators are engaged in a matter or where a regulatory proceeding in another Canadian jurisdiction will be held. In this respect, the Court stated that:
>
> > [T]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes. A transaction that is contrary to the policy of the Ontario Securities Act may be acceptable under another regulatory regime. Thus, the OSC's insistence on a more clear and direct connection with Ontario in this case reflects a sound and responsible approach to long-arm regulation and the potential for conflict amongst the different regulatory regimes that govern the capital markets in the global economy.

[40] Joint hearings may not promote harmonization and co-ordination since the possibility exists for conflicting decisions with equal legal authority such that the jurisdiction with the less compelling regulatory interest could nonetheless issue a decision that may affect a transaction in a decisive manner. This possibility can materialize in our present system of provincial and territorial securities regulation, whether through joint or separate hearings. However, the OSC should not thrust itself into a dispute that is being addressed by another Canadian securities commission unless the connecting factors with Ontario, or differences in rules or public policy, provide non-routine, compelling reasons for doing so.

[41] A decision to hold a joint hearing must be mutual, and the OSC was asked to make a decision regarding a joint hearing before the ASC indicated whether it was willing to participate in one. ASC Staff's written submissions did not take a position regarding whether the OSC should assert jurisdiction in these circumstances, but submitted, as did the parties, that if the OSC did assert jurisdiction, it should do so by way of a joint hearing rather than in a separate hearing.

[42] OSC Staff submitted, in essence, that the involvement of the Commission in addition to the principal regulator is the exception to the general practice and requires compelling circumstances. OSC Staff agreed with TransAlta that the nexus with Ontario did not support the OSC's involvement where the ASC was otherwise prepared to address the matter, at least on a preliminary basis, as it was in this case later the same morning that we heard arguments on the Motions.

[43] There are two recent examples of joint hearings in which Ontario has participated. Both can readily be distinguished from the Application.

[44] In *Hecla Mining Company (Re)*,[10] the securities commissions of Ontario and British Columbia held a joint hearing to establish a framework for assessing whether a particular private placement adopted in the context of a hostile bid was an inappropriate defensive tactic under the guidance in National Policy 62-202 – *Take-Over Bids – Defensive Tactics*. This was the first case to consider the application of the policy on defensive tactics to a private placement in the context of a take-over bid following major and uniform changes in the rules governing take-over bids in Canada, including the introduction of a minimum 50% tender requirement. All parties consented to a joint hearing, unlike the current case.

[45] In *Aurora Cannabis Inc (Re)*,[11] the securities commissions of Ontario and Saskatchewan, following a joint hearing, cease-traded a shareholder rights plan that was adopted following the implementation of a bid made under the new take-over bid requirements. The securities commissions were required to address the issue of the role of tactical shareholder rights plans after the rebalancing that occurred through those amendments, as well as novel issues related to whether persons were joint actors for purposes of the applicable rules and other specific interpretative issues related to the rules governing take-over bids. Again, all parties consented to a joint hearing.

[46] These cases followed many years without joint hearings involving the OSC. Joint hearings have remained the exception to the general approach where matters are addressed by the principal regulator. In *Hecla* and *Aurora*, joint hearings were appropriate to consider novel issues arising from very recent pan-Canadian take-over bid reforms and with the consent of all parties. These are not the only circumstances that will justify an exercise of jurisdiction through a joint hearing concurrently with another regulator, but an applicant will bear the burden of demonstrating compelling circumstances. In this case, no such compelling factors exist requiring Ontario, in addition to Alberta, to consider whether to exercise its public interest jurisdiction in connection with the Investment Agreement and the 2019 ASM.

[8] 2001 SCC 37 [***Asbestos***].
[9] *AbitibiBowater* at para 52, citing *Asbestos* at para 62.
[10] 2016 ONSEC 31, (2016) 39 OSCB 8926 [***Hecla***].
[11] 2018 ONSEC 10, (2018) 41 OSCB 2325 [***Aurora***].

VI. STANDING OF A PRIVATE PARTY UNDER SECTION 127 (1) OF THE ACT

[47] Only OSC Staff can proceed under s. 127(1) as of right. Private parties require standing. The determination of whether to exercise jurisdiction on nexus grounds and joint hearing factors is analytically separate from the issue of whether the applicant as a private party should be granted leave to commence a proceeding under s. 127(1). The issue of standing by a private party would, in this case, only be dealt with at a joint hearing with the ASC considering that, as Mangrove's counsel put it, none of the parties were asserting that "separate, parallel and duplicate of hearings concerning Mangrove's section 127 application should take place both in Alberta and here" and TransAlta's position that separate hearings should not be held. In other words, both Mangrove and TransAlta, as well as ASC Staff and OSC Staff, conceded that the ASC should proceed alone if the OSC declined to exercise its jurisdiction to participate. Since the OSC is not asserting jurisdiction to hear the Application based on the nexus and joint hearing analysis, I do not need to address Mangrove's standing as a private party to bring this Application.

VII. CONCLUSION

[48] For the foregoing reasons, I declined to exercise the OSC's jurisdiction to hear Mangrove's Application.

[49] I also adopt the same caveats set out in the concluding paragraph of the *AbitibiBowater* reasons:[12]

> Our decision not to assert jurisdiction in these circumstances does not, of course, restrict our discretion to address in the future any additional or other issues that may arise out of this matter that may affect Ontario investors or Ontario capital markets or engage our public interest jurisdiction. Any such assertion of our jurisdiction would, however, be subject to the principles and considerations discussed in these reasons.

Dated at Toronto this 30th day of May, 2019.

"D. Grant Vingoe"

[12] *AbitibiBowater* at para 60.

3.1.2 Issam El-Bouji

IN THE MATTER OF
ISSAM EL-BOUJI

REASONS FOR DECISION ON MOTION

Citation: *El-Bouji (Re)*, 2019 ONSEC 19
Date: 2019-05-31
File No. 2018-28

Hearing:	In writing	
Decision:	May 31, 2019	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Appearances:	Joseph Groia	For Issam El-Bouji
	Derek Ferris	For Staff of the Commission

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REASONS FOR DECISION ON MOTION

I. OVERVIEW

[1] The Respondent, Issam El-Bouji, has brought a motion challenging the jurisdiction of the Ontario Securities Commission (the **Commission**) to hear the allegations made by Staff of the Commission in this proceeding. In advance of hearing that jurisdiction motion, the Respondent brought a second motion seeking, among other things, an order striking certain paragraphs of a factum and affidavit filed by Staff of the Commission on the jurisdiction motion.

[2] On May 27, 2019, I issued an order dismissing the Respondent's motion to strike, with reasons to follow. These are my reasons for that decision.

II. BACKGROUND

[3] This proceeding was commenced by a Statement of Allegations dated May 24, 2018 and a Notice of Hearing issued on May 25, 2018.

[4] Staff of the Commission (**Staff**) make the following allegations against the Respondent:

a. in 2014, the Respondent entered into a settlement agreement with Staff dated April 14, 2014 (the **2014 Settlement Agreement**), in which the Respondent admitted to breaches of Ontario securities law and agreed to certain sanctions;

b. the agreed sanctions were imposed as part of an order of the Commission dated April 16, 2014 (the **2014 Order**), which approved the 2014 Settlement Agreement;

c. from January 17, 2015 to December 31, 2017, the Respondent failed to comply with the 2014 Order; and

d. as a consequence, the Respondent breached s. 122(1)(c) of the *Ontario Securities* Act[1] and acted contrary to the public interest.

[5] On April 12, 2019, the Respondent filed a Notice of Motion (the **Jurisdiction Motion**[2]) seeking the following relief:

a. an order confirming that the Commission has no jurisdiction to hear some or all of the allegations in the Notice of Hearing and Statement of Allegations on the grounds of institutional bias, a breach of natural justice, a breach of its duty of fairness and a misuse of its public interest jurisdiction;

b. an order that the Commission dismiss, stay, or adjourn these proceedings, in whole or in part; and

c. such further and other relief as is appropriate.

[6] The Jurisdiction Motion also states that:

> the 2014 Order is executory as it states that "[t]he Commission will make an order". No further order was made. Without that further order, there is no order that Mr. Bouji could have breached and no basis for a hearing under s.127 of the *Securities Act*.

[7] In response to the Jurisdiction Motion and the affidavit and submissions filed by the Respondent, Staff filed the Affidavit of Michael Denyszyn, sworn April 18, 2019 (the **Staff Affidavit**) and a Responding Factum dated April 29, 2019 (the **Staff Factum**).

[8] The Jurisdiction Motion is scheduled to be heard on June 5, 2019, at the scheduled commencement of the hearing on the merits in this proceeding.

[9] On May 1, 2019, the Respondent filed a Notice of Motion (the **Motion to Strike**) seeking the following relief:

a. an order striking paragraphs 83-98 of the Staff Factum and paragraphs 9, 12-41, 45-58, and 60-62 of the Staff Affidavit (collectively, the **Disputed Paragraphs**);

b. in the alternative, an order stating that the Disputed Paragraphs are irrelevant to the Jurisdiction Motion and Staff is not to call evidence with respect to the issues raised in the Disputed Paragraphs;

c. directions concerning Staff's failure to disclose materials reviewed by Vice Chairs Monica Kowal and D. Grant Vingoe in determining how monies received under the 2014 Settlement Agreement are to be dealt with; and

d. such further and other relief as is appropriate.

[10] The parties agreed that the Motion to Strike would be heard in writing at a hearing held *in camera* on May 7, 2019.[3] The parties also agreed to a schedule for the delivery of written submissions on the Motion to Strike.

[11] At the same hearing, the parties advised the panel that Staff had made certain disclosures to the Respondent in an attempt to satisfy the Respondent's disclosure request specified in subparagraph c. of paragraph [9] above. Counsel for the Respondent advised that he did not at that time plan to make any submissions on the request for directions relating to such disclosure. The submissions filed by the Respondent on the Motion to Strike made no request for directions. Accordingly, I consider that aspect of the motion abandoned.

[12] On May 27, 2019, after reviewing the submissions filed by both parties, I issued an order dismissing the Motion to Strike, with reasons to follow. These are the reasons for that decision.

III. ANALYSIS

[13] The Motion to Strike raises the following issues:

a. What test should be applied on a motion to strike?

b. Do the Disputed Paragraphs meet the test?

c. Should the Respondent's alternative request for relief be granted?

[1] RSO 1990, c S.5.
[2] The Respondent refers to this as the "Fairness Motion", and I use the defined term employed by Staff solely for convenience.
[3] The May 7, 2019 hearing was held *in camera* because it dealt with matters involving privacy concerns.

A. What test should be applied on a motion to strike?

[14] Both parties refer to Rule 25.11 of Ontario *Rules of Civil* Procedure[4], which states:

> The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,
>
> (a) may prejudice or delay the fair trial of the action;
>
> (b) is scandalous, frivolous or vexatious; or
>
> (c) is an abuse of the process of the court.

[15] While Rule 25.11 is most commonly used to strike pleadings in civil cases, it is also used to strike affidavits.[5] Neither party provided submissions on the test for striking written argument. However, given my findings below with respect to the Staff Affidavit, I need not consider whether the same test or other considerations might apply to the Disputed Paragraphs of the Staff Factum.

[16] I find that Rule 25.11 provides an appropriate guideline to consider in a motion to strike evidence in Commission proceedings.

[17] Rule 25.11 does not list irrelevance as a ground for striking evidence. There is support for the proposition that irrelevance alone is insufficient to warrant striking evidence on a preliminary motion, absent other grounds set out in Rule 25.11.[6]

[18] I agree. If the only concern with the evidence at issue is relevance, the determination of whether that evidence is admissible is best left to the panel hearing the main motion.

B. Do the Disputed Paragraphs meet the test?

[19] None of the grounds set out in Rule 25.11 have been demonstrated by the Respondent.

[20] The Respondent's argument to strike the Disputed Paragraphs focusses primarily on the alleged irrelevance of the Disputed Paragraphs. The Respondent submits that the Disputed Paragraphs are included in the Staff Affidavit as evidence of a course of conduct that Staff alleges demonstrates that the Respondent viewed the 2014 Order as valid and enforceable. The Respondent submits that the issues raised in the Disputed Paragraphs are not before the Commission on the Jurisdiction Motion and will only serve to waste significant time and resources.

[21] Conversely, Staff submits that while irrelevance is not properly a ground to strike evidence on this motion, the Disputed Paragraphs are nevertheless relevant to the Jurisdiction Motion for the following reasons:

a. they are directly responsive to issues raised in the Respondent's Notice of Motion;

b. they provide helpful context to the bias allegation against my involvement in a decision related to the allocation of amounts received as financial sanctions under the 2014 Settlement Agreement; and

c. they are relevant to the allegation that the Commission is misusing its public interest jurisdiction.

[22] As I indicated in the preceding section, irrelevance alone is insufficient to warrant striking evidence in advance of a hearing. Relevance and admissibility are considerations for the panel hearing the evidence on the motion. Absent the factors outlined in Rule 25.11, it would be premature to consider the admissibility of evidence before hearing the motion to which the evidence relates. This is consistent with Ontario Superior Court of Justice decisions cited by Staff for the proposition that orders to strike evidence in advance of a hearing should only be made for special reasons or in the clearest of cases.[7]

[23] Similar to *Papazian*, the Jurisdiction Motion seeks an order to dismiss, stay or adjourn this proceeding, at the very least prolonging the period before it can be adjudicated on the merits if not obtaining an outright dismissal. As stated in Papazian:

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[4] RRO 1990, Reg 194.
[5] *Allianz Global Risks US Insurance Co v Canada (Attorney General)*, 2016 ONSC 29 at para 10 [***Allianz***]; *876502 Ontario Inc v IF Propco Holdings (Ontario) 10 Ltd*, [1997] OJ No 4722, 1997 CarswellOnt 4721 at paras 12-14 [***IF Propco***].
[6] *IF Propco* at paras 16-19; *Holder et al v Wray et al*, 2018 ONSC 6133 at paras 42-48.
[7] *Allianz* at paras 12-19; *Papazian v Morris Manning, QC Professional Corporation*, 2018 ONSC 6398 at para 19 [***Papazian***].

> The applicants should be afforded a full opportunity to respond to this very serious form of relief. As a general rule, the court should not, at least at this stage, limit or prune the applicants' evidence in this fashion. The relevance and appropriateness (or lack thereof) of the impugned evidence will become clearer as the evidence develops overall with cross-examinations.[8]

[24] For purposes of this Motion, I adopt the view expressed in Papazian that orders striking evidence in advance of the hearing of, in this case, the main motion, "should only be made for special reasons in the clearest of cases."[9] Further, special reasons should generally be based on the criteria set out in Rule 25.11 of Ontario *Rules of Civil Procedure*.

[25] The Respondent does argue that the alleged irrelevant material in the Disputed Paragraphs would add significantly to the time and expense of the Jurisdiction Motion and will only serve to delay, prejudice or frustrate the Motion.

[26] I disagree. While the Disputed Paragraphs may lead to a longer cross-examination on the Staff Affidavit at the outset of the Jurisdiction Motion (assuming the Respondent chooses to cross-examine on evidence the Respondent submits is irrelevant), in this case the extra time may be necessary to assess the relevance of the Disputed Paragraphs to the relief sought on the Jurisdiction Motion. The relevance (or lack thereof) of the impugned evidence will become clearer as the evidence develops in cross-examination.

[27] Accordingly, I need not address at this time the potential relevance of the Disputed Paragraphs to the Jurisdiction Motion.

C. Should the Respondent's alternative request for relief be granted?

[28] As an alternative to striking the Disputed Paragraphs, the Respondent seeks an order stating that the Disputed Paragraphs are irrelevant to the Jurisdiction Motion and that Staff is not to call evidence with respect to the issues raised in the Disputed Paragraphs.

[29] This relief would have much the same effect as striking the Disputed Paragraphs and I reject it for the same reasons outlined above.

IV. CONCLUSION

[30] For the foregoing reasons, I dismissed the Respondent's Motion to Strike.

Dated at Toronto this 31st day of May, 2019.

"D. Grant Vingoe"

[8] *Papazian* at para 19.
[9] *Papazian* at para 19.

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

IN THE MATTER OF
ALAIN ARMAND THEROUX

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

Citation: *Theroux (Re)*, 2019 ONSEC 20
Date: 2019-06-03
File No.: 2019-9

Hearing:	In Writing	
Decision:	June 3, 2019	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Appearances:	Kai Olson	For Staff of the Commission
	Max Muñoz	For Alain Armand Theroux

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

[1] On April 19, 2018, Alain Armand Theroux (**Theroux**) pleaded guilty[1] 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*[2] (the ***Criminal Code***).

[2] Theroux's guilty plea was accepted by the Court, and he was convicted (the **Court Decision**).

[3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in paragraph 1 of subsection 127(1) of the Ontario *Securities Act*[3] (the **Act**) and requests that the Commission issue an order reciprocating Theroux's conviction.

[4] The issues for me to consider are:

a. whether one of the circumstances under subsection 127(10) of the Act applies to Mr. Theroux, namely, has Mr. Theroux been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives (s. 127(10)(1)); and if so

b. whether the Commission should exercise its jurisdiction to make a protective order in the public interest in respect of Mr. Theroux pursuant to subsection 127(1) of the Act.

[1] Staff's Hearing Brief marked as Exhibit 2, Transcript re: Guilty Plea Proceedings in the matter of *R v Theroux* held April 19, 2018, Tab 3 (**Guilty Plea**)
[2] RSC, 1985, c. C-46
[3] RSO 1990 c S.5 (the **OSA**)

[5] For the reasons that follow, I find that Mr. Theroux was convicted of offences arising from a course of conduct related to securities, and that it is in the public interest to issue an order in this matter as requested by Staff, subject to one carve-out requested by Mr. Theroux.

[6] The order is in substantially the form requested by Staff, subject to a limited carve-out to allow for Mr. Theroux to trade and acquire securities or derivatives through a registrant in certain registered and tax-free savings accounts.

II. SERVICE AND PARTICIPATION

[7] Mr. Theroux was served via process server on March 27, 2019,[4] with the Notice of Hearing, the Statement of Allegations, Staff's Hearing Brief,[5] Staff's Written Submissions, and Staff's Brief of Authorities.

[8] I find that Mr. Theroux was properly served.

[9] Mr. Theroux participated in the hearing and was represented by counsel in this matter. Both Staff and Counsel for Mr. Theroux filed written materials in this hearing, which I have reviewed in coming to my decision.

III. CRIMINAL GUILTY PLEA AND SENTENCING

A. Conduct at Issue and Guilty Plea

[10] Between August 21, 2008 and June 2, 2009, five investors provided Mr. Theroux a total of $445,000 for investment in Organo Capital (**Organo**), a Québec based biofuel venture, with which he was associated as a "representative".[6]

[11] Statements were provided to investors showing their investments in bonds, promissory notes and bridge financing with purported generous returns of up to 100 per cent for a one-year term.[7]

[12] In actuality, only $274,800 of the funds were invested in Organo, while the remaining $170,800 was retained by Theroux and used for his own personal purposes or to repay earlier investors.[8]

[13] The five individuals who were defrauded were either close friends or long-time clients of Mr. Theroux,[9] a former mutual fund sales person and branch manager with PFSL Investments Canada Ltd. (**PFSL**).[10]

[14] None of the five investors received the promised returns on their investments, nor were any of the funds provided to Mr. Theroux returned to them.[11]

[15] On April 19, 2018, Mr. Theroux pleaded guilty before 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*.[12]

B. Sentencing

[16] Mr. Theroux was sentenced on July 24, 2018, to 12 months' incarceration, followed by two years of probation.[13] He is also subject to a restitution order in the amount of $170,800 and a fine in lieu of forfeiture of $75,000, to be paid within 15 years of his release. If the fine is not paid within 15 years, Mr. Theroux will be incarcerated for an additional two years.[14]

IV. ANALYSIS

A. Has Mr. Theroux been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives?

[4] Exhibit 1, Affidavit of Service of Raviinder Saini, sworn March 28, 2019
[5] Exhibit 2, Hearing Brief of Staff of the Ontario Securities Commission
[6] Exhibit 2, Guilty Plea, Tab 3, at 3 lines 10-12, 4 lines 8, 24-29
[7] Exhibit 2, Guilty Plea, Tab 3, at 4 lines 18-21
[8] Exhibit 2, Guilty Plea, Tab 3, at 5 lines 1-9
[9] Exhibit 2, Guilty Plea, Tab 3, at 4 lines 5-8
[10] Exhibit 2, Section 139 Certificate re: Alain Armand Theroux dated February 4, 2019, Tab 1
[11] Exhibit 2, Guilty Plea, Tab 3, at 3 lines 20-25
[12] Exhibit 2, Guilty Plea, Tab 3, at 1-2
[13] Exhibit 2, Transcript re: Reasons for Sentence for the Honourable Justice Gage in the matter of *R v Theroux* held July 24, 2018, Tab 4, at 5 lines 15-17(**Sentencing**)
[14] Exhibit 2, Sentencing, Tab 4, at 6 lines 5-11, 19-23

[17] Subsection 127(10) of the Act provides as follows:

> (10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[18] Mr. Theroux has been convicted in Ontario of five counts of fraud over $5,000 contrary to the *Criminal Code*. Those convictions arose from transactions, a business or a course of conduct related to securities. Theroux admitted he solicited and accepted funds in excess of $1,000,000 from investors, reflecting their investments in bonds, promissory notes and bridge financing marketed in respect of a biofuel venture with a company with which Theroux was associated. These fraudulent investments constituted investment contracts and therefore securities for purposes of the Act.[15] Returns of up to 100% for a one-year term were promised. Substantial portions of the monies raised were diverted for his own personal use or to pay other investors and not invested in the biofuel venture. The five investors whose investments were used as the factual basis for Theroux's conviction turned over funds totalling $445,000, $178,800 of which was retained by Theroux. None of them received their promised returns or the return of their initial investments.

[19] I find that I have the authority to make a public interest order against Mr. Theroux under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the Court Decision and agreed facts arising from his guilty plea.

B. What, if any, sanctions should the Commission order against Mr. Theroux?

[20] Having found that the test in subsection 127(10) of the Act has been met, I must now determine what sanctions, if any, should be ordered against Mr. Theroux.

1. Legislative framework

[21] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection does not itself empower the Commission to make an order; rather it provides a basis for an order under subsection 127(1).[16]

[22] Orders made under subsection 127(1) of the Act are "protective and preventive" and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.[17]

[23] In determining specific sanctions, the Commission may consider, among other factors, the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.[18]

2. Facts of this case

[24] As this Commission has repeatedly held, fraud is one of the most egregious violations of securities law. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.[19]

[25] In commenting on the nature and impact of Mr. Theroux's fraud in assessing aggravating factors for the purpose of sentencing, Justice Gage stated:[20]

> The offences involved a breach of trust…[T]here are multiple victims, …the offences were perpetrated over a lengthy period of time…[T]he conduct was planned and deliberate, and the extent of the overall investment which made the victims vulnerable.
>
> And the impact of the fraud was devastating …

[15] *Pacific Coast Coin Exchange of Canada v Ontario (Securities Commission)*, [1978] 2 SCR 112 at p. 128
[16] *Euston Capital Corp (Re)*, 2009 ONSEC 23, (2009) 32 OSCB 6313 at para 46
[17] *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] SCR 132 at para 42-43
[18] *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at 7746
[19] *Black Panther (Re)*, 2017 ONSEC 8, (2017) 40 OSCB 3727 at para 48
[20] Exhibit 2, Sentencing, Tab 4 at 2 lines 24-32, 3 lines 1-7

[26] In addition, I consider it relevant that Mr. Theroux was knowledgeable about securities regulation as a former mutual fund salesperson and branch manager and therefore would have been well aware of the consequences that could flow from his conduct. He abused the trust of investors who were either personal friends of Mr. Theroux or knew him from his mutual fund activities, or both. He also had standing in his community through community and other efforts which Justice Gage indicated helped engender the trust. This mistaken trust enabled him to secure funds from the investors, amounting in some cases to the bulk of their life savings, and to pay that money over to an account for Theroux Enterprises rather than the company in which they were told they were investing. This further enabled Mr. Theroux to divert substantial amounts for his own personal use.[21]

[27] Justice Gage accepted that Mr. Theroux was genuinely remorseful.[22] Mr. Theroux's submissions also state his remorse, and I accept these submissions.

3. Analysis

[28] It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring Mr. Theroux from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons.

[29] Mr. Theroux does not contest the sanctions recommended by OSC Staff, subject to his request for two carve-outs discussed below.

[30] An investment fraud of the kind perpetrated by Mr. Theroux, based on a breach of trust by a former registered securities professional with devastating consequences for some investors is among the most serious examples of misconduct that the Commission must consider. Only a permanent ban on Mr. Theroux participating in the capital markets, subject to the one carve-out discussed below, would adequately protect investors and those markets.

[31] However, since Mr. Theroux's fraud did not involve trading activities effected through brokerage accounts, but rather the solicitation of direct investments in the biofuel enterprise, I do not consider it necessary to bar Mr. Theroux from trading in registered accounts for which he has a beneficial ownership, subject to the conditions specified below, in order provide him with the possibility of accumulating some investment savings. In addition, enabling him to save in this manner may increase the likelihood that he can free up financial resources to make restitution to the investors affected by his fraud, as ordered by Justice Gage.

[32] Mr. Theroux also requested a carve-out to enable him to return to his role as a director of a private company he apparently owns, called Genius Innovations Canada Corp. (**Genius Innovations**) at the end of his parole term, the business of which is described in Mr. Theroux's submissions as "marketing and direct marketing services in connection with HVAC, real estate and other products and services."

[33] Although Mr. Theroux's submissions state that it is a "private company, not involved in the public markets in any capacity", I am not prepared to grant this carve-out from the director ban. This enterprise could just as readily be used to raise capital or otherwise market investment contracts involving the HVAC business or real estate through the exempt market as the enterprise involved in the fraud Mr. Theroux committed. Preventing Mr. Theroux from being a director of this and other private companies will not prevent him from having a livelihood as an employee for Genius Innovations or other entities, provided that he does not perform the functions of, or hold himself out as a director or officer of, Genius Innovations or other entities.

V. CONCLUSION

[34] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff, with an additional carve-out to allow for Mr. Theroux to trade and acquire securities through a registrant provided they are held in certain registered and tax-free savings accounts. I will therefore order:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Mr. Theroux shall cease permanently, except that this order does not preclude Mr. Theroux from trading in securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which he has a beneficial ownership, provided that he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

[21] Exhibit 2, Sentencing, Tab 4 at 2 lines 4-13
[22] Exhibit 2, Sentencing, Tab 4 at 2 line 15

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Mr. Theroux shall be prohibited permanently, except that this order does not preclude Mr. Theroux from purchasing securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which he has a beneficial ownership, provided that he carries out any permitted acquisitions through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

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

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

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Mr. Theroux is prohibited permanently from being or acting as a director or officer of any issuer or registrant; and

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Theroux is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 3rd day of June, 2019.

“D. Grant Vingoe”

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Esrey Resources Ltd.	03 April 2019	31 May 2019

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Organto Foods Inc.	02 May 2019	31 May 2019

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Blocplay Entertainment Inc.	03 May 2019	
Dionymed Brands Inc.	03 May 2019	
Namaste Technologies Inc.	04 April 2019	
Organto Foods Inc.	02 May 2019	31 May 2019
TREE OF KNOWLEDGE INTERNATIONAL CORP.	01 MAY 2019	

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Chapter 5

Rules and Policies

5.1.1 Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

AMENDMENTS TO NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Subsections 14.6.1(1) and (2) are replaced with the following:

(1) In this section

"cleared specified derivative", "clearing corporation option", "futures exchange", "option on futures", "specified derivative" and "standardized future" have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

"regulated clearing agency" has the same meaning as in subsection 1(1) of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

(2) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with a member of a regulated clearing agency or a dealer as margin for transactions outside of Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if

(a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,

(b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the member or dealer is more beneficial to the client or investment fund than using a Canadian custodian.**.**

3. (1) This Instrument comes into force on June 12, 2019.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after June 12, 2019, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

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Chapter 7

Insider Reporting

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

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

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Conservative Portfolio
Moderate Portfolio
Balanced Portfolio
Growth Portfolio
High Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated May 23, 2019
Received on May 24, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2784274

Issuer Name:
Harvest Banks & Buildings Income ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 29, 2019
Received on May 29, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Harvest Portfolios Group Inc.
Project #2853875

Issuer Name:
IA Clarington Focused Balanced Fund
IA Clarington Focused Balanced Class
IA Clarington Focused Canadian Equity Class
IA Clarington Thematic Innovation Class (formerly IA Clarington Focused U.S. Equity Class)
IA Clarington U.S. Equity Currency Neutral Fund (formerly IA Clarington Sarbit U.S. Equity Fund)
IA Clarington U.S. Equity Class (formerly IA Clarington Sarbit U.S. Equity Class (Unhedged))
Principal Regulator - Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated May 30, 2019
Received on May 30, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
IA Clarington Investments Inc
Project #2766675

Issuer Name:
Sun Real Asset Fund (formerly, Sun Life Infrastructure Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to AIF dated May 24, 2019
Received on May 24, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2858300

Issuer Name:
Conservative Portfolio
Moderate Portfolio
Balanced Portfolio
Growth Portfolio
High Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated May 23, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2784274

Issuer Name:
Harvest Banks & Buildings Income ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 29, 2019
NP 11-202 Receipt dated June 3, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Harvest Portfolios Group Inc.
Project #2853875

Issuer Name:
Digital Consumer Dividend Fund
Principal Regulator - Alberta (ASC)
Type and Date:
Final Long Form Prospectus dated May 24, 2019
NP 11-202 Receipt dated May 24, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Industrial Alliance Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Ltd.
Middlefield Capital Corporation
Desjardins Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
Middlefield Limited
Project #2906229

Issuer Name:
Family Single Student Education Savings Plan
Family Group Education Savings Plan
Flex First Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 31, 2019
NP 11-202 Receipt dated May 31, 2019
Offering Price and Description:
scholarship plan units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2883798

Issuer Name:
Flex First Plan
Family Single Student Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 31, 2019
NP 11-202 Receipt dated May 31, 2019
Offering Price and Description:
scholarship plan units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2883787

Issuer Name:
Heritage Plans (formerly Heritage Scholarship Trust Plans)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 31, 2019
NP 11-202 Receipt dated May 31, 2019
Offering Price and Description:
scholarship plan units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2883780

Issuer Name:
Sun Real Asset Fund (formerly, Sun Life Infrastructure Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to AIF dated May 24, 2019
NP 11-202 Receipt dated May 27, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2858300

Issuer Name:
NCM Balanced Income Portfolio
NCM Conservative Income Portfolio
NCM Core Canadian (formerly, Norrep Core Canadian)
NCM Core Global (formerly, Norrep Core Global)
NCM Energy Plus Class (formerly Norrep Energy Plus Class)
NCM Entrepreneurs Class (fomerly Norrep Entrepreneurs Class)
NCM Global Income Growth Class (formerly Norrep Global Income Growth Class)
NCM Growth and Income Portfolio
NCM Income Growth Class (formerly Norrep Income Growth Class)
NCM Norrep Fund (formerly Norrep Fund)
NCM Short Term Income Fund (formerly Norrep Short Term Income Fund)
NCM Small Companies Class (formerly, Norrep II Class)
NCM US Dividend Plus Class (formerly, Norrep US Dividend Plus Class of Norrep Opportunities Corp.)
Principal Regulator – Alberta
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 22, 2019
NP 11-202 Final Receipt dated May 27, 2019
Offering Price and Description:
Series A (H) Units
Series M Units
Series F6 Units
Series M Shares
Series B Shares
Series F (H) Units
Series R Units
Series I Units
Series A Shares
Series F6 Shares
Series A Units
Series I Shares
Series R Units
Series F Shares
Series R Shares
Series Z Shares
Series I Units
Series T6 Units
Series F Units
Series T6 Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2899891

Issuer Name:
Sun Real Asset Fund (formerly, Sun Life Infrastructure Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to AIF dated May 24, 2019
NP 11-202 Receipt dated May 27, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2858300

Issuer Name:
Purpose Silver Bullion Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 27, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
ETF Non-Currency Hedged Units
ETF Currency Hedged Unit
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2912310

Issuer Name:
Maple Leaf Income Class
Maple Leaf Resource Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated May 27, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
Series A shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2905571

Issuer Name:
CI First Asset High Interest Savings ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 29, 2019
NP 11-202 Receipt dated May 30, 2019
Offering Price and Description:
Common units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2905138

Issuer Name:
imaxx Canadian Bond Fund
imaxx Canadian Dividend Plus Fund
imaxx Canadian Fixed Pay Fund
imaxx Equity Growth Fund
imaxx Global Fixed Pay Fund (formerly imaxx Global Equity Growth Fund)
imaxx Short Term Bond Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated May 24, 2019
NP 11-202 Final Receipt dated May 29, 2019
Offering Price and Description:
A0 Class Units
A5 Class Units
F4 Class Units
F0 Class Units
F2 Class Units
A3 Class Units
F Class Units
A0
A Class Units
A2 Class Units
F5 Class Units
A4 Class Units
F3 Class Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2902907

Issuer Name:
Invesco Balanced Portfolio
Invesco Conservative Portfolio
Invesco Growth Portfolio
Invesco High Growth Portfolio
Invesco Moderate Portfolio
Principal Regulator - Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 27, 2019
NP 11-202 Preliminary Receipt dated May 28, 2019
Offering Price and Description:
Series A units
Series I units
Series PF units
Series F units
Series P units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2921461

Issuer Name:
RBC Canadian Discount Bond ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 23, 2019
NP 11-202 Final Receipt dated May 24, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2902576

Issuer Name:
iShares Core Conservative Balanced ETF Portfolio
iShares Core Equity ETF Portfolio
iShares Core Income Balanced ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 31, 2019
NP 11-202 Preliminary Receipt dated Jun 3, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2927163

NON-INVESTMENT FUNDS

Issuer Name:
A&W Revenue Royalties Income Fund
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated May 29, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
$65,043,000.00 - 1,460,000 Units
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
CANACCORD GENUITY CORP.
HSBC SECURITIES (CANADA) INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2917753

Issuer Name:
Abigail Capital Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated May 29, 2019
NP 11-202 Preliminary Receipt dated May 31, 2019
Offering Price and Description:
$500,000.00 - 5,000,000 Common Shares
PRICE: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Ian Slater
Project #2925390

Issuer Name:
Alaris Royalty Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated May 28, 2019
NP 11-202 Preliminary Receipt dated May 28, 2019
Offering Price and Description:
$100,000,000.00 - 5.50% Convertible Unsecured Subordinated Debentures
Price: C$1,000.00 per Debenture
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Acumen Capital Finance Partners Limited
Desjardins Securities Inc.
GMP Securities L.P.
Cormark Securities Inc.
Promoter(s):
-
Project #2919833

Issuer Name:
Element Fleet Management Corp. (formerly Element Financial Corporation)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 27, 2019
NP 11-202 Receipt dated May 28, 2019
Offering Price and Description:
$3,750,000,000.00 - Debt Securities, Preferred Shares, Common Shares, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2916575

Issuer Name:
First Mining Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated May 29, 2019
NP 11-202 Preliminary Receipt dated May 29, 2019
Offering Price and Description:
$100,000,000.00 - Common Shares, Preferred Shares, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2923120

Issuer Name:
HLS Therapeutics Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated June 3, 2019
NP 11-202 Receipt dated June 3, 2019
Offering Price and Description:
C$43,500,000.00 - 2,718,750 Common Shares
Price: C$16.00 per Offered Share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
BLOOM BURTON SECURITIES INC.
CLARUS SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #2916872

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 22, 2019
NP 11-202 Receipt dated May 23, 2019
Offering Price and Description:
Up to $2,000,000,000.00 Credit Card Asset-Backed Notes
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
MUFG SECURITIES (CANADA), LTD.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
CANADIAN TIRE BANK
Project #2916645

Issuer Name:
Great Panther Mining Limited
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated May 29, 2019
NP 11-202 Preliminary Receipt dated May 30, 2019
Offering Price and Description:
US$120,000,000.00 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2924081

Issuer Name:
InnoCan Pharma Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated May 30, 2019
NP 11-202 Preliminary Receipt dated May 31, 2019
Offering Price and Description:
A minimum of C$500,000.04 and a maximum of C$1,000,000.08 - A minimum of 2,777,778 and a maximum of 5,555,556 Units
Price: C$0.18 per Unit
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
-
Project #2926788

Issuer Name:
MediPharm Labs Corp. (formerly POCML 4 Inc.)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 3, 2019
NP 11-202 Preliminary Receipt dated June 3, 2019
Offering Price and Description:
$75,002,700.00 - 13,514,000 Common Shares
Price: C$5.55 per Common Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
MACKIE RESEARCH CAPITAL CORP.
PI FINANCIAL CORP.
ALTACORP CAPITAL INC.
Promoter(s):
-
Project #2927593

Issuer Name:
Neurocords Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated May 28, 2019
NP 11-202 Preliminary Receipt dated May 29, 2019
Offering Price and Description:
A minimum of $1,500,000.00 and a maximum of $2,000,000.00 - A minimum of 10,000,000 and a maximum of 13,333,334 Units
Price: C$0.15 per Unit
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Eran Gilboa
Ariel Malik
Project #2922532

Issuer Name:
Northview Apartment Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 29, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
$75,040,000.00 - 2,800,000 Units
Price: $26.80 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2918351

Issuer Name:
PKS Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated May 29, 2019
NP 11-202 Receipt dated May 31, 2019
Offering Price and Description:
Offering: $250,000.00 or 2,500,000 Common Shares
Price: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
-
Project #2908806

Issuer Name:
Rozdil Capital Corporation
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated May 27, 2019
NP 11-202 Receipt dated May 28, 2019
Offering Price and Description:
Offering: $215,000.00 - 2,150,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Brook G. Riggins
Project #2898182

Issuer Name:
Spin Master Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 29, 2019
NP 11-202 Preliminary Receipt dated May 29, 2019
Offering Price and Description:
C$750,000,000.00 - Subordinate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units.
Underwriter(s) or Distributor(s):
-
Promoter(s):
MARATHON INVESTMENT HOLDINGS LTD.
TRUMBANICK INVESTMENTS LTD.
LENTILBERRY INC.
Project #2923018

Issuer Name:
Summit Industrial Income REIT
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 28, 2019
NP 11-202 Receipt dated May 29, 2019
Offering Price and Description:
$1,000,000,000 Units Debt Securities Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2914151

Issuer Name:
WikiLeaf Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 28, 2019
NP 11-202 Preliminary Receipt dated May 29, 2019
Offering Price and Description:
No securities are being offered pursuant to this non-offering preliminary prospectus (the “Prospectus”).
Underwriter(s) or Distributor(s):
-
Promoter(s):
Daniel Nelson
Manoj Hippola
Charles Rifici
Project #2922728

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Highwood Value Partners Inc.	Portfolio Manager	May 30, 2019
New Registration	Noah Canada Wealth Management Limited	Portfolio Manager Exempt Market Dealer	June 3, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 Investment Industry Regulatory Organization of Canada (IIROC) — Amendments Respecting Order Execution Only Service Eligibility and Adviser Identifiers — Notice of Commission Approval

NOTICE OF COMMISSION APPROVAL

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AMENDMENTS RESPECTING ORDER EXECUTION ONLY SERVICE ELIGIBILITY AND ADVISER IDENTIFIERS

The Ontario Securities Commission has approved IIROC's proposed amendments to the Dealer Member Rules respecting order execution only service eligibility and adviser identifiers ("Amendments").

The Amendments prohibit IIROC Dealer Members which provide order execution only services ("OES Dealers") from providing such services to a client that is acting and registered or exempted from registration as a dealer. In addition, the Amendments expand the requirements for identifiers by requiring OES Dealers to assign unique identifiers to registered advisers and foreign adviser equivalents that have been granted trading authority, direction or control over an order execution only account.

The Amendments come into force on September 6, being three months after the publication of this Notice of Approval. A copy of the IIROC Notice, including the Amendments, can be found at http://www.osc.gov.on.ca.

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 of New Brunswick; the Legal Registries Division, Department of Justice (Northwest Territories); the 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 Office have approved or not objected to the Amendments.

13.2 Marketplaces

13.2.1 Alpha Exchange Inc. – Notice of Approval – Fee Changes Effective June 1, 2019

ALPHA EXCHANGE INC.

NOTICE OF APPROVAL

FEE CHANGES EFFECTIVE JUNE 1, 2019

In accordance with the *Process for the Review and Approval of the Information Contained in Form 21-101F1 and the Exhibits Thereto (Protocol)*, on May 30, 2019, the Commission approved fee changes to Exhibit L of Form 21-101F1 for Alpha Exchange Inc., reflecting the differentiation of active rebates for retail order flow, as well as changes to the fees to post and rebates to take orders.

The fee changes were approved in their revised form. Staff note that we are reviewing all fee proposals in the context of existing fee models and the issues raised in outstanding policy consultations, specifically CSA Staff Notice and Request for Comment 23-323 *Trading Fee Rebate Pilot Study* and Joint CSA/IIROC Consultation Paper 23-406 *Internalization within the Canadian Equity Market*.

The fee changes will be implemented on June 1, 2019.

13.2.2 Nasdaq CXC Limited — Notice of Proposed Changes and Request for Comment

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Nasdaq CXC Limited (Nasdaq Canada) has announced plans to implement the changes described below in Q4 2019 subject to regulatory approval. Nasdaq Canada is publishing this Notice of Proposed Changes in accordance with the requirements set out in the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto (Exchange Protocol). Pursuant to the Exchange Protocol, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by July 2, 2019 to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Fax 416 595 8940
Email: marketregulation@osc.gov.on.ca

And to

Matt Thompson
Chief Compliance Officer
Nasdaq CXC Limited
25 York St., Suite 900
Toronto, ON M5J 2V5
Email: matthew.thompson@nasdaq.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES

Nasdaq Canada has announced plans to introduce the following change in Q4 2019 subject to regulatory approval. Nasdaq Canada is publishing this Notice of Proposed Changes in accordance with the requirements set out in the Exchange Protocol.

Summary of Proposed Changes

Midpoint Extended Life Order

Nasdaq Canada is proposing to introduce the Midpoint Extended Life Order (M-ELO) for the CXC Trading Book. The M-ELO is a non-displayed order that trades at the midpoint of the NBBO. Unlike a Mid Peg order, the M-ELO order must meet a minimum resting time requirement in the order book before it becomes eligible to trade (Minimum Resting Time or MRT).[1] M-ELO orders are only eligible to trade against contra-side M-ELO orders – they will not interact with other orders in the order book. An execution between two M-ELO orders will only occur after each M-ELO order has met the MRT. Modifications made to an M-ELO order (other than a reduction in quantity) will result in the MRT being reset. M-ELO orders can be cancelled at any time including the time before the MRT has been satisfied and the M-ELO order becomes eligible to trade. M-ELO executions will only occur at the midpoint of the NBBO.

Similar to Mid-Peg orders Members have the option to enter a limit price when entering an M-ELO that can be either a full or a half-tick increment. In the case where an M-ELO is entered with a limit price, the M-ELO will only be eligible to trade if the midpoint of the NBBO on a security is within the limit price of the order. Adding a pegged offset is not permitted for M-ELO orders.

M-ELO orders are available to trade during regular trading hours between 9:30 a.m. and 4:00 p.m. M-ELO orders are accepted by the Nasdaq Canada System between 8:00 a.m. and 9:30 a.m. but held until 9:30 a.m. when the orders are booked and become eligible to trade after the MRT has been satisfied. Open M-ELO orders are cancelled at 4:00 p.m. M-ELO orders will not trade if the NBBO for a security is locked or crossed.

M-ELO orders can be entered with or without attribution by selecting the anonymous order marker. Matching priority for M-ELO orders is based on Broker/Time priority. Unique to M-ELO orders, broker priority is applicable to both anonymous and attributed orders. M-ELO orders will be entered with a unique FIX tag value identifying that the order is a M-ELO order.

How it Works[2]

Example 1:

		BID	ASK	
NBBO (midpoint 10.005)		10.00	10.01	
CXC Book	M-ELO (500)	10.005		

Action: M-ELO sell order is entered in the CXC Trading Book for 500 shares

Result: The M-ELO sell order will execute against the M-ELO buy order for 500 shares after it meets the MTR

Example 2:

		BID	ASK	
NBBO (midpoint 10.005)		10.00	10.01	
CXC Book	M-ELO (500)	10.005		

[1] The specific time for the Minimum Resting Time will be communicated to Nasdaq Canada Exchange members by way of Notice.
[2] Mid Peg M-ELO orders are used in all examples.

Action: M-ELO sell order is entered in the CXC Book for 500 shares

M-ELO buy order is cancelled before the M-ELO sell order meets the MRT

		BID	ASK	
NBBO (midpoint 10.005)		10.00	10.01	
CXC Book			10.005	M-ELO (500)

Result: The M-ELO sell order will not execute against the M-ELO buy order because it did not meet the MRT prior to the M-ELO buy order being cancelled.

Example 3:

		BID	ASK	
NBBO (midpoint 10.005)		10.00	10.01	
CXC Book	M-ELO (500)	10.005		

Action: A sell order is entered in the CXC Book with a limit price of $10.00 moving the NBBO from 10.00 – 10.01 to 9.99 – 10.00

		BID	ASK	
NBBO (midpoint 9.995)		9.99	10.00	
CXC Book	M-ELO (500)	9.995		

Result: The sell limit order will not interact with the M-ELO. M-ELO orders are only eligible to interact with other M-ELO orders.

The sell limit order will establish a new NBBO of 9.99 – 10.00.

The M-ELO buy order will be repriced to the midpoint of the new NBBO (9.995).

Action: A sell M-ELO is entered on CXC for 500 shares.

Result: The sell M-ELO will execute against the buy M-ELO at 9.995 after it meets the MRT

Example 4:

		BID	ASK	
NBBO (midpoint 10.01)		10.00	10.02	
CXC Book	M-ELO LP 10.01 (500)	10.01		

Action: A buy order is entered on the CXC Book with a limit price of 10.01 moving the NBBO to 10.01 – 10.02 and a new midpoint price of 10.015

		BID	ASK	
NBBO (midpoint 10.015)		10.01	10.02	
CXC Book	M-ELO LP 10.01 (500)	10.01		

Result: The M-ELO buy order will not be repriced to the new midpoint (10.015) because it is above its limit price. The buy M-ELO order will remain in the trading system at its limit price of 10.01 but will not be eligible to trade.

Action: A sell Mid-Peg M-ELO is entered for 500 shares.

		BID	ASK	
NBBO (midpoint 10.01)		10.01	10.02	
CXC Book	M-ELO LP 10.01 (500)	10.01	10.015	M-ELO (500)

Result: The sell M-ELO will float at the midpoint (10.015)

The buy M-ELO will continue to remain in the trading system at its limit price (10.01)

Action: A sell order is entered in the CXC Book with a limit price of $10.01 moving the NBBO from 10.01 – 10.02 to 10.00 – 10.01 and a new midpoint price of 10.005.

		BID	ASK	
NBBO (midpoint 10.005)		10.00	10.01	
CXC Book	M-ELO LP 10.01 (500)	10.005	10.005	M-ELO (500)

Result: The buy M-ELO will be repriced and at the new midpoint (10.005) becoming eligible to trade because this midpoint price is below its limit price.

The sell M-ELO will be repriced to the new midpoint (10.005) and will execute against the buy M-ELO order.

Expected Date of Implementation

Subject to regulatory approval, we are expecting to introduce the M-ELO in Q4 2019.

Rationale and Relevant Supporting Analysis

The M-ELO is designed to attract and unite counterparties with longer-term investment horizons. By de-emphasizing speed and immediacy, the M-ELO facilitates long-term strategies by reducing the opportunity for latency arbitrage and adverse selection for non-latency sensitive participants. The M-ELO will limit market impact when managing large sized orders. By combining the benefits of reducing adverse selection with limiting market impact, the M-ELO is ideally suited for institutional investors and the algorithms they use. In addition, by permitting cancellations of M-ELO orders prior to the MRT, Members are able to effectively manage risk.

By making the M-ELO available on the CXC Trading Book the M-ELO provides an alternative to a speedbump market without disrupting current dealer routing practices. Members will also be able to leverage existing connectivity to Nasdaq Canada which in turn will reduce costs.

Expected Impact on Market Structure

Nasdaq Canada is introducing the M-ELO in response to consultations with Members that have expressed the need to have additional trading tools available to facilitate non-latency sensitive trading strategies. We expect the M-ELO will assist Members in this regard by decreasing adverse selection and trading costs.

Expected Impact on the Exchange's Compliance with Ontario Securities Law

The proposed changes will not impact Nasdaq Canada's compliance with Ontario securities law.

Consultation and Review

This change is being made in response to feedback solicited by Members.

Estimated Time Required by Subscribers and Vendors (or why a reasonable estimate is not provided)

Some optional development work will be required by Members and vendors that choose to incorporate the proposed order types into their trading systems. Based on the intended implementation date we anticipate that there will be at least 90 days between regulatory approval of the proposed changes and implementation, which should be sufficient for those who decide to implement the M-ELO into their trading systems.

Will Proposed Fee Change or Significant Change introduce a Fee Model or Feature that Currently Exists in other Markets or Jurisdictions

Yes, The M-ELO is supported by Nasdaq in the United States. In Canada the CMO order is a similar order type supported by the TSX and TSX-V.

Any questions regarding these changes should be addressed to Matt Thompson, Nasdaq CXC Limited: matthew.thompson@nasdaq.com, T: 647-243-6242

13.3 Clearing Agencies

13.3.1 CDCC — Amendments to the Rules, Risk Manual and Operations Manual of the Canadian Derivatives Clearing Corporation for Implementation of the New Risk System — Notice of Commission Approval

CDCC — AMENDMENTS TO THE RULES, RISK MANUAL AND OPERATIONS MANUAL OF THE CANADIAN DERIVATIVES CLEARING CORPORATION FOR IMPLEMENTATION OF THE NEW RISK SYSTEM

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and The Canadian Derivatives Clearing Corporation (CDCC), the Commission approved on May 24, 2019, amendments related to the implementation of the new risk system and enhancements to CDCC's risk management processes and methodologies.

A copy of the CDCC notice was published for comment on November 22, 2018 on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

Chapter 25

Other Information

25.1 Exemptions

25.1.1 YTM Capital Fixed Income Alternative Fund – Part 6 of NI 81-101 Mutual Fund Prospectus Disclosure

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from s. 2.1(2) of NI 81-101 to file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus – National Instrument 81-101 Mutual Fund Prospectus Disclosure.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1(2), 6.1.

VIA SEDAR

May 21, 2019

YTM Capital Asset Management Ltd. (the **Manager**)

Attention: David Burbach

Dear Sir:

Re: YTM Capital Fixed Income Alternative Fund (the Fund)

Preliminary Simplified Prospectus, Annual Information Form and Fund Facts dated November 21, 2018

Exemptive Relief Application under Part 6 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101)
Application No. 2019/0087; SEDAR Project Number 2845550

By letter dated February 11, 2019 (the **Application**), YTM Capital Asset Management Ltd., the manager of the Fund applied to the Director of the Ontario Securities Commission (the **Director**) under section 6.1 of NI 81-101 for relief from the operation of subsection 2.1(2) of NI 81-101, which prohibits an issuer from filing a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Fund's prospectus, subject to the condition that the prospectus be filed no later than **June 7, 2019**.

Yours very truly,

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

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