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CSA Second Notice and Request for Comment

Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure

Related Proposed Consequential Amendments and Changes

February 13, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period the following materials:

- Revised version of proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Proposed Instrument**);
- Revised version of proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Proposed Companion Policy**);
- Related proposed consequential amendments or changes to:
  - Multilateral Instrument 45-108 *Crowdfunding*[1];
  - Companion Policy 45-108CP *Crowdfunding*;
  - Companion Policy 51-102CP *Continuous Disclosure Obligations*;
  - Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*[2];
  - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*.

(collectively, the **Proposed Materials**).

The Proposed Instrument sets out disclosure requirements for non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Proposed Instrument).

The original versions of the Proposed Materials (the **Original Materials**) were first published on September 6, 2018. During the 90-day comment period we conducted 38 outreach sessions across seven cities in Canada allowing us to actively engage with stakeholders. The comment period ended on December 5, 2018. We received 42 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms. The list of commenters is

[1] The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments or the changes to the related Companion Policy because MI 45-108 does not apply in these jurisdictions.

[2] The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* and its Companion Policy do not apply in Ontario.

attached as Annex A. We wish to thank all commenters for contributing to the consultation. A summary of the comments we received and our responses to those comments are attached as Annex B. In response to the feedback we received, we have reduced the scope of the application of the Proposed Instrument and simplified the disclosure requirements, with the aim of ensuring investors receive appropriate disclosure without an overall increase in regulatory burden.

We understand that non-GAAP financial measures, non-GAAP ratios, and other financial measures can provide valuable information to investors when supplemented with useful disclosures. Considering the substantive changes made in response to comments received on the Original Materials, we are publishing the Proposed Instrument and the Proposed Companion Policy for a second comment period. We are also publishing for information the related proposed consequential amendments or changes in their original form.

The text of the Proposed Materials is contained in Annexes D through J of this Notice. Local amendments, if any, are in Annex K of this Notice. This Notice will also be available on the websites of CSA jurisdictions, including:

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

Summary of Changes to the Original Materials

Many comment letters expressed support for the objectives of the Original Materials. Commenters agreed with the analysis that non-GAAP financial measures and other financial measures disclosures lack standardized meaning under financial reporting frameworks, lack context when disclosed outside of the issuer's financial statements, and lack transparency as to their calculation or vary significantly by issuer and industry. However, concerns were expressed on the application and scope of the Proposed Instrument, definitions proposed, and perception of increased regulatory burden that the Proposed Instrument would have in comparison to current CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (**SN 52-306**), and SEC rules.

Following our extensive review and analysis of the comment letters, through the substantive changes to the Original Materials, we have aimed to:

- reduce the scope of application to certain issuers,
- exempt certain disclosures, financial measures, and types of documents,
- narrow and clarify various definitions,
- simplify the disclosure for non-GAAP financial measures that are forward-looking information and non-GAAP ratios,
- limit disclosures for capital management measures and total of segments measures,
- permit cross-referencing in certain circumstances,
- better align disclosure requirements with those adopted by other securities regulators,
- enhance readability, and
- reduce uncertainty regarding disclosure obligations by clarifying disclosure requirements and including significant guidance.

More information on the changes made in the Proposed Instrument is included in Annex C.

A second publication for comment will allow for stakeholder input on these changes.

Substance and Purpose

The Proposed Instrument addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures.

In some cases, non-GAAP financial measures, non-GAAP ratios, and other financial measures are helpful to investors to assess an issuer's financial performance. The Proposed Instrument does not contain specific limitations or industry-specific requirements; rather, it provides clarity and consistency with respect to an issuer's disclosure obligations and improve the quality of information provided to investors.

We acknowledge that some stakeholders continue to prefer that we

- limit, in specific circumstances, the disclosure of certain financial measures, and
- develop industry-specific requirements for certain financial measures.

However, due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we continue to believe that disclosure requirements are best suited to respond to investor needs for quality information without being overly prescriptive. These requirements would allow investors to better analyze different financial measures within an industry or among different industries.

Although the definition of a non-GAAP financial measure has been clarified, the Proposed Materials have substantially incorporated the disclosure guidance in SN 52-306 for non-GAAP financial measures.

To ensure investors appreciate the context of capital management measures and total of segments measures, the Proposed Instrument introduces disclosure requirements if such financial measures are disclosed outside of the financial statements.

Background

Non-GAAP Financial Measures

Various activities have contributed to the development of the Proposed Materials, which are intended to replace the guidance provided in SN 52-306.

Many issuers, in all industries, disclose a range of financial measures that may lack standardized meanings under the financial reporting framework used in the preparation of the issuer's financial statements and lack transparency as to their calculation or vary significantly by issuer and industry.

Common terms used to label non-GAAP financial measures may include "adjusted earnings", "adjusted EBITDA", "free cash flow", "pro forma earnings", "cash earnings", "distributable cash", "cost per ounce", "adjusted funds from operations" and "earnings before non-recurring items".

In Canada, the guidance in SN 52-306 is intended to help ensure that non-GAAP financial measures (including ratios that include non-GAAP financial measures) do not mislead investors. Although we have updated SN 52-306 several times to respond to changing circumstances and published various staff notices and reports that comment on the topic, we continue to find that disclosure practices surrounding non-GAAP financial measures vary. Our findings are consistent with those of other stakeholders (particularly investors) who share our desire for quality disclosure.

The use of non-GAAP financial measures is a topic raised frequently by the financial reporting community, locally and abroad. In Canada, several organizations have undertaken research and issued guidance on how to disclose non-GAAP financial measures. Stakeholders generally have expressed the view that regulating the use of non-GAAP financial measures as primarily a task of the CSA.

We are aware the International Accounting Standards Board (IASB) has recently issued an exposure draft, as part of its Primary Financial Statements project, on General Presentation and Disclosures. This exposure draft could, among other things, change the structure and content of the income statement and result in some traditional non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. As the IASB proposals are at an early stage, it is difficult to determine what changes, if any, will be made to International Financial Reporting Standards (IFRS) requirements. We will monitor the progress of the exposure draft and the overall project in order to consider whether any changes to securities legislation will be appropriate.

Internationally, securities regulators are strengthening their efforts to regulate non-GAAP financial measure disclosure, including the International Organization of Securities Commissions (IOSCO) and the European Securities Markets Authority (ESMA). In addition, the U.S. Securities and Exchange Commission (SEC), which has formalized requirements for disclosure of non-GAAP financial measures in its rules, continues to provide further guidance on how to comply with applicable requirements.

Other Financial Measures

Over the years, we have also found that other financial measures that do not meet the definition of a non-GAAP financial measure in the Proposed Instrument present similar issues if not accompanied by appropriate disclosure. Such financial

measures include certain measures disclosed in the notes to the financial statements that lack context when disclosed outside of the financial statements.

For example, IFRS permits disclosure of a broad range of capital management or segment measures but do not specify how such measures must be calculated in most circumstances. As a result, such measures can differ materially from amounts presented in the primary financial statements and may not be prepared in accordance with the recognition and measurement accounting policies used to prepare the issuer's primary financial statements.

To ensure investors were not confused or mislead, such measures were frequently identified as "non-GAAP" and issuers provided disclosures consistent with our expectations in SN 52-306. To ensure investors continue to appreciate the context of such measures, the Proposed Instrument includes disclosure requirements for such measures when disclosed outside of the financial statements. Consistent with the Original Materials, these disclosures are tailored for each measure and would require substantially less disclosure than expected under SN 52-306.

Anticipated Costs and Benefits of the Proposed Instrument

Overview

Cost benefit considerations have been informed by comments received in response to the Original Materials, as well as feedback received during related stakeholder outreach sessions. In addition, the Proposed Instrument has been developed in the context of various initiatives to reduce regulatory burden which, among other things, aim to ensure that regulatory costs are proportionate to the regulatory objectives sought.

We believe the Proposed Instrument results in a cost-effective and proportionate regulatory framework that supports innovation and competition while maintaining appropriate investor protections.

Although the Proposed Instrument codifies disclosures for non-GAAP financial measures and introduces targeted disclosure requirements for other financial measures, on balance, we believe, the Proposed Instrument and the Proposed Companion Policy result in an overall net reduction in regulatory burden, particularly in the long-term, because compared to current regulatory expectations as outlined in SN 52-306, the Proposed Instrument and the Proposed Companion Policy aim to:

- limit the application to certain issuers,
- exempt certain disclosures, financial measures, and documents,
- remove categorization of certain measures as non-GAAP financial measures,
- reduce and simplify disclosures for certain non-GAAP financial measures,
- eliminate duplication, in certain areas, through targeted provisions of incorporating information by reference,
- reduce uncertainty regarding disclosure obligations, and
- diminish the time and effort investors spend on understanding certain financial information.

We considered costs and benefits in limiting the application of the Proposed Instrument to certain issuers and in the process of identifying and disclosing non-GAAP and other financial measures.

Affected Stakeholders

Issuers

The Proposed Instrument only applies if an issuer that is within the scope of the Proposed Instrument discloses non-GAAP or other financial measures. If such an issuer does not disclose such measures, there is no effect.

Currently, disclosure expectations in SN 52-306 apply to all issuers that disclose non-GAAP financial measures. In contrast, the Proposed Instrument limits the application to certain issuers, such as reporting issuers. Investment funds, SEC foreign issuers, and designated foreign issuers are exempted – a significant reduction in scope.

Investors

We expect investors (institutional and retail) to be the primary beneficiaries of the Proposed Instrument because the Proposed Instrument:

- addresses many of the identified investor concerns,

- enhances the consistency, comparability and transparency of disclosure,
- reduces information-asymmetry, and
- diminishes the time and effort historically required to understand certain financial information (i.e., investor regulatory burden will be reduced).

Investors are not expected to incur additional costs.

Local Matters – Ontario

Authority for the Proposed Instrument

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 13, 16, 22, 22.1, 25 and 39 of subsection 143(1) of the *Securities Act* (Ontario).

Alternatives Considered

We considered adopting the Original Materials in their original form as well as the alternatives suggested by the commenters as detailed in Annex B.

Reliance on Unpublished Studies

In developing the Proposed Instrument, we are not relying on any significant unpublished study, report or other written material.

Request for Comments

We welcome your comments on the Proposed Materials.

Please submit your comments in writing on or before May 13, 2020. If you are not sending your comments by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

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Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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514 395-0337 Ext: 4466 | michel.bourque@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

ANNEX A
List of Commenters

We received comment letters on the Original Materials from the following:

- Auditing and Assurance Standards Board
- Bennett Jones LLP
- Blakes, Cassels & Graydon LLP
- British Columbia Investment Management Corporation
- Burnet, Duckworth & Palmer LLP
- Canadian Accounting Standards Board
- Canadian Bankers Association
- Canadian Coalition for Good Governance
- Canadian Natural Resources Ltd.
- Canadian Public Accountability Board
- Cassels Brock & Blackwell LLP
- Cenovus Energy Inc.
- CPA Canada
- Davies Ward Phillips & Vineberg LLP
- Deloitte
- Ernst & Young LLP
- Financial Executives International Canada
- Freehold Royalties Ltd.
- Goodmans LLP
- Great-West Lifeco Inc.
- InPlay Oil Corp.
- Institute of Corporate Directors
- Intact Financial Corporation
- Inter Pipeline Ltd.
- Keyera Corp.
- KPMG
- Lynessa Dias
- Manulife Financial Corporation
- Norton Rose Fulbright Canada LLP
- Ontario Power Generation

- OSC Investor Advisory Panel
- Pembina Pipeline Corporation
- PricewaterhouseCoopers LLP
- Québec Bourse Inc.
- Seven Generations Energy
- Stikeman Elliott LLP
- Suncor Energy Inc.
- The Canadian Advocacy Council for Canadian CFA Institute Societies
- The Investment Funds Institute of Canada
- The Real Property Association of Canada
- Torys LLP
- Veritas Investment Research Corporation

ANNEX B

Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

This annex contains the following sections:

1. Introduction
2. Responses to comments received on the Proposed Instrument and the Proposed Companion Policy

1. Introduction

Drafting Suggestions

We received a number of drafting suggestions and comments. While we incorporated many of these suggestions, this annex does not include a summary of all the drafting changes we made.

Categories of comments and single responses

In this annex, we consolidated and summarized the comments and our responses by the general themes of the comments. We have included section references to the Proposed Instrument for convenience.

2. Responses to Comments Received on the Proposed Instrument and the Proposed Companion Policy

General Comments on the Original Materials		
Subject	**Comment**	**Response**
General comments	There was widespread support for the general objective of the proposals, with commenters noting that this will enhance investor confidence and improve financial reporting in Canada.	We thank the commenters for their submissions.
General comments	Commenters agreed with the CSA decision to not limit the issuers' ability to disclose different types of measures and to not prescribe industry-specific non-GAAP financial measures.	No change. Fundamental to the CSA's approach to regulating non-GAAP financial measures, non-GAAP ratios, and other financial measures is a disclosure-based regime with an overall goal to improve the quality of information provided to investors. Due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we believe that disclosure requirements are better suited to respond to investor needs for quality information. In our view, the requirements in the Proposed Materials allow investors to better analyze different financial measures within an industry or among different industries without the CSA limiting or prescribing certain measures.
General comments	A number of commenters raised concerns with a lack of consistency with international regulators, specifically the U.S. Securities and Exchange Commission (**SEC**), and perception that there may be a competitive disadvantage.	The Proposed Materials have been revised for better alignment with the SEC.
General comments	Commenters expressed the need for a long transition period leading up to the effective date, and that the instrument should be effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.	We agree with the comment and will consider this in determining the effective date before a final instrument is published.

General comments	A few commenters suggested that the CSA could stagger adoption dates to reduce implementation burden with different documents. For example, the CSA could replace CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (**SN 52-306**) with a rule for non-GAAP financial measures only, and delay disclosure requirements for other financial measures.	No change in the fundamental approach to regulate both non-GAAP financial measures, non-GAAP ratios, and other financial measures. Based on the CSA's experience, other financial measures may be equally problematic if not accompanied by appropriate disclosure. This approach is consistent with other international regulators, including the SEC. Refer to above comment regarding the need for a long transition period.
General comments	A few commenters expressed the emphasis on the CSA reducing regulatory burden strategic initiative and that the CSA should consider whether there is an alternative approach to achieve the CSA's objective.	As part of developing the Proposed Materials, we considered a number of alternatives to address stakeholder concerns regarding the quality of disclosures surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures, including careful consideration of updating SN 52-306 instead or developing other forms of staff guidance to supplement. Based on this work, we concluded that development of the Proposed Materials would be more effective in addressing the significant stakeholder concerns regarding quality disclosures. We also considered and agree with certain commenter responses who expressed that the Proposed Materials provide more guidance and less uncertainty regarding an issuer's disclosure obligations. To address concerns regarding regulatory burden, we have significantly revised the Proposed Materials, reducing the application of the Proposed Materials and disclosure requirements.
General comments	A few commenters expressed the need for the CSA to clarify that disclosures of non-GAAP financial measures and other financial measures are within the scope of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**), and that the CSA should encourage issuers to establish a written disclosure policy in consideration of National Policy 51-201 *Disclosure Standards* (**NP 51-201**). One commenter recommended adding specific disclosure requirements regarding internal controls over non-GAAP financial measures.	Companion Policy 52-109CP *to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings* (**52-109CP**) states that the forms included in NI 52-109 require each certifying officer to certify that an issuer's financial statements and other financial information (which includes non-GAAP financial measures, capital management measures, total of segments measures and supplementary financial measures) included in the annual or interim filings fairly present, in all material respects, the financial condition, financial performance and cash flows of the issuer, as of the date and for the periods presented. In addition, both section 6.8 of 52-109CP and part 6 of NP 51-201 provide guidance to assist an issuer with the adoption of good disclosure practices.
General comments	A number of commenters expressed the need for application guidance.	We agree with the comment and have provided more application guidance in the Proposed Companion Policy.
General comments	Some commenters expressed that specific regulation on non-financial measures or operational measures should be considered.	Non-financial measures and financial measures that do not meet one of the defined terms are excluded from the scope of the

		Proposed Materials, although disclosures are subject to provisions in applicable securities legislation which, among other things, prohibits misleading statements. We caution against the general statement that operating measures are not within the scope of the Proposed Instrument, as certain measures may meet one of the defined terms within the Proposed Instrument.
General comments	Some commenters expressed the view that the CSA should monitor the use of information outside the financial statements and whether it is in the public interest for the credibility of this information to be enhanced by independent assurance.	We thank the commenters for their submissions. The use of non-GAAP financial measures continues to evolve, and we are actively monitoring developments in this area.
General comments	One commenter expressed that disclosure requirements should be the same for all financial measures.	No change. Disclosure requirements have been scaled to address specifically identified concerns.
General comments	Some commenters suggested delaying the Proposed Materials to allow the CSA to consider how the proposals interact with other initiatives, including the International Accounting Standards Board's (IASB) various projects under its headline theme "Better Communication in Financial Reporting".	We note that IASB project is still in the early stages of development. We are aware of the project and are monitoring developments. If necessary in the future, we may update the Proposed Materials (or other securities legislative requirements) to respond to these and other marketplace changes (if any).
General comments	A few commenters suggested that requiring additional disclosures of GAAP measures when disclosed outside the financial statements (total of segments measures and capital management measures) may create confusion or a perception that the CSA considers these measures non-GAAP. One commenter encouraged the CSA to be more explicit by indicating that the Proposed Materials are not intended to suggest that segment and capital management measures are non-GAAP.	The Proposed Materials explicitly exclude the financial measures that are presented or disclosed in the financial statements, such as total of segments measures or capital management measures, from the definition of a non-GAAP financial measure. Disclosure requirements under the Proposed Materials are intended to ensure that when these measures are disclosed outside the financial statements, that investors and other users appreciate the context.
General comments	Many commenters expressed desire to cross-reference between documents for compliance with the Proposed Materials.	Change made. We thank commenters for the suggestions on how to implement a cross-referencing framework. We agree that a form of cross-referencing would be a beneficial feature of the Proposed Materials. Refer to section 5 of Proposed Materials.
Part 1 – Definitions		
s. 1	We received a significant number of comments regarding the proposed definitions, and how those definitions in the Original Materials may capture more financial measures than desired.	Changes made. Defined terms have been revised. We have also expanded examples provided within the Proposed Companion Policy.
Part 1 – Application		
General comments	Commenters generally noted that the Original Materials are overly broad, and it was unclear on the policy rationale for why new disclosure-related requirements should be applied to issuers who are not otherwise subject to obligations of continuous disclosure. One commenter recommended that the Proposed Materials should apply to reporting	Change made. Part 1 has been revised.

	issuers, and non-reporting issuers that disseminate non-GAAP financial measures in the context of securities distribution.	
s. 2	Several commenters submitted that investment funds subject to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) should be excluded on the basis that there are no specific concerns raised on non-GAAP financial measures used by investment funds, and investors understand and are accustomed to disclosures currently provided under NI 81-106.	Change made. See s. 4(a)
s. 2(1)	Commenters generally expressed that the SEC foreign issuer exemption is appropriate. A number of commenters also recommended that the same exemption should apply to Canadian SEC issuers. A few commenters also questioned the appropriateness of exempting SEC foreign issuers on the basis that different information presented for Canadian issuers and SEC foreign issuers will reduce comparability of information provided.	No change made. The exemption for SEC foreign issuers is consistent, and based on similar rationale, to other exemptions provided to these issuers under current Canadian securities legislation.
s. 2(1)	Some commenters expressed confusion as to what constitutes an SEC foreign issuer, and whether it applies to Canadian “foreign private issuers” as that term is defined under SEC rules and regulations.	Refer to s. 4(b) in the Proposed Companion Policy. Clarification regarding application made.
s. 2(1)	A few commenters recommended that the exemption for SEC foreign issuers be expanded to also included designated foreign issuers.	Change made.
Application to executive compensation	A number of commenters requested for clarification on how the Proposed Materials relate to executive compensation disclosure. While some commenters provided a strong recommendation that executive compensation disclosure be added to the explicit list of documents included in the Proposed Materials and we should increase disclosure requirements for these specific measures, we heard contrary views that executive compensation should be excluded.	We thank commenters for their views. Non-GAAP financial measures are used for a variety of purposes and we did not see the policy rationale specific to executive compensation that should be different than other uses of non-GAAP financial measures.
Application to documents	Commenters provided mixed views on the application to documents made available to the public in the local jurisdiction. While we received support for this, we also received comments that the Proposed Materials should be more limited to documents that are intended to be used by the investment and/or analyst community.	Change made. We are limiting the scope of the Proposed Materials for non-reporting issuers to specific documents. However, we have retained the scope for reporting issuers and instead excluded certain disclosures required under specific securities legislation as well as disclosures in certain filings.
Application to documents	Commenters requested clarity in defining what constitutes a “document”.	Change made.
Application to documents	Commenters requested clarity in the term “made available to the public”. They questioned whether the concept noted in NP 51-201 regarding dissemination broadly to the investing public (s. 1.1(1)) may be a more appropriate standard.	We note that “made available to the public” is a common concept used in securities legislation. For example, a document filed electronically in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (*SEDAR*) may be accessible to the public. National Instrument 43-101 *Standards of Disclosure for*

		Mineral Projects (**NI 43-101**) uses "made available to the public" in the definition of "disclosure". Another example is in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) where the term "public" is used in relation to proxy solicitation. In addition, the term "public" is used throughout NP 51-201.
Application to non-reporting issuers	Three commenters suggested that offering memorandums whose form is not prescribed by regulation should be excluded from the Proposed Materials on the policy basis that these offering memorandums are prepared on a voluntary basis, and the prospectus exemption upon which issuers rely is not based on the information the investors received, but on the investors' sophistication. Issuers are already careful to ensure offering memorandums do not contain a misrepresentation.	Change not made. The Proposed Materials will apply to disclosures made by an issuer in a document that is filed with a securities regulatory authority in reliance on the offering memorandum exemption. There is a policy decision that non-GAAP financial measures, non-GAAP ratios, and other financial measures contained in documents being used to raise capital are included within the scope of the Proposed Materials.
Application to an issuer's own financial results	One commenter suggested that the Proposed Materials should be limited in scope to disclosure of the issuer's own financial results. The commenter raised the concern that an issuer may have difficulties in complying with the Proposed Materials, for example, when disclosing financial measures of an acquisition target's financial results.	Change not made. The Proposed Materials are applicable to all disclosure of non-GAAP financial measures, non-GAAP ratios and other financial measures within documents as set out in the Application section. The concern is noted. However, disclosure of non-GAAP financial measures, non-GAAP ratios, and other financial measures is voluntary, and we did not see sufficient policy rationale to exclude these types of financial measures provided by an issuer in their documents.
Application to oil and gas activities	One commenter expressed concern for how disclosures of measures within National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* will be in scope of the Proposed Materials.	Change made.
s. 2(2)	A few commenters requested clarity on the term "specific financial measures", and provided recommendations to expand the types of specific financial measures that are excluded from the scope of the Proposed Materials.	The term "specific financial measures" has been removed and replaced with a broader category of financial measures that are excluded from the scope of the Proposed Materials.
s. 2(2)	The majority of commenters expressed that oral statements should be excluded from the scope, including transcripts of oral statements. We also received one conflicting comment that oral statements should be covered when these are relied upon for investment or voting decisions.	We thank the commenters for their submissions. We agree with our initial policy decision to exclude oral statements from scope, and have explicitly excluded transcripts of oral statements from scope. We remind issuers of the securities legislation requirements not to disclose misleading information.
s. 2	One commenter suggested that third-party valuation reports prepared by a third party firm excluded from the Proposed Materials.	Change made.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures		
General comments	A few commenters suggested additional disclosure requirements for non-GAAP financial measures, including specific labelling requirements (e.g. requiring the use of specific descriptors or terminology), and more explicit cautionary	We thank commenters for their submissions. We agree with our initial policy decision to not prescribe specific labelling requirements, and consider that the cautionary language in s. 6(e)(ii) provides sufficient information to

	statements.	investors that non-GAAP financial measures do not have standardized meaning.
s. 3(b)	Commenters provided mixed views on the prominence requirements. While a few noted that the Proposed Materials should be consistent with the SEC rules and regulations on non-GAAP financial measures, other commenters expressed that the Proposed Materials are too prescriptive.	Change not made. We thank commenters for their submissions. Prominence is a concern of regulators.
s. 3(c)	A few commenters requested clarity on disclosure of comparative period financial measures. A few commenters requested that the Proposed Materials should contain language exempting this requirement when it is impracticable to present a comparative period.	Change made, including additional clarifying language in the Proposed Companion Policy.
s.3(d)(iii), 3(d)(iv)	Some commenters expressed concerns over the term “reasonable person”, and questioned how this standard will affect expectations on issuers’ compliance with disclosure obligations.	We thank commenters for their submissions. The term “reasonable person” has been removed in relation to providing useful information and has been changed to investor, although it has been retained in relation to providing a quantitative reconciliation in s. 6(e)(v). Clarifying language has been included in the Proposed Companion Policy.
s. 3(d)(iv)	Two commenters suggested there was overlap in the requirements to provide a quantitative reconciliation that is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items, and explained in such a way that it provides a reasonable person an understanding of each reconciling item.	Change made. We clarified that s. 6(e)(v)(A) is in regards to the quantitative reconciliation, and (B) is in regards to the narrative accompanying the reconciling items.
s. 3(d)(iv)	One commenter suggested that the most directly comparable financial measure for the purposes of providing a quantitative reconciliation could be to a financial measure within the notes to the financial statements, instead of only to a measure presented in the primary financial statements.	Change not made. We thank the commenter for the suggestion, but confirm the policy decision that the most comparable financial measure is to a financial measure within the primary financial statements. The notes to the financial statements are intended to provide further information regarding financial measures in the primary financial statements, and we do not consider this requirement difficult to comply with.
s. 3	One commenter recommended to include further disclosure requirements if a non-GAAP measure reported by an issuer ceases to be reported, and that the issuer provide disclosure allowing users to understand why the basis for reporting a non-GAAP financial measure has changed.	Change not made. We thank the commenter for the suggestion. The disclosure requirements within section 6 should provide sufficient information when there are new or changed non-GAAP financial measures.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures that are Ratios		
General comments	A number of commenters highlighted the inconsistency with the SEC.	Change made. We have revised the framework for ratios which will typically be either a non-GAAP ratio or supplementary financial measure, and we have reduced the disclosure requirements for both.
Part 2 – Disclosures Requirements for Non-GAAP Financial Measures that are Financial Outlooks		

General comments	A number of commenters suggested that the proposed disclosure requirements for non-GAAP financial measures that are forward-looking information are complex and questioned the usefulness of certain disclosure requirements.	Changes made. We thank commenters for their suggestions. We have made changes to the disclosure requirements under section 7, including a reduction in disclosure requirements.
Part 2 – Disclosure Requirements for Segment Measures		
General comments	One commenter noted that "total of segment measures" are considered non-GAAP financial measures under SEC rules and regulations for non-GAAP financial measures (Regulation G and Item 10(e) of Regulation S-K) but are defined as "total of segments measure" under the Proposed Materials. Given the different classification under the two jurisdictions, the commenter was concerned about compliance of dual-listed reporting issuers.	We have added guidance in the Companion Policy that SEC issuers may refer to such measures as non-GAAP financial measures and provide, at minimum, the associated disclosures required in section 9.
General comments	Some commenters suggested that if information on total of segments measures are provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	We thank commenters for their suggestion. The proposed disclosures ensure readers appreciate the context of total of segments measures when these measures are disclosed outside the financial statements.
General comments	Some commenters requested clarity on the what constitutes a "segment" in comparison to a "reportable segment".	Change made.
General comments	One commenter suggested that the requirement to disclose a comparative measure should be removed.	We thank the commenter for their suggestion. The disclosure requirement provides that if the total of segments measure has been previously disclosed in the comparative period, then in the current period, both must be disclosed for comparability.
Part 2 – Disclosure Requirements for Capital Management Measures		
General comments	Some commenters suggested that if information on capital management measures is provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	Change made. We thank commenters for their suggestion. Issuers may include disclosure requirements under the Proposed Materials within the notes to the financial statements for compliance.
s. 7(2)(b)(iv)	Two commenters suggested that more guidance be provided on the level of detail expected for the quantitative reconciliation requirement.	Change made. Additional clarifying language has been included within the Proposed Companion Policy.
s. 7(2)(b)(iv)	One commenter suggested eliminating the quantitative reconciliation requirement for capital management measures that are ratios, as generally it is difficult to identify the most directly comparable financial measure presented in the primary financial statements.	Change made.
Part 2 – Disclosure Requirements for Supplementary Financial Measures		
General comments	Commenters provided mixed views on disclosure requirements. Some commenters were of the view that there should be additional disclosure requirements, while other commenters disagreed with including disclosure requirements for supplementary financial measures.	We thank commenters for their suggestions. We maintain the policy decision to require certain disclosures when supplementary financial measures are disclosed. However, the disclosure requirements have been scaled to address specific risks. Transparency around the composition of these measures is

		the primary concern we identified, which is addressed in the Proposed Materials.
General comments	One commenter raised questions on the requirement within the Original Materials to explain the reason for the change in label, composition and calculation and whether this is useful information.	Change made. The disclosure requirement has been removed.
General comments	One commenter recommended disclosure requirements for additional subtotals and totals within the financial statements.	Change not made. It is outside the scope of the project to set requirements for financial statement disclosures.

ANNEX C

Summary of Changes Made in the Proposed Instrument

This annex summarizes the substantive changes made in the Proposed Instrument.

Definitions

- The defined term "non-GAAP financial measure" has been changed in response to comments received. The new definition is more consistent with CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* and with rules and guidance of other securities regulators, including the U.S. Securities and Exchange Commission (SEC). This revised definition reduces the scope of financial measures captured compared to the Original Materials. Ratios are specifically excluded from the defined term. The scope of what is captured as a "non-GAAP ratio" has also been substantially reduced. Only ratios where a non-GAAP financial measure is used in the numerator or the denominator, or both, are captured. This is dealt with in a separate section within the Proposed Instrument.

- The defined term "segment measure" has been changed to "total of segments measure", and the definition has been clarified in response to comments received. This revised term captures only a subtotal or total of two or more reportable segments. This clarifies that not all segment measures are captured within the defined term, for example, measures of a discrete reportable segment.

- The defined term "supplementary financial measure" has been changed to reflect the changes in the defined term "non-GAAP financial measure".

- Transcripts of an oral statement are specifically excluded. Only oral statements were excluded in the Original Materials.

Application

- In addition to excluding SEC foreign issuers, we have reduced the scope of application of the Proposed Instrument by:

    - only capturing disclosures by reporting issuers and issuers that are not reporting issuers in a document that is subject to prospectus requirements, filed in connection with reliance on the offering memorandum exemption, and other similar documents submitted to a recognized exchange,

    - excluding issuers that are investment funds as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure* and designated foreign issuers as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers,* and

    - excluding disclosures that are required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**), except for voluntary disclosures using oil and gas metrics under section 5.14 of NI 51-101.

- We have expanded the list of specific documents and financial measures that the Proposed Instrument does not apply to including valuations reports and pro forma financial statements.

- We have also excluded financial measures disclosed in compliance with a requirement under law or by an SRO to which the issuer is a member. This includes any system of regulation of a government or governmental authority or SRO that is applicable to the issuer, not just limited to the laws of a jurisdiction of Canada as originally included in the Original Materials.

Incorporating Information by Reference

- We have introduced a form of cross-referencing in certain discrete documents back to an issuer's MD&A through incorporating information by reference.

Disclosure Requirements

- Subparagraph 6(b), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must be accompanied by the disclosure of the most comparable financial measure presented in the primary financial statements.

- Subparagraph 6(e)(iii), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must provide an explanation of the composition of the measure.

- Section 7, disclosure requirements for non-GAAP financial measures that are forward-looking information, has been substantially revised to reduce the disclosure requirements and enhance readability. The requirement for a quantitative reconciliation has been removed and replaced with a requirement to describe each reconciling item between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure. SEC Issuers, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, may instead comply with Regulation G under the 1934 Act to comply with this disclosure requirement.

- Disclosures of non-GAAP financial measures used in ratios has been separated, with reduced disclosure requirements from the Original Materials.

- Subparagraph 10(a)(ii) allows issuers to make certain disclosures related to capital management measures within their financial statements to comply with the Proposed Instrument instead of directly within documents outside the financial statements.

- Section 11, disclosure for supplementary financial measures, has been revised to remove requirements to present the comparative period and explain the reason for a change, if any, from the comparative period.

ANNEX D

PROPOSED NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

Table of Contents

PROPOSED NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

PART 1

DEFINITIONS, APPLICATION AND INCORPORATING INFORMATION BY REFERENCE

Definitions

1. In this Instrument

"capital management measure" means a financial measure presented by an issuer that

(a) is intended to enable a person to evaluate an entity's objectives, policies and processes for managing the entity's capital, and

(b) is presented in the notes to the financial statements of the entity but is not presented in the primary financial statements of the entity;

"forward-looking information" has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

"MD&A" has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-GAAP financial measure" means a financial measure presented by an issuer that

(a) depicts the historical or expected future financial performance, financial position or cash flow of an entity,

(b) with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most comparable financial measure presented in the primary financial statements of the entity,

(c) is not presented in the financial statements of the entity, and

(d) is not a ratio;

"non-GAAP ratio" means a financial measure presented by an issuer in the form of a ratio, fraction, percentage or similar representation and that has a non-GAAP financial measure as one of its components;

"primary financial statements" means, with respect to an entity, any of the following:

(a) the statement of financial position;

(b) the statement of profit or loss and other comprehensive income;

(c) the statement of changes in equity;

(d) the statement of cash flows;

"reportable segment" means a reportable segment as described in the accounting principles used to prepare an entity's financial statements;

"specified financial measure" means any of the following:

(a) a non-GAAP financial measure;

(b) a non-GAAP ratio;

(c) a total of segments measure;

(d) a capital management measure;

(e) a supplementary financial measure;

"supplementary financial measure" means a financial measure presented by an issuer that

(a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity,

(b) is not presented in the financial statements of the entity,

(c) is not a non-GAAP financial measure, and

(d) is not a non-GAAP ratio;

"total of segments measure" means a financial measure presented by an issuer that

(a) is a subtotal or total of financial measures of two or more reportable segments of an entity, and

(b) is presented in the notes to the financial statements of the entity but is not presented in the primary financial statements of the entity.

Application – reporting issuers

2. This Instrument applies to a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is intended to be, or reasonably likely to be, made available to the public.

Application – issuers that are not reporting issuers

3. This Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is

(a) subject to National Instrument 41-101 *General Prospectus Requirements*,

(b) filed with a regulator or a securities regulatory authority in connection with a distribution made in reliance on the offering memorandum exemption under National Instrument 45-106 *Prospectus Exemptions*, or

(c) submitted to a recognized exchange in connection with a qualifying transaction, reverse takeover, change of business, listing application, significant acquisition or similar transaction.

Application – exceptions

4. Despite section 2 or 3, this Instrument does not apply to the following:

(a) an investment fund as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(b) a designated foreign issuer, or an SEC foreign issuer, as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

(c) an issuer in respect of disclosure required under any of the following:

(i) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(ii) section 5.4 of Form 51-102F2 *Annual Information Form*;

(iii) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, other than section 5.14 of that Instrument;

(d) an issuer in respect of disclosure in any of the following:

(i) a filing required under subparagraph 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 *General Prospectus Requirements* or section 2.5 of Form 51-102F4 *Business Acquisition Report*;

(ii) pro forma financial statements required to be filed under securities legislation;

(iii) a filing required under section 12.1 or 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations*;

(iv) a transcript of an oral statement;

(e) an issuer in respect of disclosure of a financial measure if

(i) disclosure of the financial measure is required under law or by an SRO of which the issuer is a member,

(ii) the law or the SRO's requirement specifies the composition of the financial measure and the financial measure was determined in compliance with that law or requirement, and

(iii) in proximity to the financial measure, the issuer discloses the law or the SRO's requirement under which the financial measure is disclosed.

Incorporating information by reference

5.(1) Subject to subsection (3), an issuer may incorporate by reference the information required under any of the following provisions, if the reference is to the MD&A of the issuer:

(a) subparagraphs 6(e)(iv), (v) and (vi);

(b) paragraph 7(2)(d);

(c) subparagraphs 8(d)(iii) and (iv);

(d) paragraph 9(c);

(e) subparagraph 10(a)(ii).

(2) If, as permitted under subsection (1), an issuer incorporates any information by reference into a document, the issuer must include all of the following in the document:

(a) a statement indicating that the required information is incorporated by reference;

(b) a statement that specifies the location of the required information in the MD&A;

(c) a statement that the MD&A is available on SEDAR at www.sedar.com.

(3) Subsection (1) does not apply if the document that contains the specified financial measure is

(a) the MD&A filed by the issuer, or

(b) a news release issued or filed by the issuer.

PART 2

DISCLOSURE REQUIREMENTS

Non-GAAP financial measures that are historical information

6. An issuer must not disclose a non-GAAP financial measure that is historical information in a document unless all of the following apply:

(a) the non-GAAP financial measure is labelled using a term that,

(i) given the measure's composition, describes the measure, and

(ii) distinguishes the measure from totals, subtotals and line items presented in the primary financial statements of the entity to which the measure relates;

(b) the document presents the most comparable financial measure that is presented in the primary financial statements of the entity to which the measure relates;

(c) the non-GAAP financial measure is presented with no more prominence in the document than that of the most comparable financial measure referred to in paragraph (b);

(d) the document presents the non-GAAP financial measure, determined using the same composition, for a comparative period, unless it is impracticable to present the measure for the comparative period;

(e) in proximity to the first instance of the non-GAAP financial measure in the document, the document

(i) identifies the measure as a non-GAAP financial measure,

(ii) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures presented by other issuers,

(iii) explains the composition of the non-GAAP financial measure,

(iv) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the non-GAAP financial measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,

(v) provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation, to the most comparable financial measure referred to in paragraph (b), that

(A) is disaggregated quantitatively in a way that would enable a reasonable person applying a reasonable effort to get an understanding of the reconciling items,

(B) explains each reconciling item, and

(C) does not describe a reconciling item as "non-recurring", "infrequent", "unusual", or using a similar term, if a loss or gain of a similar nature is reasonably likely to occur within the entity's two financial years that immediately follow the disclosure, or has occurred during the entity's two financial years that immediately precede the disclosure, and

(vi) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or composition of the non-GAAP financial measure.

Non-GAAP financial measures that are forward-looking information

7.(1) In this section,

"historical non-GAAP financial measure" means a non-GAAP financial measure that is historical information and has the same composition as a non-GAAP financial measure that is forward-looking information;

"SEC issuer" has the meaning ascribed to it in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(2) An issuer must not disclose a non-GAAP financial measure that is forward-looking information in a document unless all of the following apply:

(a) the non-GAAP financial measure that is forward-looking information is labelled using the same label used for the historical non-GAAP financial measure;

(b) the document presents the historical non-GAAP financial measure;

(c) the non-GAAP financial measure that is forward-looking information is presented with no more prominence in the document than that of the historical non-GAAP financial measure;

(d) in proximity to the first instance of the non-GAAP financial measure that is forward-looking information in the document, the document provides, directly or incorporating it by reference as permitted by section 5, a description of any significant difference between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure.

(3) Subsection (2) does not apply if the disclosure is made

(a) by an SEC issuer, and

(b) in compliance with Regulation G under the 1934 Act.

Non-GAAP ratios

8. An issuer must not disclose a non-GAAP ratio in a document unless all of the following apply:

(a) the non-GAAP ratio is labelled using a term that, given the non-GAAP ratio's composition, describes the non-GAAP ratio;

(b) the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the entity to which the non-GAAP ratio relates;

(c) the document presents the non-GAAP ratio for a comparative period using the same means of calculation, unless

(i) the non-GAAP ratio is forward-looking information, or

(ii) it is impracticable to present a comparative period;

(d) in proximity to the first instance of the non-GAAP ratio in the document, the document

(i) explains the composition of the non-GAAP ratio and identifies each non-GAAP financial measure that is used as a component of the non-GAAP ratio,

(ii) explains that the non-GAAP ratio is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the non-GAAP ratio relates and might not be comparable to similar financial measures presented by other issuers,

(iii) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the non-GAAP ratio provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP ratio, and

(iv) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or the composition of the non-GAAP ratio.

Total of segments measures

9. An issuer must not disclose a total of segments measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:

(a) the document presents the most comparable financial measure presented in the primary financial statements of the entity;

(b) the total of segments measure is presented with no more prominence in the document than that of the most comparable financial measure referred to in paragraph (a);

(c) in proximity to the first instance of the total of segments measure in the document, the document provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the total of segments measure to the most comparable financial measure referred to in paragraph (a);

(d) the document presents the total of segments measure, determined using the same composition, for a comparative period, if the total of segments measure for the comparative period has been previously disclosed.

Capital management measures

10. An issuer must not disclose a capital management measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:

(a) in proximity to the first instance of the capital management measure in the document, the document

(i) explains the composition of the capital management measure, and

(ii) unless presented in the notes to the financial statements of the entity to which the measure relates,

(A) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and

(B) unless the capital management measure is a ratio, fraction, percentage or similar representation, provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the capital management measure to the most comparable financial measure presented in the primary financial statements of the issuer;

(b) the capital management measure is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the issuer;

(c) the document presents the capital management measure, determined using the same composition, for a comparative period, if the capital management measure for the comparative period has been previously disclosed.

Supplementary financial measures

11. An issuer must not disclose a supplementary financial measure in a document unless both of the following apply:

(a) the supplementary financial measure is labelled using a term that,

(i) given the measure's composition, describes the measure, and

(ii) distinguishes the measure from totals, subtotals and line items presented in the primary financial statements of the issuer;

(b) in proximity to the first instance of the supplementary financial measure in the document, the document provides an explanation of the composition of the supplementary financial measure.

PART 3

EXEMPTION

Exemption

12.(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

PART 4

EFFECTIVE DATE

Effective date

13. This Instrument comes into force on •, 202•.

ANNEX E

PROPOSED COMPANION POLICY 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

Introduction

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "Instrument") sets out specific disclosure requirements for non-GAAP financial measures, non-GAAP ratios, and other financial measures, which are capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument (together the "specified financial measures").The purpose of this Companion Policy (the "Policy") is to state the view of the securities regulatory authorities on certain provisions of the Instrument.

This Policy includes explanations, discussions, and examples of various parts of the Instrument.

Interpretation of "filed" and "delivered" or "submitted"

The Instrument uses the terms "filed" and "submitted". This Policy also uses the term "delivered". Material that is filed in a jurisdiction will be made available to the public in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction. Material that is delivered to a regulator or securities regulatory authority, or submitted to a recognized exchange, but not filed, is not generally required under securities legislation to be made available to the public.

Document

A document is any written communication, including a communication prepared and transmitted in electronic form, e.g. a website, but does not include a transcript of an oral statement.

Specified Financial Measures Presented by an Issuer and Financial Statements of an Entity

An issuer may present a specified financial measure that is derived from its financial statements or the financial statements of another entity. The following are examples of financial statements of an entity, other than the issuer's financial statements, that a specified financial measure may be derived from:

- Financial statements filed by or included in a document filed by an issuer, for example, financial statements of a reverse takeover acquirer, financial statements of an acquired business;
- Financial statements that are required to be filed with or delivered to a regulator or a securities regulatory authority, or made reasonably available to each holder of a security acquired, as required by a provision of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106);
- Financial statements of a subsidiary, joint venture or associate for which summarized financial information is presented in the notes to the financial statements of the issuer;
- Financial statements of an investment entity's investments, where supplemental financial information is included in the financial statements or the management's discussion & analysis (the "MD&A") of the investment entity; and
- Financial statements of an entity with which the issuer completed a transaction, included in a filing statement or a listing document.

Financial Measures

The Instrument applies when a specified financial measure is presented in a document. If the financial measure is only identified by label without a corresponding numerical amount or measure, a specified financial measure has not been disclosed and, thus, the disclosure requirements within the Instrument do not apply.

For clarity, the Instrument does not apply to qualitative disclosure of targets, benchmarks or covenants that are not accompanied by a financial numerical amount or measure.

Financial Reporting Framework, Accounting Principles, and Accounting Policies

In Canada, there are different financial reporting frameworks for different types of Canadian entities. Generally Accepted Accounting Principles (GAAP) is a common term used to refer to a financial reporting framework which are the accounting principles that are generally accepted in a jurisdiction. National Instrument 52-107 *Accounting and Auditing Principles* prescribes, among other things, acceptable accounting principles, such as International Financial Reporting Standards (IFRS).

The application of accounting principles often requires specific accounting policies. Accounting policies encompass all accounting policies applied in preparing and presenting financial statements, not just those which are presented in the notes to the financial statements.

Misleading

Compliance with the Instrument does not relieve an issuer from other obligations under securities legislation. Specifically, an issuer may not present a specified financial measure in a way that would be misleading.

Section 1 - Definition of a non-GAAP financial measure

Common terms used to identify non-GAAP financial measures may include “adjusted earnings”, “adjusted EBITDA”, “free cash flow”, “pro forma earnings”, “cash earnings”, “distributable cash”, “adjusted funds from operations”, “earnings before non-recurring items” and measures presented on a constant-currency basis. Many of these terms lack standard meanings and issuers across a spectrum of industries may use the same term to refer to different compositions.

The following are examples of measures that are not captured by the definition:

- Amounts that do not depict historical or future “financial performance”, “financial position” or “cash flow”, which relate to elements of the primary financial statements as defined in the Instrument, such as share price, market capitalization, or credit rating.
- Financial information that does not have the effect of providing a financial measure that is different from a financial measure presented in the primary financial statements, such as the addition or subtraction of an identical line item, subtotal or total originating from multiple periods of primary financial statements. For example, rolling 12-month results or fourth quarter revenue calculated by subtracting year-to-date third quarter revenue from the annual revenue presented in primary financial statements.

Component Information

When an issuer presents a financial statement line item in a more granular way outside the financial statements, it may be a component of a line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements. Such a measure would not be a non-GAAP financial measure. However, in such a situation, the issuer should consider whether such a measure meets the definition of a supplementary financial measure.

For example, an issuer may disclose sales per square foot on a periodic basis to depict its financial performance. When the sales figure, included in sales per square foot, is extracted directly from the primary financial statements or is a component of such line item (where the component is calculated in accordance with the issuer’s accounting policies used to prepare the line item presented in the financial statements), the “sales per square foot” measure would not meet the definition of a non-GAAP ratio but would meet the definition of a supplementary financial measure. However, if the sales figure is adjusted in any way, the “sales per square foot” measure in this example would meet the definition of a non-GAAP ratio.

Conversely, when the measure is not calculated in accordance with the issuer’s accounting policies, such measure would meet the definition of a non-GAAP financial measure. For example, if the sales figure in “sales per square foot” is sales presented on a constant-dollar basis, this constant-dollar sales figure meets the definition of a non-GAAP financial measure since it excludes amounts (i.e. the effect of foreign exchange differences) that are included in the most comparable measure presented in the primary financial statements (i.e. sales). As a result, the “constant dollar sales per square foot” measure in this example would meet the definition of a non-GAAP ratio.

Combinations of Line Items

A financial measure calculated by combining financial information that originates from different line items from the primary financial statements would meet the definition of a non-GAAP financial measure if the measure depicts financial performance, financial position or cash flow, unless that resulting measure is separately presented in the notes to the financial statements.

Non-GAAP Financial Measures that are Forward-looking Information

Forward-looking information for which there is an equivalent historical financial measure presented in the financial statements does not meet the definition of a non-GAAP financial measure. Therefore, section 7 of the Instrument does not apply to such measures as future capital management measures and future total of segments measures. Issuers are reminded that such forward-looking information is subject to the disclosure requirements in parts 4A and 4B and section 5.8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

For example, if revenue is presented on a forward-looking basis using the accounting policies applied by the issuer in its latest set of financial statements (i.e. revenue as presented in the primary financial statements adjusted only for assumptions about future economic conditions and courses of action), it is not a non-GAAP financial measure. Conversely, if an issuer discloses EBITDA on forward-looking basis, and does not present or disclose this financial measure in the financial statements, it does meet the definition of a non-GAAP financial measure.

Non-Financial Information

For clarity, the definition of a non-GAAP financial measure does not include non-financial information such as the following:

- number of units;
- number of subscribers;
- volumetric information;
- number of employees or workforce by type of contract or geographical location;
- environmental measures such as greenhouse gas emissions;
- information on major shareholdings;
- acquisition or disposal of the issuer's own shares; and
- total number of voting rights.

The above list is not exhaustive.

We remind issuers that while non-financial information is not subject to the requirements of the Instrument, non-financial information is subject to various disclosure requirements under applicable securities legislation, including the requirement not to disclose misleading information.

Section 1 – Definition of primary financial statements

The Instrument uses the terms "statement of financial position", "statement of profit or loss and other comprehensive income", "statement of changes in equity", and "statement of cash flows", to describe the primary financial statements. Issuers may use titles for the statements other than those terms if the titles comply with the accounting policies used in the preparation of the financial statements. For example, an issuer may use the title of "balance sheet" instead of "statement of financial position".

Section 1 - Definition of a supplementary financial measure

Component Information

An issuer that operates in the retail industry may disclose financial results for "same-store sales" each reporting period. Where same-store sales, a component of overall sales, is calculated in accordance with the accounting policies used to prepare the sales line item presented in the primary financial statements, it would not meet the definition of a non-GAAP financial measure. However, since in this example "same-store sales" is used by the issuer to report sales performance from period to period, it would meet the definition of a supplementary financial measure.

For clarity, if an issuer discloses a financial measure that is a component of a financial statement line item to explain how the financial statement line item changed from period to period, such a measure would not meet the definition of a supplementary financial measure if the measure is not intended to be disclosed on a periodic basis. For example, if an issuer experienced an unexpected increase in administrative expenses, it may analyze the reasons for changes in administrative expenses by, among other things, disclosing information about its insurance expense, a component of overall administrative expenses. In this example, insurance expense would not meet the definition of a supplementary financial measure where the insurance expense was calculated in accordance with the accounting policies used to prepare the administrative expenses line item presented in the primary financial statements.

Periodic Basis

An element of the definition of a supplementary financial measure is that it is disclosed or is intended to be disclosed on a periodic basis. A measure will not be precluded from being considered a supplementary financial measure the first time it is disclosed if the measure is intended to be disclosed on an ongoing basis (e.g., in future quarterly and/or annual disclosures).

Financial Ratios

A financial ratio that is not a non-GAAP ratio would typically meet the definition of supplementary financial measure because such ratio is often disclosed on a periodic basis to depict historical or future financial performance, financial position or cash flow.

Financial ratios contain at least one financial component (either the numerator or the denominator).

Examples include, but are not limited to the following ratios:

- liquidity ratios such as the current ratio;
- solvency ratios such as the debt-to-equity ratio;
- profitability ratios such as the return on equity ratio or revenue per user; and
- activity ratios such as the inventory turnover ratio.

Section 2 – Application to reporting issuers

Websites and Social Media

The Instrument applies to a reporting issuer in respect of its disclosure, on a website and social media, of a specified financial measure.

A reporting issuer should not disclose a specified financial measure using social media, if it is unable to include all the relevant disclosure.

If a reporting issuer uses social media to provide links to publications (e.g., analyst reports), such publications are within the scope of the Instrument.

Statement of Executive Compensation

For clarity, the Instrument applies to Form 51-102F6 *Statement of Executive Compensation* (Form 51-102F6). Form 51-102F6 requires, among other things, an issuer that discloses performance goals or similar conditions that are non-GAAP financial measures, to explain how the issuer calculates these performance goals or similar conditions.

In the context of Form 51-102F6, if a financial measure is identified (e.g., adjusted net income) and the calculation is described (e.g., net income adjusted for foreign exchange gains or losses) but no financial amount is presented (i.e., no dollar amount), it would not be within the scope of the Instrument because a financial measure has not been presented – only identified and described.

If a non-GAAP financial measure amount or other specified financial measure amount that is in scope of the Instrument is disclosed in Form 51-102F6 (e.g., adjusted net income of $X), part 2 of the Instrument applies.

Section 3 – Application to issuers that are not reporting issuers

The Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is filed with a regulator or a securities regulatory authority in connection with a distribution made in reliance on the offering memorandum exemption under NI 45-106. The following are examples of document that are within the scope of the Instrument:

- the offering memorandum filed; and
- the offering memorandum marketing materials filed with a regulator or a securities regulatory authority.

Subparagraphs 4(c)(i) and (ii) – Mineral projects

The Instrument does not apply to disclosure required under *National Instrument 43-101 Standards of Disclosure for Mineral Projects* (NI 43-101) related to an issuer's material mineral project. For example, item 22 of Form 43-101F1 *Technical Report* requires an issuer to disclose an economic analysis that includes certain financial measures. Item 5.4 of Form 51-102F2 *Annual Information Form* requires an issuer to disclose certain measures such as capital and operating costs, and annual cash flow, net present value, internal rate of return, and payback period disclosed in an economic analysis.

The Instrument does not apply to these measures because they are specifically required to be disclosed under NI 43-101. However, if an issuer discloses a financial measure that is not specifically required to be disclosed under NI 43-101, for

example, EBITDA, it may be considered a non-GAAP financial measure or other specified financial measure and, thus, is within the scope of the Instrument.

Subparagraph 4(c)(iii) – Oil and gas metrics

The Instrument does not apply to disclosure required under National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). However, disclosures of oil and gas metrics that are made under section 5.14 of NI 51-101 are subject to the requirements of the Instrument because such disclosure is made on a voluntary basis.

Subparagraph 4(d)(ii) – Pro forma financial statements

The Instrument does not apply to pro-forma financial statements included in a filing required under securities legislation, such as pro-forma financial statements required to be included in a business acquisition report under NI 51-102.

The Instrument does apply to pro-forma financial statements included in a filing made on a voluntary basis (i.e., it is not explicitly required under securities legislation).

Paragraph 4(e) – Financial measures required under law or by an SRO

Financial measures that are required to be disclosed by a law or SRO of which the issuer is a member and which composition is determined in compliance with the law or the requirement of the SRO are not subject to the Instrument. This includes financial measures disclosed in accordance with prescribed requirements under applicable securities legislation. For example, disclosure of earnings coverage ratios prescribed by item 9 of Form 41-101F1 *Information Required in a Prospectus* are not subject to the Instrument.

While disclosure of a financial measure in order to comply with other securities legislation is not subject to the requirements of the Instrument, the disclosure is subject to the provisions of that legislation. Voluntary disclosure that is permitted but is not required by other securities legislation is subject to the requirements of the Instrument.

The Instrument also does not apply to a financial measure that is disclosed in accordance with the laws of a jurisdiction of Canada, or jurisdiction outside Canada, including governments, governmental authorities and SROs. This exclusion is, however, only applicable in situations where a financial measure is required to be disclosed and the law specifically specifies its composition; for example, a government payment calculated and disclosed in accordance with the *Extractive Sector Transparency Measures Act* (Canada).

If an issuer discloses a financial measure that is prepared in accordance with voluntary guidance published by a government, governmental authority or SRO that is applicable to the issuer then the financial measure is subject to the requirements of this Instrument.

Section 5 – Incorporation by reference

The Instrument allows an issuer to incorporate by reference certain required disclosure, if the reference is to the issuer's MD&A. For clarity, the MD&A must be filed on SEDAR before it can be incorporated by reference under the Instrument. For example, if an issuer is filing an annual information form that includes non-GAAP financial measure information and the issuer is incorporating certain information in the MD&A by reference to satisfy the disclosure requirements of the Instrument, that MD&A would have to be filed on SEDAR prior to filing the annual information form.

Paragraph 5(2)(b) requires the identification of the specific location of the required information in the MD&A. Issuers would not satisfy this requirement with a general hyperlink to the relevant MD&A. To comply with the requirement the issuer would need to hyperlink or identify (e.g., identify the specific section) where the required information is specifically located within the MD&A.

Section 6 – Non-GAAP financial measures that are historical information

Paragraph 6(a) – Labelling non-GAAP financial measures that are historical information

Any label or term used to describe a non-GAAP financial measure or adjustments in a reconciliation must be appropriate given the nature of information.

For example, the following are not in compliance with the labelling requirement in paragraph 6(a) of the Instrument:

- Labels that are the same as, or confusingly similar to, those normally used under the accounting policies used to prepare the financial statements. For example, a measure labelled as "cash flows from operations" calculated as cash flows from operating activities before changes in non-cash working capital items, is confusingly similar to the term "cash flows from operating activities" specified in IAS 7 *Statement of Cash Flows*;

- Labels that purport to represent "results from operating activities" or a similar title but exclude items of an operating nature, such as inventory write-downs, restructuring costs, impairment of assets used for operations and stock-based compensation;

- Labels that are overly optimistic (e.g., guaranteed profit or protected returns); and

- Labels that may cause confusion based on the financial measure's composition. For example, in presenting EBITDA as a non-GAAP financial measure, it would be inappropriate to exclude amounts for items other than interest, taxes, depreciation and amortization.

The above list is not exhaustive.

The label used for a non-GAAP financial measure that is historical information may arise from a written agreement, such as a credit agreement containing a material covenant regarding a non-GAAP financial measure. If the label in the written agreement is inconsistent with the requirements of paragraph 6(a) of the Instrument, the issuer will be expected to clarify that the label is from a written agreement so that a reader does not confuse it with an amount prepared in accordance with the accounting policies used in the preparation of the financial statements.

Paragraph 6(c) – Prominence of a non-GAAP financial measure that is historical information

Determining the relative prominence of a non-GAAP financial measure is a matter of judgment, considering the overall disclosure and the facts and circumstances in which the disclosure is made.

The presentation of a non-GAAP financial measure should not in any way confuse or obscure the presentation of financial measures presented in accordance with the accounting policies used in the preparation of the financial statements.

The following are examples that would cause a non-GAAP financial measure to be more prominent than the most comparable measure presented in the financial statements:

- Presenting a non-GAAP financial measure in the form of a statement of profit or loss and other comprehensive income without presenting it in the form of a reconciliation to the most comparable measure, sometimes referred to as a "single column approach";

- Omitting the most comparable measure from a news release headline or caption that includes a non-GAAP financial measure;

- Presenting a non-GAAP financial measure using a style of presentation (for example, bold, underlined, italicized, or larger font) that emphasizes the non-GAAP financial measure over the most comparable measure;

- Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure;

- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most comparable measures or without including the most comparable measures in the same table or graph; and

- Providing a discussion and analysis of a non-GAAP financial measure in a more prominent location than a similar discussion and analysis of the most comparable measure. For greater certainty, we take the view that a location is not more prominent if it allows an investor who reads the document, or other material containing the non-GAAP financial measure, to be able to view the discussion and analysis of both the non-GAAP financial measure and the most comparable measure contemporaneously. For example, within the previous, same or next page of the document.

The above list is not exhaustive.

The Instrument requires that the non-GAAP financial measure be presented with "no more prominence in the document than that of the most comparable financial measure" presented in the primary financial statements. If the most comparable measure is presented with "equal or greater prominence" than the non-GAAP financial measure, the requirement under paragraph 6(c) of the Instrument has been met.

The purpose of Form 51-102F6 is to provide information about executive compensation within the context of the overall stewardship and governance of the issuer, in contrast to disclosure explaining an issuer's financial performance, financial position, or cash flow. Therefore, for purposes of Form 51-102F6 only, a reference to the specific location where disclosures are

made in the MD&A as required by section 5 of the Instrument would provide sufficient prominence of the most comparable GAAP measure.

Paragraph 6(d) – Comparative information

Impracticable

Understandably, it is impracticable for an issuer to provide the comparative disclosure required by paragraph 6(d) of the Instrument when the current period is the first period of operations and no comparative period exists. We do not consider the cost or the time involved in preparing the comparative information to be sufficient rationale for an issuer to assert that it is impracticable to present such information.

Changes in Accounting Standards

We would not consider adoption of a new accounting standard, which would include adoption of amendments to current accounting standards, or a change in accounting policy, a basis for not presenting comparative period disclosure, as the composition of the non-GAAP financial measure should continue to be the same.

Adoption of new accounting standards, or changes in accounting policy, may modify measurement and recognition of transactions which will have an impact on line items, subtotals and totals over different financial periods. However, the composition of the non-GAAP financial measure itself should not change. For example, an issuer discloses EBITDA as its non-GAAP financial measure. In the current year it adopts a new accounting standard which modifies the classification of certain expenditures from administrative expense to interest expense. While the resulting EBITDA measure will no longer include those transactions, EBITDA will continue to have the same composition, as it will be comprised of earnings before interest, taxes, depreciation and amortization. Therefore, the issuer would not be subject to subparagraph 6(e)(vi).

The accounting policies used to prepare an entity's financial statements would determine whether comparative information is restated with adoption of a new accounting standard or change in accounting policy. For example, we expect comparative non-GAAP financial measures to be restated when a new accounting standard or policy is applied retrospectively to each prior reporting period presented. Conversely, if a new accounting standard is applied prospectively or retrospectively without restatement of a prior reporting period presented, the non-GAAP financial measures would also not be restated. In such circumstances, the issuer communicates that the comparative non-GAAP financial measures are presented under the previous accounting policies used to prepare the entity's financial statements.

In both cases, the composition of the non-GAAP financial measure has not changed, and disclosure under subparagraph 6(e)(vi) would not be required.

Paragraph 6(e) – Proximity to the first instance

The information required by paragraph 6(e) of the Instrument should be presented in the same document as the non-GAAP financial measure. To satisfy these requirements, an issuer may identify the non-GAAP financial measure as such when it first appears in the document and then reference a separate section within the same document that contains the disclosure required under subparagraphs 6(e)(ii), (iii), (iv), (v) and (vi) of the Instrument.

There may be types of documents where it is not clear when the non-GAAP financial measure first occurs or appears, for example, websites and social media. In these instances, the "first instance" disclosure requirements are satisfied by clearly identifying the financial measure as being a non-GAAP financial measure on each webpage where the financial measure appears and providing a website hyperlink to where the disclosures required by subparagraphs 6(e)(ii), (iii), (iv), (v) and (vi) are found (e.g., on another section of the website) with minimal to no scrolling or navigation.

To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document that contains the non-GAAP financial measures, and cross-reference that section each time a non-GAAP financial measure is presented in that document.

If there is a discrete document within a larger document (e.g., a pull-out glossy page in an annual report), both will be treated as separate documents.

Subparagraph 6(e)(i) – Identification of a non-GAAP financial measure

Non-GAAP financial measures do not have standardized meanings under the financial reporting framework used to prepare the financial statements of entity to which the measure relates. Therefore, it is important that non-GAAP financial measures are appropriately identified. This also signals to an investor that additional information about the measure should be considered as it may not be comparable to similar measures presented by other issuers.

An issuer may satisfy the subparagraph 6(e)(i) identification requirement by inserting a footnote to the non-GAAP financial measure with a statement or language similar to the following: “This is a non-GAAP financial measure. Refer to the Non-GAAP Financial Measures section of this document for more information on each non-GAAP financial measure”.

Subparagraph 6(e)(iv) – Usefulness of non-GAAP financial measure disclosure

The Instrument does not define the term “useful”. The term “useful” is intended to reflect how management believes that presentation of the non-GAAP financial measure provides incremental information to investors regarding the issuer’s financial position, financial performance or cash flows. The term “useful” should be considered in the context of what a person making an investment decision would consider useful.

A statement made to satisfy the requirement of subparagraph 6(d)(iv) of the Instrument should

- be clear and understandable,
- be specific to the non-GAAP financial measure used, the issuer, the nature of the business and the industry (i.e., not boilerplate), and
- specifically explain how the non-GAAP financial measure is assessed and applied to decisions made by management and explain the reasons why the non-GAAP financial measure is useful to an investor.

Issuers should avoid making inappropriate or potentially misleading statements about the usefulness of a measure. The Instrument does not explicitly prohibit certain adjustments. However, if adjustments are not consistent with the usefulness explanation provided to address subparagraph 6(e)(iv) of the Instrument, this may result in a non-GAAP financial measure that is inappropriate or misleading.

A non-GAAP financial measure may be misleading if it

- includes positive components of the most comparable measure but omits negative components (e.g., presenting a non-GAAP financial measure that excludes unrealized losses on financial instruments but not unrealized gains), or
- excludes operating expenses necessary to operate an issuer’s business from an operating performance measure.

Subparagraph 6(e)(v) – Reconciliation of a non-GAAP financial measure

Subparagraph 6(e)(v) of the Instrument requires a quantitative reconciliation between the non-GAAP financial measure and the most comparable financial measure presented in the primary financial statements. An issuer may satisfy this requirement by providing a reconciliation in a clearly understandable way, such as a table. For purposes of presenting the reconciliation, an issuer may begin with the non-GAAP financial measure or the most comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible and consistent manner.

Most Comparable Measure

The Instrument does not define the “most comparable financial measure” and therefore the issuer needs to apply judgment in determining the most comparable financial measure. In applying judgment, it is important for an issuer to consider the context of how the non-GAAP financial measure is used. For example, where the non-GAAP financial measure is discussed primarily as a performance measure used in determining cash generated by the issuer or its distribution-paying capacity, its most comparable GAAP measure will be from the statement of cash flows. In practice, earnings-based measures and cash flow-based measures are used to disclose operational performance. If it is not clear from the way the non-GAAP financial measure is used what the most comparable measure is, consideration can be given to the nature, number and materiality of the reconciling items.

Reconciling Items

The reconciliation must be quantitative, separately itemizing and explaining each significant reconciling item.

Source of Reconciling Items

Where a reconciling item is taken directly from the entity’s financial statements, it should be named such that an investor is able to identify the item in those financial statements, and no further explanation of that reconciling item is required.

Where a reconciling item is not extracted directly from the entity’s financial statements, but is, for example, a component of a line item in the entity’s primary financial statements or originates from outside the primary financial statements, disclosure must be provided to satisfy subparagraph 6(e)(v) of the Instrument. Such disclosure should identify the financial statement line item

that is the source of the reconciling item, if not obvious, and explain how the amount is calculated, including a discussion of any significant judgments or estimates management has made in developing the reconciling items used in the reconciliation.

Entity-Specific Inputs

Reconciling items should be calculated using entity-specific inputs. An entity may make adjustments that are accepted within an industry; however, the quantum of these adjustments should be calculated using entity-specific information. For example, an entity may make an adjustment for operating capital expenditures, which is a standard adjustment in certain industries, but the amount of the adjustment should be calculated based on the entity's operating capital expenditures, and not by using only an 'industry average' amount as the sole factor.

Level of Detail

The level of detail expected in the reconciliation depends on the nature and complexity of the reconciling items. The adjustments made from the most comparable financial measure should be consistent with the explanation required by subparagraph 6(e)(iv) of the Instrument regarding why the information is useful to investors and if applicable, how it is used by management. Explanations should be more detailed than merely stating what the reconciling item represents and should also cover the circumstances that give rise to the particular adjustment if it is not obvious.

An "other" or "adjusting items" category to describe numerous insignificant reconciling items should not be used without further explanation as to the nature of items that comprise the category.

Gross Basis

Issuers should consider significant reconciling items on a gross basis. For example, an issuer is expected to separately itemize positive and negative adjustments unless netting is permitted under the accounting policies used in the preparation of the financial statements.

Tax

Reconciling items are commonly presented on a pre-tax basis to ensure that investors understand the gross amount of each reconciling item. If an issuer chooses to present reconciling items on a post-tax basis then the tax effect for each reconciling item should also be disclosed.

Comparatives

For comparative non-GAAP financial measures presented for a previous period, a reconciliation to the corresponding most comparable measure is required for that previous period.

Presentation in the Form of a Primary Financial Statement

An issuer may present adjusted financial information outside the entity's financial statements using a format that is similar to one or more of the primary financial statements, but that is not in accordance with the accounting policies used to prepare the entity's financial statements. In this case, the adjusted financial information would contain non-GAAP financial measures. Specifically, this would arise if an issuer presents such financial measures in a form that is similar to the following financial statements:

- a statement of financial position;
- a statement of profit or loss and other comprehensive income;
- a statement of changes in equity; or
- a statement of cash flows.

Presentation of this information as a single column that excludes the most comparable GAAP financial measures in a separate column would not satisfy paragraph 6(e)(v) of the Instrument. However, this information may be presented in the form of a reconciliation of the non-GAAP financial measure to the most comparable financial measure if such presentation shows in separate columns each of the most comparable measures, the reconciling items, and the non-GAAP financial measures.

When the adjusted presentation is used as a basis for the qualitative discussions and analysis of an entity's financial performance, financial position or cash flows with greater prominence than financial measures presented in the primary financial statements, this would not be considered to be in compliance with the requirement in paragraph 6(c) of the Instrument.

Subparagraph 6(e)(vi) – Changes in a non-GAAP financial measure

If the comparative non-GAAP measure presented in accordance with paragraph 6(d) of the Instrument is not presented on the same basis as that previously presented, the requirement of subparagraph 6(e)(vi) of the Instrument would apply. This would be the case when the composition of the comparative non-GAAP financial measure is not the same as previously presented.

Including additional reconciling items or excluding previously included reconciling items between the non-GAAP financial measure and the most comparable measure constitutes a change in composition. A clear explanation of the reason for this change is required under subparagraph 6(e)(vi) of the Instrument.

A change in magnitude of an individual item would not constitute a change in composition. For example, an issuer may define adjusted earnings as earnings before impairment losses and transaction costs. Transaction costs may only be incurred every three years, such that there may be no adjustment in year two to reflect transaction costs, but there should be an explanation noting that the issuer expects that it will incur transaction costs in the future. In this example, the issuer should continue to include transaction costs in the explanation of the composition under subparagraph 6(e)(iii) to maintain consistency of the non-GAAP financial measure.

Given that the disclosure of non-GAAP financial measures is optional, disclosing a particular non-GAAP financial measure does not generate a requirement to continue disclosing that measure in future periods. If, however, an issuer replaces a non-GAAP financial measure with another measure that achieves the same objectives (that is, the information provided to comply with subparagraph 6(e)(iv) of the Instrument was consistent for both measures), the requirement of subparagraph 6(e)(vi) of the Instrument would apply.

If the label of a non-GAAP financial measure has changed, while the explanation for the change may be incorporated by reference, we expect that the issuer make it clear in the document that the label has changed in the current period from that disclosed in the prior period.

Section 7 – Non-GAAP financial measures that are forward-looking Information

Paragraph 7(2) – Historical non-GAAP financial measure

An issuer needs to apply judgment in determining the historical non-GAAP financial measure. In applying judgment, it is important for an issuer to consider the context of how the non-GAAP financial measure that is forward-looking information is used. For example, adjusted EBITDA could be the historical non-GAAP financial measure of forward-looking adjusted EBITDA. We remind issuers that the historical non-GAAP financial measure disclosed is subject to the provisions of the Instrument. For example, the Instrument requires a non-GAAP financial measure that is forward-looking to be presented with no more prominence in the document than that of the historical non-GAAP financial measure presented. This means that the non-GAAP financial measure that is forward looking information must be presented with no more prominence than that of the most comparable measure that is presented in the primary financial statements, as required by paragraph 6(b) of the Instrument.

Determining the relevant historical period to satisfy the requirement in subparagraph 7(2)(b) of the Instrument is also a matter of judgment, considering the time period covered by the forward-looking information and the extent to which the business of the issuer is cyclical or seasonal. For example, where an issuer presents forward-looking information for the three months ending June 30, 20X2, the relevant period for the historical non-GAAP financial measure may be:

- in the case where the business of the issuer is not seasonal, the issuer's most recent interim period ended for which annual financial statements or an interim financial report has been filed (e.g., the three months ended March 31, 20X2), or
- in the case where the business of the issuer is seasonal, the comparable historical interim period to that of the financial outlook presented (e.g., the three months ended June 30, 20X1).

Section 8 – Non-GAAP ratios

Financial ratios may be useful in communicating aspects of an issuer's financial performance, financial position or cash flow. A ratio where a non-GAAP financial measure is used as one of its components is a non-GAAP ratio and subject to the disclosure requirements of section 8. For clarity, ratios may also meet the definition of forward-looking information. Examples of non-GAAP ratios include "adjusted EBITDA per share", "free cash flow per ounce", "funds flow per barrel of oil equivalent", and the equivalent future measures "forecasted adjusted EBITDA per share", "forecasted free cash flow per ounce" and "forecasted funds flow per barrel of oil equivalent".

Ratios that are calculated using exclusively:

- financial measures that are presented in the primary financial statements; or
- operating measures or other measures that are not non-GAAP financial measures

would not meet the definition of a non-GAAP ratio. For example, working-capital ratio would not meet the definition if the ratio is calculated as total current assets divided by total current liabilities as both total current assets and total current liabilities are presented in the primary financial statements. A percentage increase or decrease year over year with respect to a line item presented in the primary financial statements (or a component of such line item) for the purpose of variance analysis would not meet the definition of a non-GAAP ratio.

Subparagraphs 8(b) and 10(b) – Prominence of similar financial measures

The prominence requirements in paragraphs 8(b) and 10(b) of the Instrument for non-GAAP ratios and capital management measures differ from the requirements for non-GAAP financial measures in paragraph 6(c) and the requirements for total of segments measures in paragraph 9(b). However, the principle that the non-GAAP ratios and capital management measures should be presented with no more prominence than that of measures from the primary financial statements remains the same.

Many non-GAAP ratios and capital management measures do not have a most comparable financial measure. As such, issuers should consider the disclosure of the non-GAAP ratio and capital management measure in relation to the overall disclosure of similar financial measures presented in the primary financial statements to which the non-GAAP ratio or the capital management measure relates. For example, the prominence requirement in paragraph 8(b) of the Instrument is not met if the issuer focused its disclosure on an increased gross margin percentage without giving at least equally prominent disclosure to the fact sales have significantly decreased over the same period of time, resulting in a reduction in total profit period over period. In this example, it is assumed that the financial measure of “gross margin” is not presented in the primary financial statements and therefore meets the definition of a non-GAAP financial measure. As another example, an issuer that discloses a capital management measure such as “adjusted debt” will meet the requirement in paragraph 10(b) by giving at least equally prominent disclosure to similar financial measures presented in the primary financial statements such as short-term and long-term debt.

For a non-GAAP ratio or a capital management measure which has a most comparable financial measure presented in the primary financial statements, the guidance on prominence contained in this Policy for paragraph 6(b) or 10(b) should be referred to. For example, the most comparable measure of “adjusted earnings per share” is “earnings per share” and we expect that the discussion of “adjusted earnings per share” should not be more prominent than the discussion of “earnings per share”.

Section 9 – Disclosure of total of segments measures

An entity’s accounting policies used in the preparation of the financial statements may permit disclosure of a broad range of segment measures, but not necessarily specify how such financial measures should be calculated or require that these financial measures comply with the recognition and measurement requirements of the accounting policies used to prepare the financial statements of the entity.

When disclosed outside the financial statements, to the extent a total of segments measures is not also presented as a line item in the primary financial statements, the disclosures made under section 9 of the Instrument should allow a reader to understand how the measure is calculated and how it relates to the primary financial statements.

For example, in the notes to the financial statements, an issuer discloses adjusted EBITDA for each of its reportable segments: segment A, segment B, and segment C. The issuer then sums the adjusted EBITDA for each segment and discloses total “entity-adjusted EBITDA”. “Entity-adjusted EBITDA” is a total of segments measures and is not presented in the primary financial statements. When this financial measure is disclosed in a document other than the financial statements, the issuer must comply with section 9 of the Instrument.

If an issuer discloses a financial measure of a reportable segment and such financial measure is not presented in the financial statements to which the financial measure relates, the issuer should consider whether this financial measure meets the definition of a non-GAAP financial measure.

An SEC issuer may characterize a total of segments measure as a non-GAAP financial measure in compliance with SEC rules on non-GAAP financial measures.

Section 10 – Disclosure of capital management measures

Disclosure of information that enables a person to evaluate an entity’s objectives, policies and processes for managing capital may be required by the accounting policies used in the preparation of the financial statements; for example, requirements in IFRS under IAS 1 *Presentation of Financial Statements*.

How an entity manages its capital is entity-specific and the accounting policies used to prepare the financial statements might not prescribe a specific calculation. The accompanying disclosure required by section 10 of the Instrument allows a reader to understand how an entity calculates these measures and how they relate to measures presented in the entity's primary financial statements when these measures are disclosed in documents other than the financial statements.

Subparagraph 10(a)(i) of the Instrument requires a clear explanation of the composition of the capital management measure. For example, if the capital management measure was calculated in accordance with an agreement, a description of the agreement (e.g. the measure was calculated in accordance with lending agreements) together with a description of the composition, or details of the calculations, would satisfy the requirement.

The level of detail expected in the reconciliation required under subparagraph 10(a)(ii)(B) is a matter of judgment and depends on the nature and complexity of the reconciling items required to provide the necessary context. In situations where the capital management measure is an aggregation of individual line items presented on the primary financial statements, the requirements of subparagraph 10(a)(ii)(B) of the Instrument can be met by detailing quantitatively how the measure has been calculated.

If the capital management measure was calculated using one or more non-GAAP financial measures, the issuer must comply with section 6 of the Instrument, in respect of each non-GAAP financial measure used.

ANNEX F

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 45-108 *CROWDFUNDING*

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. Multilateral Instrument 45-108 Crowdfunding is amended by this Instrument.

2. Form 45-108F1 Crowdfunding Offering Document is amended by replacing the heading "Non-GAAP financial measures" and the paragraph that follows this heading, in the "Instructions related to financial statement requirements and the disclosure of other financial information" of Schedule A with the following:

> ***Non-GAAP financial measures and other financial measures*** *- An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure in its crowdfunding offering document should refer to the requirements set out in that Instrument..*

3. This Instrument comes into force on ●.

ANNEX G

PROPOSED CHANGE TO COMPANION POLICY 45-108CP *CROWDFUNDING*

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential changes to Companion Policy 45-108CP Crowdfunding because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. Companion Policy 45-108CP Crowdfunding is changed by this Document.

2. Section 16 is changed by replacing the last paragraph with the following:

> Non-GAAP financial measures and other financial measures – An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, including in its crowdfunding offering document, should refer to the requirements set out in that Instrument..

3. This change becomes effective on ●.

ANNEX H

PROPOSED CHANGES TO COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.

2. Section 4.2 is changed by replacing the heading "*Non-GAAP Financial Measures*" with* "Non-GAAP Financial Measures and Other Financial Measures" *and by replacing the paragraph with the following:

> Reporting issuers that intend to publish financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* should refer to the requirements set out in that Instrument.*.*

3. These changes become effective on ●.

ANNEX I

PROPOSED CHANGE TO
COMPANION POLICY 51-105CP MULTILATERAL INSTRUMENT 51-105 *ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS*

The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets and its Companion Policy do not apply in Ontario.

1. Companion Policy 51-105CP Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is changed by this Document.

2. Section 5 is changed by adding the following paragraph under the heading "National Instruments":

(e) National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* which sets out disclosure requirements for non-GAAP financial measures and certain other financial measures.

3. This change becomes effective on ●.

ANNEX J

PROPOSED CHANGE TO
COMPANION POLICY 52-107CP *ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS*

1. Companion Policy 52-107CP Acceptable Accounting Principles and Auditing Standards is changed by this Document.

2. Section 2.10 is replaced with the following:

> **2.10 Acceptable Accounting Principles** — Readers are likely to assume that financial information disclosed in a news release is prepared on a basis consistent with the accounting principles used to prepare the issuer's most recently filed financial statements. To avoid misleading readers, an issuer should alert readers if financial information in a news release is prepared using accounting principles that differ from those used to prepare an issuer's most recently filed financial statements or includes financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.**.**

3. This change becomes effective on ●.

ANNEX K

Local Matters

Ontario Securities Commission

Description of Anticipated Costs and Benefits of the Proposals

This analysis is provided to supplement the anticipated costs and benefits discussion in the attached notice[1].

Overview

As identified in the Notice, the most significant cost and benefit considerations arise in limiting the application of the Proposed Materials to certain issuers and in the process inherent in identifying and disclosing non-GAAP financial measures, non-GAAP ratios, and other financial measures.

Benefits to Firms

Currently, disclosure expectations in SN 52-306 apply to *all* issuers. In contrast, the Proposed Materials exempt investment funds, SEC foreign issuers, and designated foreign issuers, resulting in reduction of regulatory burden for over 5,800 investment funds in Ontario[2] and over 60 issuers who meet the definition of SEC foreign issuer or designated foreign issuer. We expect this exemption will result in cost savings to these issuers**.**

In addition, as discussed in the Notice, we believe the Proposed Materials will result in an overall net reduction in regulatory burden and cost savings for those issuers that are in scope, particularly in the long-term, because compared to current regulatory expectations as outlined in SN 52-306, we propose to:

- exempt certain disclosures, financial measures, and documents,
- remove categorization of certain measures as non-GAAP financial measures,
- reduce and simplify disclosures for certain non-GAAP financial measures,
- eliminate duplication, in certain areas, through targeted provisions of incorporating information by reference,
- reduce uncertainty regarding disclosure obligations, and
- diminish the time and effort investors spend on understanding certain financial information.

Costs to Firms

Most activities associated with the reporting of non-GAAP financial measures, non-GAAP ratios, and other financial measures can generally be categorized into one of the following:

- Identification
- Drafting disclosure (e.g., compiling information and drafting)
- Review (e.g., management oversight, review and approvals, corporate governance etc.)
- Communication (e.g., publications and presentations, investor engagement etc.)

Since non-GAAP financial measures, non-GAAP ratios, and other financial measures are often used by management for internal management purposes and already typically reported to the audit committee or board of directors as well as to investors, no significant incremental costs associated with review and communication are expected.

Incremental costs of identifying and drafting disclosure for such measures are considered below.

[1] The analysis does not address the considerations inherent in the issuer's determination of whether to disclose certain financial measures – a determination that is distinct from the Proposed Materials because it is based on, among other things, entity-specific business objectives and investor needs. Once an issuer determines that it will disclose a non-GAAP or other financial measure, consideration of the Proposed Materials applies.

[2] As of September 2019, Ontario has over 4,300 investment funds that are reporting issuers (of which approximately 830 are listed) and over 1,500 investment funds that are non-reporting issuers.

Non-GAAP Financial Measures

Currently, SN 52-306 applies to both historical and future non-GAAP financial measures. Compared to SN 52-306, the overall population of non-GAAP financial measures is not expected to materially change.

Since the disclosures for non-GAAP financial measures aim to formalize the existing disclosure expectations in SN 52-306, an issuer that is satisfying the existing disclosure expectations in SN 52-306 is expected to meet the disclosure requirements in the Proposed Materials.

As such, no significant incremental costs associated with identifying and disclosing non-GAAP financial measures are expected. In some cases, incremental costs may be lower because of the introduction of certain regulatory reduction provisions, such as incorporation of information by reference.

Non-GAAP Ratios

Currently, SN 52-306 applies to a non-GAAP financial measure used to calculate a ratio such as adjusted earnings per unit. To address the unique nature of non-GAAP ratios, the Proposed Materials have excluded these measures from the definition of a non-GAAP financial measure and created a separate category with tailored disclosures compared to SN 52-306.

We expect the activity of identifying a non-GAAP ratio can be substantially leveraged from existing reporting processes.

Although issuers have existing reporting processes for such measures, time will be needed to draft the new disclosure, which is substantially limited to including a description of the composition of the measure. Since these measures are often used by management for internal management purposes and typically reported to the audit committee or board of directors, it is expected that the information necessary to comply with the Proposed Materials can be substantially leveraged from existing information available to the issuer.

As such, we expect an issuer to initially incur, on average, less than one hour drafting the new disclosure upon initial application of the Proposed Materials. It is assumed that this work would primarily be undertaken by a finance or accounting professional, at the management level, with an annual salary of $157,350.[3] Assuming an overhead charge of 25%, the total incremental cost for one hour of work is anticipated to be $95 or less.[4] If an issuer chooses to introduce a new non-GAAP ratio, similar one-time costs are expected to be incurred.

Total of Segments Measures

Total of Segments Measures are currently non-GAAP financial measures subject to staff expectations in SN 52-306.[5] To address the unique nature of Total of Segments Measures, the Proposed Materials have excluded these measures from the definition of a non-GAAP financial measure and created a separate category, resulting in tailored and more limited disclosures compared to SN 52-306.

Total of Segments Measures, by definition, are measures disclosed in the financial statements, and therefore are easily identifiable. Since these measures are often used by management for internal management purposes and typically reported to the audit committee or board of directors, it is expected that the information necessary to comply with the Proposed Materials can be substantially leveraged from existing information available to the issuer.

Since issuers have existing reporting processes for such measures, no significant incremental costs are expected upon initial application of the Proposed Materials, or in the future if an issuer chooses to disclose a new Total of Segments Measures outside of the financial statements. In some cases, incremental costs may be lower because of the introduction of certain regulatory reduction provisions, such as incorporation of information by reference.

Capital Management Measures

Capital Management Measures, by definition, are measures disclosed in the financial statements, and are therefore easily identifiable.

[3] The salary figure is based on information from the Robert Half 2019 *Salary Guide for Accounting and Finance Professionals* for a manager involved with corporate financial reporting in Toronto, Ontario. The salary range is $92, 837 - $157,350. The analysis is based on the upper end of the range. This figure is based on information regarding Toronto, Ontario salaries, which may differ from the salary of an equivalent position in another area or jurisdiction.

[4] $157,350 / 2,080 annual working hours (based on 40-hour work week) x 1.25% overheard charge = $94.56 hourly rate.

[5] Notwithstanding the fact that such measures may be disclosed in the financial statements, these measures are often not in accordance with the recognition and measurement principles used to prepare the primary financial statements and therefore have no authoritative meaning outside of the notes to the financial statements.

If certain required information is already disclosed in the notes to the financial statements, the additional disclosure requirements are substantially limited to including a description of the composition of the measure and providing a comparative. Since these measures are often used by management for internal management purposes and typically reported to the audit committee or board of directors it is expected that the information necessary to comply with the Proposed Materials can be substantially leveraged from existing information available to the issuer.

As such, we expect an issuer to incur, on average, less than one hour in drafting disclosures. It is assumed that this work would primarily be undertaken by a finance or accounting professional, at the management level, with an annual salary of $157,350. Assuming an overhead charge of 25%, the total incremental cost is anticipated to be $95 or less. If an issuer chooses to introduce a new Capital Management Measure, it is expected to incur similar one-time costs.

Supplementary Financial Measures

To comply with the disclosure requirements for Supplementary Financial Measures, an issuer will need to incur time to identify such measures in its existing disclosure.

Once identified, the disclosure is substantially limited to providing an explanation of the composition of the measure, which is inherently based on information available to the issuer. Since these measures are often used by management for internal management purposes and typically reported to the audit committee or board of directors it is expected that the information necessary to comply with the Proposed Materials can be substantially leveraged from existing information available to the issuer.

As such, we expect an issuer to incur, on average, less than one hour in drafting disclosures. It is assumed that this work would primarily be undertaken by a finance or accounting professional, at the management level, with an annual salary of $157,350. Assuming an overhead charge of 25%, the total incremental cost is anticipated to be $95 or less. If an issuer chooses to introduce a new supplementary financial measure, it is expected to incur similar one-time costs.

1.1.2 Notice of Ministerial Approval of National Instrument 94-102 Customer Clearing and Protection of Customer Collateral and Positions

NOTICE OF MINISTERIAL APPROVAL OF
NATIONAL INSTRUMENT 94-102 CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

February 13, 2020

National Instrument 94-102 *Customer Clearing and Protection of Customer Collateral and Positions* (the National Instrument) received Ministerial approval on March 16, 2017, pursuant to paragraph 143.3(3)(a) of the *Securities Act* (Ontario). Through inadvertence, this Notice is being published later than is customary.

The National Instrument was published by the Commission on January 19, 2017. The Commission also published Companion Policy 94-102 to the National Instrument. See (2017) 40 OSCB 672.

The National Instrument has been effective from July 3, 2017. The text of the National Instrument and Companion Policy 94-102 is reproduced in Chapter 5 of this Bulletin. The text in Chapter 5 is identical to the applicable text published on January 19, 2017.

1.1.3 CSA Staff Notice 23-326 Order Protection Rule: Market Share Threshold for the period April 1, 2020 to March 31, 2021

CSA Staff Notice 23-326

Order Protection Rule: Market Share Threshold for the period April 1, 2020 to March 31, 2021

February 13, 2020

Introduction

On June 20, 2016, the Canadian Securities Administrators (the **CSA** or **we**) published a notice[1] (the **2016 Notice**) regarding the implementation of the market share threshold. This notice updates the list of protected and unprotected marketplaces published on January 31, 2019. The updated list will be in effect from April 1, 2020 to March 31, 2021. We note that there are no changes compared to the list published last year.

The text of this notice is available on the websites of the CSA jurisdictions, including:

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

Purpose

The purpose of this notice is to provide the list of marketplaces that display protected orders (**protected marketplaces**) and marketplaces whose orders will not be protected (**unprotected marketplaces**) for the purposes of National Instrument 23-101 *Trading Rules* (**NI 23-101**) and the order protection rule (**OPR**) for the period April 1, 2020 to March 31, 2021 because they do not:

(i) provide automated trading functionality as they have an intentional order processing delay, and/or

(ii) meet the market share threshold.

The market share threshold has been set at 2.5%.[2]

OPR Requirements

Section 6.1 of NI 23-101 requires marketplaces to establish, maintain and ensure compliance with policies and procedures that are reasonably designed to prevent trade-throughs of better priced protected bids and offers. Section 6.4 of NI 23-101 imposes the same requirement on marketplace participants that assume responsibility for compliance with OPR by entering directed-action orders.

Section 1.1 of NI 23-101 defines protected bids and offers as bids and offers displayed on a marketplace offering automated trading functionality, and about which information is provided to an information processor.

Section 1.1.2.1 of Companion Policy 23-101 *Trading Rules* outlines the circumstances in which a marketplace that introduced an intentional order processing delay would not be considered to be providing automated trading functionality. In those circumstances, the orders on that marketplace would not be protected.

[1] CSA Staff Notice 23-316 Order Protection Rule: Implementation of the Market Share Threshold and Amendments to Companion Policy 23-101 *Trading Rules*.
[2] CSA Staff Notice 23-316 includes a description of the calculation of the market share threshold.

Orders on "dark" marketplaces are not protected as they are not displayed. Therefore, orders on ICX, LiquidNet, MATCHNow, NEO Exchange dark book (NEO-D) and Nasdaq CXD are unprotected for the purposes of OPR.

List of Protected and Unprotected Marketplaces

Below we have listed the protected and unprotected marketplaces.

The orders displayed on the marketplaces listed in Table 1 below are protected because either the marketplace meets the market share threshold and/or the orders are for securities that are listed by and traded on that marketplace:

Table 1 – Marketplaces that Display Protected Orders

Marketplace	Market Share	Status	Reason Protected
NEO-L	3.84	Protected	Meets market share threshold
CSE	7.91	Protected	Meets market share threshold
Nasdaq CXC	11.94	Protected	Meets market share threshold
Nasdaq CX2	4.25	Protected	Meets market share threshold
Omega	4.66	Protected	Meets market share threshold
TSX	46.59	Protected	Meets market share threshold
TSX Venture	9.38	Protected	Meets market share threshold

Orders displayed on the marketplaces listed on Table 2 below will be unprotected because either the marketplace does not provide automated trading functionality, does not meet the market share threshold or does not display orders:

Table 2 – Marketplaces whose Orders Are Unprotected

Marketplace	Market Share	Status	Reason Unprotected
NEO-N	3.60	Unprotected	Does not provide automated trading functionality
Alpha	7.74	Unprotected	Does not provide automated trading functionality
Lynx	0.07	Unprotected	Does not meet market share threshold
ICX		Unprotected	Does not display orders
LiquidNet		Unprotected	Does not display orders
MATCHNow		Unprotected	Does not display orders
Nasdaq CXD		Unprotected	Does not display orders
NEO-D		Unprotected	Does not display orders

QUESTIONS

Please refer your questions to any of the following:

Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission abazavan@osc.gov.on.ca	Alex Petro Trading Specialist, Market Regulation Ontario Securities Commission apetro@osc.gov.on.ca
Roland Geiling Derivatives Product Analyst Exchanges and SRO Oversight Autorité des marchés financiers Roland.Geiling@lautorite.qc.ca	Serge Boisvert Senior Policy Analyst Exchanges and SRO Oversight Autorité des marchés financiers serge.boisvert@lautorite.qc.ca
H. Zach Masum Manager, Legal Services British Columbia Securities Commission zmasum@bcsc.bc.ca	Jesse Ahlan Regulatory Analyst, Market Structure Alberta Securities Commission jesse.ahlan@asc.ca

1.4 Notice from the Office of the Secretary

1.4.1 Issam El-Bouji

FOR IMMEDIATE RELEASE
February 7, 2020

ISSAM EL-BOUJI,
File No. 2018-28

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

A copy of the Reasons for Decision dated February 6, 2020 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.2 Solar Income Fund Inc. et al.

FOR IMMEDIATE RELEASE
February 7, 2020

SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, and
KENNETH KADONOFF,
File No. 2019-35

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

A copy of the Order dated February 7, 2020 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.3 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
February 7, 2020

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

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

A copy of the Order dated February 7, 2020 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.4 Sean Daley and Kevin Wilkerson

FOR IMMEDIATE RELEASE
February 11, 2020

SEAN DALEY and
KEVIN WILKERSON,
File No. 2019-39

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on February 13, 2020 at 10:00 a.m., will be heard on February 13, 2020 at 11:30 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.5 Joseph Debus

FOR IMMEDIATE RELEASE
February 11, 2020

JOSEPH DEBUS,
File No. 2019-16

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

A copy of the Order dated February 11, 2020 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Fortrade Canada Ltd.

Headnote

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

Applicable Legislative Provisions

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

February 5, 2020

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
FORTRADE CANADA LIMITED
(the Filer)

DECISION

Background

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

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in British Columbia, (the **Non-Principal Jurisdiction**, and, together with the Jurisdiction, the **Applicable Jurisdictions**).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of British Columbia with its principal office in Toronto, Ontario.

2. The Filer is registered as a dealer in the category of investment dealer in Ontario and British Columbia, and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

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

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

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

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

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

9. The Filer is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Form 1 and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Filer, as an IIROC member, is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the firm's Form 1 and required to be kept positive at all times.

Online Trading Platform

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

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

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

(b) *Fully automated risk management system*. Clients are instructed that they must maintain the required margin against their position(s). If a client's funds drop below the required margin, margin calls are regularly issued via email (as frequently as hourly), alerting the client to the fact that the client is required to either deposit more funds to maintain the position or close/reduce it voluntarily. Where possible, daily telephone margin calls are provided as a supporting communication for clients. However, if a client fails to deposit more funds, where possible, the client's position is automatically liquidated. This liquidation procedure is intended to act as a mechanism to help reduce the risk entering into a negative account balance.

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

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

13. The Filer is the counterparty to its clients' CFD trades; it will not act as an intermediary, broker or trustee in respect of the CFD transactions. The Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding CFD transactions.

14. The Filer manages the risk in its client positions by simultaneously placing the identical CFD on a back-to-back with a Platform Provider or an affiliate, each of which will be at all times an "acceptable counterparty" or a "regulated entity" (as those terms are defined in the Form 1) (the **Acceptable/Regulated Counterparty**). The Acceptable/Regulated Counterparty will, in turn, automatically offset each position against other client positions on a second-by-second basis, and either "hedges" its net exposure by trading with liquidity providers or using its equity capital, or both. By virtue of this risk management functionality inherent in the Trading Platforms, the Filer minimizes counterparty risk. This also means that the Filer does not have an inherent conflict of interest with its clients, since it does not profit on a position if the client loses on that position, and *vice versa*.

15. The CFDs are OTC contracts and are not transferable.

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

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

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

Structure of CFDs

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

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

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

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

CFDs Distributed in the Applicable Jurisdictions

23. Certain types of CFDs, such as CFDs where the underlying instrument is a security, may be considered to be "securities" under the securities legislation of the Applicable Jurisdictions.

24. Investors wishing to enter into CFD transactions must open an account with the Filer.

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

26. Prior to the client's first CFD transaction and as part of the account opening process, the Filer will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the Risk Disclosure Document. Such acknowledgement will be prominent and separate from other acknowledgements provided by the client as part of the account opening process.

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

Satisfaction of the Registration Requirement

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

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

    (a) applicable Risk Disclosure Documents and client suitability waivers be provided in a form acceptable to IIROC;

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

    (c) the Filer's registered supervisors who conduct the KYC and initial product suitability analysis will meet, or be exempted from, the proficiency requirements for futures trading and will be registered with IIROC as Investment Representatives (**IR**) for retail customers in the product category of Futures Contracts and Futures Contract Options. The course proficiency requirements for an IR include the completion of the Derivatives Fundamentals Course and Futures Licensing Course. In addition, the Filer must have a fully qualified Supervisor (Futures); and

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

30. The CFDs offered in Canada will be offered in compliance with applicable IIROC Rules and other IIROC Acceptable Practices.

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

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

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

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

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

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

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

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

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

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

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

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

Decision

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

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

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

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

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

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

(e) prior to the client's first CFD transaction and as part of the account opening process, the Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 26, confirming that the client has received, read and understood the Risk Disclosure Document;

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

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

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

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

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

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

ii. in respect of a subject Applicable Jurisdiction or Quebec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, or other similar regulatory body including the *Autorité des marchés financiers* that suspends or terminates the ability of the Filer to offer CFDs to clients in such Applicable Jurisdiction or Quebec; and

iii. with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by its Commission regarding the distribution of CFDs to investors in such Applicable Jurisdiction

(the **Interim Period**).

“Craig Hayman”
Commissioner
Ontario Securities Commission

“Garnet W. Fenn”
Commissioner
Ontario Securities Commission

2.1.2 1832 Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from alternative mutual fund short selling restrictions in NI 81-102, such that the aggregate market value of all securities sold short by a fund will not exceed 100% of the fund's net asset value, to permit alternative mutual funds each to short sell "index participation units", as defined in NI 81-102, of one or more investment funds the securities of which are index participation units, up to a maximum of 100% of the net asset value of the alternative mutual fund, subject to conditions – relief from single issuer short selling restriction applies only to short sales of the index participation units of the investment fund issuer, not to the underlying portfolio holdings of the investment fund issuer of the index participation units.

Applicable Legislative Provisions

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

September 19, 2019

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

AND

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

AND

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

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), exempting the Funds from the following short selling restrictions of NI 81-102 to permit each Fund to exceed these restrictions to short sell IPUs (as defined below) of one or more IPU Issuers (as defined below) up to a maximum of 100% of the Fund's NAV at the time of sale such that, immediately after entering into a transaction to short sell IPUs of IPU Issuers or borrow cash: (a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's net asset value (**NAV**); (b) the aggregate value of cash borrowing by the Fund does not exceed 50% of the Fund's NAV; and (c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV (collectively, the **Requested Relief**):

(a) section 2.6.1(1)(c)(iv), which restricts a Fund from selling a security of an issuer, other than a "government security", as defined in NI 81-102, short if, at the time, the aggregate market value of the securities of that issuer sold short by the Fund exceeds 10% of the Fund's NAV (the **Single Issuer Short Restriction**);

(b) section 2.6.1(1)(c)(v), which restricts a Fund 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 Fund's NAV; and

(c) section 2.6.2, which restricts a Fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Fund (the **Combined Aggregate Value**) would exceed 50% of the Fund's NAV and which requires a Fund, if the Combined Aggregate Value exceeds 50% of the Fund's NAV, as quickly as commercially reasonable, to take all necessary steps to reduce the Combined Aggregate Value to 50% or less of the Fund's NAV (together with the restriction described in (b) above, the **Aggregate Short Restrictions**).

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

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

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

Interpretation

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

Aggregate Limit means the aggregate gross exposure restriction in section 2.9.1 of NI 81-102, which places an overall limit on a Fund's exposure to borrowing, short selling and derivatives equal to 300% of the Fund's NAV.

Fund means each existing and future "alternative mutual fund", as defined in NI 81-102, managed by the Filer or an affiliate or successor of the Filer, including the Initial Fund.

Fund Aggregate Limit means in relation to the Initial Fund, the limit set out in the Initial Fund's simplified prospectus that limits its aggregate exposure to cash borrowing, short selling and specified derivatives transactions, excluding any specified derivatives used for hedging purposes, to 200% of the Initial Fund's NAV.

Initial Fund means Dynamic Alpha Performance II Fund.

IPU means "index participation unit", as defined in NI 81-102.

IPU Issuer means an investment fund the securities of which are IPUs.

Specified IPU Issuer means each of the following IPU Issuers: (i) the SPDR® S&P 500 ETF, which trades on the NYSE Arca under the ticker symbol: SPY; or (ii) the SPDR® S&P MidCap 400 ETF, which trades on the NYSE Arca under the ticker symbol: MID.

Representations

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

The Filer and the Funds

1. The Filer is a limited partnership established under the laws of Ontario. The Filer's head office is located in Toronto, Ontario.

2. The Filer, or an affiliate or successor of the Filer, is or will be, the registered investment fund manager of each Fund. The Filer, or an affiliate or successor of the Filer, is also or will also be, the registered portfolio manager of each Fund and the trustee of each Fund structured as a trust.

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

4. Each Fund is, or will be, an "alternative mutual fund", as defined in NI 81-102, created under the laws of the Province of Ontario or another of the Jurisdictions and governed by NI 81-102, subject to any relief therefrom granted to the Fund by the securities regulatory authorities.

5. Neither the Filer, nor any of the existing Funds, is in default of any of the requirements of securities legislation in any of the Jurisdictions.

6. Securities of each Fund are, or will be, offered by prospectus filed in one or more of the Jurisdictions and, accordingly, each Fund is or will be a reporting issuer in one or more of the Jurisdictions.

7. The description of the investment objective of the Initial Fund, as set out in its simplified prospectus, includes the following: *Dynamic Alpha Performance II Fund seeks to protect capital during a wide range of economic and market environments while earning superior risk-adjusted equity or equity related returns that are not correlated to major stock market indices. The Fund will use alternative investment strategies primarily including engaging in physical short sales and may also include purchasing securities on margin or with borrowed funds. The Fund aims to reduce risk and invest in a diversified portfolio of equity securities from around the world.*

8. As part of its investment strategies, each Fund may: (i) purchase securities, including on margin or with borrowed funds; (ii) engage in short sales; and/or (iii) engage in derivative transactions to limit or hedge potential losses associated with securities, among other things.

9. Each Fund is subject to the Aggregate Limit and the Initial Fund is currently subject to the Fund Aggregate Limit. The Filer intends to continue with the Fund Aggregate Limit for the Initial Fund if the Requested Relief is granted.

10. Subject to applicable restrictions including the Aggregate Limit, each Fund may gain exposure, including short exposure, to IPUs of IPU Issuers by way of specified derivative transactions without impacting such Fund's ability to engage in cash borrowings and short sales.

11. The Filer's assessed risk rating of the Initial Fund is low to medium, and the Filer believes this risk rating would not change by virtue of relying on the Requested Relief.

IPU Issuers and the Specified IPU Issuers

12. IPU Issuers are generally diversified. IPU Issuers seek to provide investment results that correspond generally to the performance of a specified underlying market index comprised of multiple issuers by holding a portfolio of securities that are included in the index or otherwise investing in a

manner that causes the IPU Issuer to replicate the performance of that index. The Specified IPU Issuers track underlying indices comprised of hundreds of issuers.

13. IPU Issuers are generally liquid. In respect of the Specified IPU Issuers, the volume of trading of the SPDR S&P 500 ETF routinely reaches over a hundred million securities exchanged on a daily basis. The volume of trading of the SPDR S&P MidCap 400 ETF routinely reaches over a million securities exchanged on a daily basis. Additionally, the creation process for IPUs of IPU Issuers can quickly increase the available supply of IPUs of IPU Issuers in the marketplace, making the potential for a liquidity issue inherently lower.

14. The weight of each underlying security held in an IPU Issuer substantially corresponds to the weight of such security in the underlying index. In respect of the Specified IPU Issuers, the S&P Midcap 400 Index is composed of 400 selected stocks all of which are listed on national stock exchanges, and span a broad range of major industry groups. The S&P 500 Index includes 500 selected companies, all of which are listed on national stock exchanges and spans over 24 separate industry groups.

15. The Specified IPU Issuers are "registered" investment companies in the United States, which means that there is mandated disclosure about the Specified IPU Issuers readily available in the marketplace.

16. The Specified IPU Issuers are publicly traded on the U.S. NYSE Arca stock exchange.

The Requested Relief

17. Sections 2.1(1) and 2.1(1.1) of NI 81-102 restrict an investment fund from purchasing a security of an issuer, entering into a specified derivatives transaction or purchasing an IPU if, immediately after the transaction, more than 10% of its NAV, in the case of a mutual fund other than an alternative mutual fund, or more than 20% of its NAV, in the case of an alternative mutual fund or non-redeemable investment fund, would be invested in securities of any one issuer (the **Concentration Restriction**).

18. Section 2.1(2) of NI 81-102 provides an exception to the Concentration Restriction for an IPU that is a security of an investment fund. The Filer has submitted that the rationale for this exception is in part that an IPU Issuer should be considered a look-through vehicle in that it is comprised of and represents a diversified group of issuers whose securities it holds in proportion to the underlying index, thereby mitigating the concentration risk otherwise associated with a fund holding the securities of a single issuer. The Filer believes a similar rationale applies to shorting IPU Issuers.

19. A significant risk associated with short positions generally is the potential to be unable to obtain the securities required to cover the short position, or to be unable to obtain them without additional costs, at the required time due to a lack of liquidity in the market. The Filer has submitted that the liquidity of the IPU Issuers as described above significantly reduces the risk that a Fund may not be able to cover or exit a short position in an IPU Issuer. On this basis, short sales of IPU Issuers will not have the same risk profile as a short sale of a single issuer or of a security that lacks liquidity of this magnitude.

20. The Funds are permitted to short sell IPUs of multiple IPU Issuers up to the limits of the Aggregate Short Restrictions. However, the Filer has submitted that shorting a single IPU Issuer is preferable in certain cases to shorting multiple IPU Issuers where the liquidity of the single IPU Issuer being sold short is higher than other IPU Issuers tracking the same index, or where the underlying index tracked by a particular IPU Issuer otherwise presents more favourable investment characteristics than other IPU Issuers.

21. The Filer is of the view that, in the case of IPU Issuers, given their high diversity and liquidity, the concentration risk otherwise associated with shorting securities of a single issuer is mitigated and, as a result, the Requested Relief would permit the Funds to benefit from efficiencies without prejudicing investors.

22. The Requested Relief is requested to permit each Fund to short sell IPUs of IPU Issuers without otherwise impacting such Fund's ability to borrow cash or engage in short sales under NI 81-102, in circumstances where the Filer believes that it is more beneficial to gain the desired short exposure to IPU Issuers: (a) through shorting fewer IPU Issuers than would otherwise be necessary under the Single Issuer Short Restriction; and (b) by way of short sales potentially in excess of the Aggregate Short Restrictions rather than by way of specified derivative transactions.

23. The Requested Relief would permit the Initial Fund to effectively pursue its investment strategies, namely, by protecting capital and reducing risk through hedging. Such a strategy will mitigate the impact of price changes on such Fund's portfolio. To hedge against market volatility, the Initial Fund would hold long positions in certain individual issuers that are included in an index, concurrent with holding offsetting short exposure to the relevant index. The effect of this strategy would be to hedge away risks of the general market (i.e. beta), while preserving idiosyncratic returns of the long positions in such individual issuers held by the Initial Fund. As a result, the Filer believes the Requested Relief would provide the potential for compelling, low volatility returns to investors.

24. While the Initial Fund could acquire exposure, including short exposure, to the Specified IPU Issuers and other IPU Issuers in pursuit of its investment strategies through derivative transactions, the Filer believes that short sales of the Specified IPU Issuers may provide a faster, more efficient and flexible means of achieving diversification and hedging against market risk. The Filer believes that while the underlying indices of the Specified IPU Issuers trade as futures contracts on the Chicago Mercantile Exchange, the use of this alternative form of leverage, through futures, can be less liquid, more cumbersome and less flexible, and therefore ultimately potentially riskier to investors of the Fund.

25. As such, the Filer is of the view that it would be in the Initial Fund's best interest to permit it to physically short sell IPUs of IPU Issuers, up to 100% of the Fund's NAV at the time of sale, instead of being limited to achieving that degree of leverage through either specified derivatives alone, or a combination of physical short selling and specified derivatives, including for the following reasons. In some circumstances, the availability of derivatives with similar risk characteristics to corresponding indices may be limited. Alternatively, pricing of a short position at a particular point in time may be preferable to the pricing of a corresponding derivatives contract. Granting the Requested Relief would expand the scope of available tools at the disposal of the portfolio manager to achieve market hedging, and thereby provide the portfolio manager with the best execution and best liquidity. As an example, at times the Specified IPU Issuers trade more frequently than similar derivatives contracts. At such times, there may be reduced risk when covering short positions comparatively to closing out a derivatives transaction through offsetting positions. In addition, the Requested Relief may also be less risky than certain derivatives transactions by allowing the Fund to, in part, mitigate against settlement risk (which is the risk that one of the parties to the derivatives contract defaults under the derivatives contract). Use of derivatives may also be incrementally riskier by exposing the Fund to operational risk (such as the case of a party to a derivatives contract failing to maintain adequate internal procedures or controls including intra-day settlements or managing closing-out the transaction) and liquidity risk.

26. The Requested Relief would allow the portfolio manager of the Funds greater flexibility and liquidity in pursuing a hedging strategy that reduces potential market volatility by expanding options for hedging to include selling highly liquid IPU Issuers short.

27. Notwithstanding the Requested Relief, the Funds would otherwise still be required to comply with all of the requirements applicable to alternative mutual funds in sections 2.6.1 and 2.6.2 of NI 81-102, including with the 50% of NAV restriction on cash borrowing and the 50% of NAV restriction on short selling securities (in respect of securities that are not IPUs of IPU Issuers) in paragraphs 2.6(2)(c) and 2.6.1(1)(c)(v) of NI 81-102 respectively and with the total borrowing and short sale limits in section 2.6.2 of NI 81-102.

28. The Requested Relief would not change each Fund's obligation to comply with the Aggregate Limit. The Fund Aggregate Limit would continue to apply to the Initial Fund's combined exposure to borrowing, short selling and derivatives and the Requested Relief. The Aggregate Limit would continue to apply to a Fund's combined exposure to borrowing, short selling and derivatives and the Requested Relief. A decision to grant the Requested Relief would not permit the Initial Fund to exceed the Fund Aggregate Limit, or a Fund to exceed the Aggregate Limit, through a combination of investment strategies.

29. If the aggregate gross exposure were to exceed the Aggregate Limit, section 2.9.1(5) of NI 81-102 would require a Fund to, as quickly as commercially reasonable, take all necessary steps to reduce the aggregate gross exposure to 300% of the Fund's NAV or less.

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

31. Each Fund 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 with 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.

32. Each Fund's prospectus will contain adequate disclosure of the Fund's short selling activities, including the material terms of the Requested Relief.

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

Decision

The 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 only securities that a Fund will sell short in an amount that exceeds 50% of the Fund's NAV at the time of sale will be IPUs of IPU Issuers;

2. The only securities that a Fund will sell short (other than "government securities", as defined in NI 81-102), resulting in the aggregate market value of the securities of that issuer sold short by the Fund exceeding 10% of the Fund's NAV at the time of sale, will be IPUs of IPU Issuers;

3. The relief from the Single Issuer Short Restriction granted by this decision only applies in respect of a Fund's short sales of IPUs of an IPU Issuer and each Fund will comply with the Single Issuer Short Restriction in respect of its exposure to the securities held by each IPU Issuer the IPUs of which the Fund sells short. For each IPU of an IPU Issuer the Fund sells short, the Fund will be considered to be directly selling short its proportionate share of the securities held by the IPU Issuer, except that it will not be considered to be directly selling short a security or instrument that is a component of, but represents less than 10% of, the securities held by the IPU Issuer;

4. A Fund may sell an IPU of an IPU Issuer short or borrow cash only if, immediately after the transaction:

   (a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;

   (b) the aggregate value of cash borrowing by the Fund does not exceed 50% of the Fund's NAV; and

   (c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV;

5. Each Fund will otherwise comply with all of the requirements applicable to alternative mutual funds in sections 2.6.1 and 2.6.2 of NI 81-102;

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

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

8. Each Fund's prospectus discloses that the Fund is able to sell short IPUs of one or more IPU Issuers in an amount up to 100% of the Fund's NAV at the time of sale, including the material terms of this decision.

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

2.1.3 Ovintiv Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdiction.

Issuer exempt from requirements in NI 51-101 that the qualified reserves evaluator or auditor be independent of the issuer, and that the qualified reserves evaluator or auditor executing Form 51-101F2 be independent of the issuer; issuer also relieved from the required form of Forms 51-101F2 and 51-101F3 to the extent necessary to reflect the relief from the independence requirement; all the foregoing relief subject to conditions.

Applicable Legislative Provisions

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, ss. 2.1, 3.2 and 8.1.

Citation: *Re Ovintiv Inc.*, 2020 ABASC 18

February 6, 2020

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

AND

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

AND

IN THE MATTER OF
OVINTIV INC.
(the Filer)

DECISION

Background

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

(a) be exempt from the requirement that each qualified reserves evaluator or qualified reserves auditor appointed under section 3.2 of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (**NI 51-101**) be independent of the Filer, and the requirement that each of the qualified reserves evaluators or qualified reserves auditors who execute the report required under item 2 of section 2.1 of NI 51-101 (the **Evaluator Report**) be independent of the Filer (together, the **Independent Evaluator Requirement**); and

(b) be exempt from the required form of the Evaluator Report and the required form of the report required under item 3 of section 2.1 of NI 51-101, to the extent necessary for such reports to reflect the exemption from the Independent Evaluator Requirement.

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

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 51-101 or CSA Staff Notice 51-324 *Revised Glossary to NI 51-101 Standards of Disclosure for Oil and Gas Activities* have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer was domesticated as a corporation under the laws of the State of Delaware following a series of reorganization transactions (the **Reorganization**) which resulted in the Filer acquiring all of the issued and outstanding common shares (**Encana Common Shares**) of Encana Corporation (**Encana**) in exchange for shares of common stock, par value US$0.01 per share of the Filer (**Ovintiv Common Shares**).

2. The business, assets, liabilities, directors and officers of the Filer are the same as the business, assets, liabilities, directors and officers of Encana immediately prior to the Reorganization.

3. The Filer will maintain a business office in Calgary, Alberta, and field offices in Alberta, British Columbia and Nova Scotia.

4. Prior to the Reorganization, Encana was a reporting issuer in all provinces and territories of Canada, and was subject reporting obligations under the 1934 Act and filed regular periodic reports with the SEC. As part of the Reorganization, Encana was continued under the *Business Corporations Act* (British Columbia) and changed its corporate name to Ovintiv Canada ULC and subsequently ceased to be subject to reporting obligations under the 1934 Act. Ovintiv Canada ULC ceased to be a reporting issuer in all provinces and territories of Canada on January 30, 2020.

5. Upon completion of the Reorganization, the Filer became a reporting issuer in all provinces and territories of Canada, became subject to reporting obligations under the 1934 Act, and will file regular periodic reports with the SEC.

6. Neither Encana nor Ovintiv is in default of securities legislation in any jurisdiction of Canada.

7. The Filer is engaged in the business of the acquisition, development, production and marketing of oil, natural gas liquids and natural gas. The Filer holds a portfolio of oil and natural gas properties in Canada and the United States of America.

8. Encana (the business and assets of which became the business and assets of the Filer upon completion of the Reorganization) produced an average of approximately 605,100 barrels of oil equivalent (converted pursuant to a ratio of six thousand cubic feet of natural gas to one barrel of oil) per day of oil, natural gas and natural gas liquids in the quarter ended September 30, 2019.

9. The Filer's internally-generated reserves data, contingent resources data and prospective resources data, as applicable, is as reliable as if it were independently generated, for the following reasons:

    (a) the Filer has qualified reserves evaluators or qualified reserves auditors within the meaning of NI 51-101;

    (b) the Filer has a well-established evaluation process that is at least as rigorous as would be the case if it were to rely upon independent qualified reserves evaluators or independent qualified reserves auditors;

    (c) the Filer has a technical quality assurance program in connection with the estimation of its internally generated reserves data, contingent resources data and prospective resources data, as applicable; and

    (d) the Filer has written evaluation practices and procedures that are in accordance with the Canadian Oil and Gas Evaluation Handbook.

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) **Explanatory and Cautionary Disclosure** – the Filer discloses:

    (i) at least annually, its reasons for considering the reliability of its internally-generated reserves data, contingent resources data and prospective resources data, as applicable, to be not materially less than if the Independent Evaluator Requirement were adhered to, including a discussion of:

(ii) factors that support the involvement of independent qualified reserves evaluators or independent qualified reserves auditors and why such factors are not considered compelling in the case of the Filer; and

(iii) the manner in which its internally-generated reserves data, contingent resources data and prospective resources data, as applicable, are determined, reviewed and approved, its relevant disclosure control procedures and the related role, responsibilities and composition of each of its responsible management, board of directors and (if applicable) reserves committee of its board of directors; and

(iv) in each document that discloses any information from internally-generated reserves data, contingent resources data and prospective resources data, as applicable, and reasonably proximate to that disclosure, the fact that such data was internally-generated; and

(b) **No Changes to Reliability of Internally Generated Information** – paragraph 9 above continues to be true.

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

2.1.4 BlackRock Asset Management Canada Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to permit mutual funds to invest in underlying ETFs whose securities would meet the definition of index participation unit in NI 81-102, but for the fact that they are traded in the United Kingdom – relief also granted to permit mutual funds to invest in other mutual funds that hold more than 10% of NAV in securities of one or more of the United Kingdom-traded ETFs to form a three-tier structure – relief is subject to certain conditions and requirements including that the underlying funds are not synthetic exchange-traded mutual funds – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

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

February 5, 2020

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
BLACKROCK ASSET MANAGEMENT CANADA LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the mutual funds that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) that it currently manages (the **Existing Funds**) and the mutual funds that are subject to NI 81-102 that the Filer or an affiliate of the Filer may manage in the future (the **Future Funds**, and together with the Existing Funds, the **Funds**, and each, a **Fund**) for a decision under the securities legislation of the principal regulator (the **Legislation**):

(a) revoking the decision granted on July 22, 2013 (the **Prior Decision**) by the principal regulator (the **Revocation**); and

(b) exempting the Funds from:

(i) subsection 2.1(1) of NI 81-102 to permit each Fund to purchase securities of a Dublin iShares Fund (as defined below) even though, immediately after the transaction, more than 10% of the Fund's net asset value (**NAV**) would be invested in securities of the Dublin iShares Fund;

(ii) paragraph 2.2(1)(a) of NI 81-102 to permit each Fund to purchase securities of a Dublin iShares Fund even though, immediately after the purchase, the Fund would hold securities representing more than 10% of (i) the votes attaching to the outstanding voting securities of the Dublin iShares Fund, or (ii) the outstanding equity securities of the Dublin iShares Fund;

(iii) paragraph 2.5(2)(a) of NI 81-102 to permit each Fund to purchase and/or hold securities of a Dublin iShares Fund, even though the Dublin iShares Fund is not subject to NI 81-102;

(iv) paragraph 2.5(2)(c) of NI 81-102 to permit each Fund to purchase and/or hold securities of a Dublin iShares Fund, even though the Dublin iShares Fund is not a reporting issuer in a Canadian Jurisdiction (as defined below) (together with paragraphs (i), (ii) and (iii) above, the **Two Tier Relief**); and

(v) paragraph 2.5(2)(b) of NI 81-102 to permit each Fund to purchase and/or hold a security of another Fund that holds more than 10% of its NAV in securities of one or more Dublin iShares Funds (a **Middle Fund**, and collectively, the **Middle Funds**) (the **Three Tier Relief**, and together with the Two Tier Relief, 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 all of the provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the **Canadian Jurisdictions**).

Interpretation

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

Representations

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

The Filer and the Funds

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario and is an indirect, wholly-owned subsidiary of BlackRock, Inc, with its head office located in Toronto, Ontario.

2. The Filer is registered in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer in all of the Canadian Jurisdictions. The Filer is also registered as a Commodity Trading Manager in Ontario and an Adviser under the *Commodity Futures Act* in Manitoba.

3. The Filer or an affiliate of the Filer acts, or will act, as trustee, manager and portfolio adviser of the Funds. BlackRock Institutional Trust Company, N.A. or another affiliate of the Filer may be appointed as the sub-advisor of the Funds.

4. Each Fund is, or will be, an open-ended mutual fund governed by the laws of the Province of Ontario.

5. Each Fund distributes, or will distribute, its securities pursuant to either a (a) long form prospectus prepared pursuant to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**), or (b) simplified prospectus prepared pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**), as applicable, and is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom granted by the securities regulatory authorities.

6. Units of each Fund that is an exchange-traded mutual fund (an **ETF**) are, or will be, listed and traded on the Toronto Stock Exchange (the **TSX**), Neo Exchange Inc. (the **NEO Exchange**) or another stock exchange recognized by the OSC.

7. Each Fund is, or will be, a reporting issuer in each of the Canadian Jurisdictions.

8. The Filer and the Existing Funds are not in default of securities legislation in any of the Canadian Jurisdictions.

9. In order to achieve its investment objectives, each Fund may, from time to time, (a) invest up to 100% of its NAV in securities of one or more ETFs which are, or will be, listed and traded on the London Stock Exchange (the **LSE**) and managed by BlackRock Asset Management Ireland Limited (**BlackRock Ireland**) or another affiliate of the Filer (each, a **Dublin iShares Fund**, and collectively, the **Dublin iShares Funds**), and/or (b) invest up to 100% of its NAV in securities of one or more Middle Funds.

The Dublin iShares Funds

10. Each Dublin iShares Fund is, or will be, a portfolio with segregated liability of an umbrella open-ended investment company with variable capital which is incorporated as a public limited company under the *Companies Act 2014* (Ireland), as amended.

11. Each Dublin iShares Fund is, or will be, authorized by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011, as amended by the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations

2016, as may be amended or replaced (the **UCITS Regulations**) and therefore is, or will be, a "UCITS" that must comply with all UCITS requirements, subject to any relief therefrom.

12. The following affiliates of the Filer are currently involved in the management of the Dublin iShares Funds:

    (a) BlackRock Ireland, which is regulated by the Central Bank of Ireland, is the manager and has responsibility for the management and administration of the Dublin iShares Funds, as well as the oversight of all service providers or other delegates; and

    (b) BlackRock Advisors (UK) Limited (**BlackRock UK**), which is regulated by the Financial Conduct Authority of the United Kingdom (the **FCA**), is the investment manager and has responsibility for the investment and re-investment of the assets.

13. The following third parties are currently involved in the administration of the Dublin iShares Funds:

    (a) State Street Fund Services (Ireland) Limited is the administrator, registrar and transfer agent; and

    (b) State Street Custodial Services (Ireland) Limited is the depositary.

14. Affiliates of BlackRock UK may be retained by BlackRock UK to act as sub-advisors or to perform other services in respect of certain Dublin iShares Funds. BlackRock UK's affiliates remain subject to the oversight of BlackRock UK.

15. BlackRock Ireland is subject to substantially equivalent regulatory oversight as the Filer, which is primarily regulated by the OSC, as well as BlackRock Fund Advisors, the manager of ETFs managed by an affiliate of the Filer that are listed and traded on a recognized U.S. stock exchange (the **U.S. iShares Funds**), which is regulated by the U.S. Securities and Exchange Commission.

16. Securities of each Dublin iShares Fund are, or will be, offered in their primary market in a manner similar to the Funds and U.S. iShares Funds pursuant to a prospectus for each investment company filed with the Central Bank of Ireland.

17. In addition to being listed on the LSE, the securities of a Dublin iShares Fund may also be listed on one or more additional stock exchanges.

18. The LSE is subject to regulatory oversight by the FCA. The LSE is subject to substantially equivalent regulatory oversight to securities exchanges in Canada and the United States, and the listing requirements to be complied with by the Dublin iShares Funds are consistent with the listing requirements of the TSX and NEO Exchange.

19. The fundamental investment objective of each of the Dublin iShares Funds, is or will be, to seek to track the performance of an index, net of expenses, and to provide investors with a total return, or net total return, taking into account both capital and income returns.

20. Each Dublin iShares Fund achieves, or will achieve, its investment objective by holding the component securities of the applicable index or otherwise investing in securities in a manner that will enable the Dublin iShares Fund to track the performance of the applicable index in accordance with the rules on eligible assets prescribed by the UCITS Regulations.

21. The index tracked by each Dublin iShares Fund is, or will be, transparent, in that the methodology for the selection and weighting of index components is, or will be, publicly available. Details of the components of the index tracked by each Dublin iShares Fund, such as issuer name, ISIN and weighting within the index, are, or will be, publicly available by the applicable index provider and updated from time to time or when requested of the applicable index provider.

22. Each Dublin iShares Fund makes, or will make, the NAV of its holdings available to the public through at least one price information system associated with the stock exchange on which it is listed.

23. No Dublin iShares Fund is a "synthetic ETF", meaning that no Dublin iShares Fund will principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index.

24. Each Dublin iShares Fund is, or will be, an "investment fund" and a "mutual fund" within the meaning of applicable Canadian securities legislation.

25. The Dublin iShares Funds are, or will be, subject to the following regulatory requirements:

    (a) each Dublin iShares Fund is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets;

(b) each Dublin iShares Fund is restricted to investments permitted by the UCITS Regulations and/or authorized by the Central Bank of Ireland (including any exemptive relief obtained by the Dublin iShares Funds therefrom);

(c) each Dublin iShares Fund is subject to investment restrictions limiting its holdings of illiquid securities which are not listed on a stock exchange or regulated market to no more than 10% of the Dublin iShares Fund's NAV;

(d) each Dublin iShares Fund is subject to investment restrictions limiting its holdings of other collective investment undertakings to no more than 10% of the Dublin iShares Fund's NAV;

(e) each Dublin iShares Fund is subject to restrictions regarding the use of derivatives, including the types of derivatives in which it may transact, limits on counterparty risk, and limits on increases to overall market risk resulting from the use of derivatives, which are similar to those contained in NI 81-102;

(f) each Dublin iShares Fund is required to prepare a prospectus which discloses material facts, similar to the disclosure requirements under Form 41-101F2 and Form 81-101F1;

(g) each Dublin iShares Fund is required to prepare key investor information documents which provide disclosure that is substantially similar to the disclosure required to be included in the ETF facts document required by Form 41-101F4 *Information Required in an ETF Facts Document*;

(h) each Dublin iShares Fund is subject to continuous disclosure obligations which are substantially similar to the disclosure obligations under National Instrument 81-106 – *Investment Fund Continuous Disclosure*;

(i) each Dublin iShares Fund is required to update information of material significance in the prospectus, to prepare management reports and an unaudited set of financial statements at least semi-annually, and to prepare management reports and an audited set of financial statements annually; and

(j) each Dublin iShares Fund has a board of directors and a manager that are subject to a governance framework which sets out the duty of care and standard of care, which require the board of directors of both the manager and the Dublin iShares Fund to act in the best interest of securityholders of the Dublin iShares Fund.

The Two Tier Relief

26. Each Fund may, from time to time, wish to invest up to 100% of its NAV in securities of one or more Dublin iShares Funds. Specifically, each Fund may wish to invest up to 100% of its NAV in securities of a single Dublin iShares Fund, or, up to 50% of its NAV in securities of multiple Dublin iShares Funds.

27. The Filer considers that an investment in a Dublin iShares Fund by a Fund is an efficient and cost-effective alternative to administering one or more investment strategies similar to that of the applicable Dublin iShares Fund. The Filer also considers that an investment in Dublin iShares Funds would enable a Fund to obtain exposure to the markets and asset classes in which the applicable Dublin iShares Fund invests and in which the investment objectives and strategies of the Fund may contemplate.

28. The Filer believes that investments in securities of Dublin iShares Funds may enable the Funds to obtain tax-efficient exposure to international investments by avoiding a layer of withholding tax. In general, a Fund that is exposed to non-North American income-generating investments via holdings in securities of U.S. iShares Funds could be subject to an extra layer of withholding tax which could be avoided if a Fund was able to invest directly in securities of one or more Dublin iShares Funds. The first layer of withholding tax could be applied by the country of origin and the second by the Internal Revenue Service when the U.S. iShares Fund pays a distribution to its unitholders, including the Fund. The second layer of withholding tax could be avoided if a Fund were able to invest directly in the securities of Dublin iShares Funds.

29. In the absence of the Two Tier Relief, the Funds would not be permitted to:

(a) purchase a security of a Dublin iShares Fund:

(i) if, immediately after the transaction, more than 10% of the Fund's NAV would be invested in securities of the Dublin iShares Fund, as prohibited by subsection 2.1(1) of NI 81-102; or

(ii) if, immediately after the purchase, the Fund would hold securities representing more than 10% of (A) the votes attaching to the outstanding voting securities of the Dublin iShares Fund, or (B) the

outstanding equity securities of the Dublin iShares Fund, as prohibited by paragraph 2.2(1)(a) of NI 81-102; or

(b) purchase or hold securities of a Dublin iShares Fund:

(i) since the Dublin iShares Fund is not subject to NI 81-102 as prohibited by paragraph 2.5(2)(a) of NI 81-102; and

(ii) since the Dublin iShares Fund is not a reporting issuer in a Canadian Jurisdiction, as prohibited by paragraph 2.5(2)(c) of NI 81-102.

30. But for the fact that the securities of the Dublin iShares Funds are traded on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, such securities would otherwise qualify as "index participation units" (**IPUs**) within the meaning of NI 81-102.

31. If the securities of a Dublin iShares Fund were IPUs within the meaning of NI 81-102, a Fund would be permitted to purchase and/or hold securities of one or more Dublin iShares Funds up to 100% of its NAV, since the Funds would be able to rely on the exceptions to the prohibitions in subsection 2.1(1), 2.2(1) and 2.5(2) of NI 81-102 for investments in IPUs.

32. The investment structure of the Dublin iShares Funds, which consists of investments in underlying securities and the ability to invest in derivative instruments as an ancillary investment strategy and not as the primary means to track the performance of the applicable index, is similar to the investment structure of the Funds and U.S. iShares Funds, whose securities qualify as IPUs in NI 81-102.

33. The Filer wishes to invest assets of the Funds in securities of Dublin iShares Funds on the same basis as would be permitted under NI 81-102 if the securities of the Dublin iShares Funds were traded on a stock exchange in Canada or the United States and were therefore IPUs.

34. Each Fund that is relying on the Two Tier Relief will provide the disclosure required by the securities legislation of the Canadian Jurisdictions for investment funds investing in other investment funds.

35. The prospectus of each Fund that is relying on the Two Tier Relief will, no later than the next time that the prospectus of the Fund is renewed after the date of this decision, disclose the fact that the Fund has obtained the Two Tier Relief to permit investments in one or more Dublin iShares Funds on the terms described in this decision.

36. There will be no duplication of management fees or incentive fees for the same service as a result of an investment by a Fund in a Dublin iShares Fund.

37. The amount of loss that could result from an investment by a Fund in a Dublin iShares Fund will be limited to the amount invested by the Fund in the Dublin iShares Fund.

38. An investment by a Fund in one or more Dublin iShares Funds will be made in accordance with the fundamental investment objectives of the Fund.

39. An investment by a Fund in a Dublin iShares Fund represents, or will represent, the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

The Three Tier Relief

40. Each Fund may, from time to time, wish to invest up to 100% of its NAV in securities of one or more Middle Funds.

41. The Filer submits that employing a three-tier fund-of-fund structure in this way achieves efficiencies from both an investment diversification and operational perspective. Such a structure will allow a Fund to obtain exposure to one or more Dublin iShares Funds on a cost-effective basis, including by allowing a Fund to purchase a currency-hedged Fund that employs a fund-of-fund structure.

42. In the absence of the Three Tier Relief, the Funds would not be permitted to purchase or hold a security of a Middle Fund since the Middle Fund holds more than 10% of its NAV in securities of Dublin iShares Funds, as prohibited by paragraph 2.5(2)(b) of NI 81-102.

43. But for the fact that the securities of the Dublin iShares Funds are traded on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, such securities would otherwise qualify as IPUs within the meaning of NI 81-102.

44. If the securities of a Dublin iShares Fund were IPUs within the meaning of NI 81-102, a Fund would be permitted to purchase and/or hold securities of one or more Middle Funds up to 100% of its NAV, since the Funds would be able to rely on the exception to the prohibition in subsection 2.5(2)(b) of NI 81-102 for investments in funds that hold IPUs.

45. The Filer wishes to invest assets of the Funds in securities of Middle Funds on the same basis as would be permitted under NI 81-102 if the securities of the Dublin iShares Funds were traded on a stock exchange in Canada or the United States and were therefore IPUs.

46. Each Fund that is relying on the Three Tier Relief will provide the disclosure required by the securities legislation of the Canadian Jurisdictions, if any, for investment funds investing in other investment funds that themselves invest in other investment funds.

47. The prospectus of each Fund that is relying on the Three Tier Relief will, no later than the next time that the prospectus of the Fund is renewed after the date of this decision, disclose the fact that the Fund has obtained the Three Tier Relief to permit investments in one or more Middle Funds on the terms described in this decision.

48. There will be no duplication of management fees or incentive fees for the same service as a result of an investment by a Fund in a Middle Fund.

49. The amount of loss that could result from an investment by a Fund in a Middle Fund will be limited to the amount invested by the Fund in the Middle Fund.

50. An investment by a Fund in one or more Middle Funds will be made in accordance with the fundamental investment objectives of the Fund.

51. An investment by a Fund in a Middle Fund represents, or will represent, the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

The Exemption Sought

52. The ETF market continues to develop and evolve in the United Kingdom and Europe, and new Dublin iShares Funds continue to be launched that provide exposure to different and unique asset classes and markets. The Exemption Sought will enable the Funds to invest directly or indirectly in the expanding suite of Dublin iShares Funds on a more flexible basis than the exemption granted in the Prior Decision.

53. In the absence of the Exemption Sought, the Funds would not be permitted to:

    (a) purchase and/or hold securities of one or more Dublin iShares Funds; or

    (b) purchase and/or hold securities of one or more Middle Funds.

Decision

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

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

(a) the investment by a Fund in securities of the Dublin iShares Funds is made in accordance with the fundamental investment objectives of the Fund;

(b) securities of the Dublin iShares Funds qualify as IPUs within the meaning of NI 81-102 but for the fact that they are traded on a stock exchange in the United Kingdom and not a stock exchange in Canada or the United States;

(c) none of the Dublin iShares Funds are synthetic ETFs, meaning that they will not principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index;

(d) investments by a Fund, directly or indirectly, in securities of one or more Dublin iShares Funds comply with NI 81-102 as if securities of the Dublin iShares Funds were IPUs within the meaning of NI 81-102; and

(e) in the event there is a significant change to the regulatory regime applicable to the Dublin iShares Funds that results in a less restrictive regulatory regime compared to the current regime and that has a material impact on the management or operation of the Dublin iShares Funds in which the Funds are invested, the Funds do not

acquire any additional securities of such Dublin iShares Funds, and dispose of any securities of such Dublin iShares Funds in an orderly and prudent manner.

The Exemption Sought will terminate six months after the coming into force of any amendments to NI 81-102 that restrict or regulate a Fund's ability to invest in Dublin iShares Funds or Middle Funds.

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

2.2 Orders

2.2.1 Cautivo Mining Inc.

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

February 3, 2020

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
CAUTIVO MINING 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, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, North West Territories, Yukon, and Nunavut.

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.

"Marie-France Bourret"
Manager
Corporate Finance

2.2.2 Solar Income Fund Inc.

IN THE MATTER OF
SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, and
KENNETH KADONOFF

File No. 2019-35

Timothy Moseley, Vice-Chair and Chair of the Panel

February 7, 2020

ORDER

WHEREAS on February 7, 2020, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and for Solar Income Fund Inc., Allan Grossman, Charles Mazzacato and Kenneth Kadonoff;

IT IS ORDERED THAT:

1. Each respondent shall file and serve a witness list, and serve a summary of each witness's anticipated evidence on Staff, and indicate any intention to call an expert witness, by no later than May 8, 2020; and

2. an Attendance in this matter is scheduled for June 8, 2020 at 9:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"Timothy Moseley"

2.2.3 First Global Data Ltd. et al.

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

Timothy Moseley, Vice-Chair and Chair of the Panel

February 7, 2020

ORDER

WHEREAS on February 7, 2020, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario for the third attendance in this proceeding;

ON HEARING the oral submissions of the representatives for Staff of the Commission and for each of the Respondents;

IT IS ORDERED THAT:

1. By March 6, 2020:

   a. Nayeem Alli shall serve a summary of each of his witness's anticipated evidence on all parties; and

   b. all Respondents shall serve summaries of their witnesses' anticipated evidence on each of the other Respondents;

2. The motion to be filed by Staff regarding the sufficiency of the witness summaries delivered by Andre Itwaru shall be heard on April 7, 2020, at 10:00 a.m., or on such other date or time as may be agreed to by the parties and set by the Office of the Secretary;

3. By April 30, 2020, Staff shall serve every party with the report of its expert witness;

4. By August 19, 2020, each party shall serve every other party with a hearing brief containing copies of the documents and identifying the other things that the party intends to produce or enter as evidence at the merits hearing;

5. By August 26, 2020, each party shall file a completed copy of the *E-hearing Checklist for the Hearing on the Merits*;

6. The final interlocutory attendance in this matter is scheduled for September 2, 2020, at 10:00 a.m., or on such other date or time as may be agreed to by the parties and set by the Office of the Secretary;

7. By September 28, 2020, each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an Index File, in accordance with the *Protocol for E-Hearings*; and

8. The merits hearing shall commence on October 5, 2020 and continue on October 7, 8, 9, 13-16, 19, 21, 22, 23, 26, 27, November 20, 23, 25, 26, 27, 30, December 1-4, 7, 9-11, 14-18, 2020, and January 7, 8, and 11-15, 2021, at 10:00 a.m. on each day, or such other dates and times as may be agreed to by the parties and set by the Office of the Secretary.

"Timothy Moseley"

2.2.4 Joseph Debus

IN THE MATTER OF
JOSEPH DEBUS

File No. 2019-16

M. Cecilia Williams, Commissioner and Chair of the Panel

February 11, 2020

ORDER

WHEREAS on February 11, 2020, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, in relation to the Application by Joseph Debus (**Debus**) to review decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated March 18, 2019 and June 25, 2019;

ON HEARING the submissions of Staff of IIROC, Staff of the Commission, and the representative of Debus, all parties consenting;

IT IS ORDERED THAT:

1. the filing dates previously set out in the order dated January 28, 2020 in this proceeding are vacated;

2. by no later than February 18, 2020, Debus shall make a request to Richardson GMP for any and all email exchanges between the individuals specified in Debus's witness list dated December 10, 2019, from July 2006 to March 2013; and

3. a further attendance in this proceeding is scheduled for February 24, 2020 at 2:00 p.m. or on such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

"M. Cecilia Williams"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Issam El-Bouji

Citation: *El-Bouji (Re)*, 2020 ONSEC 5
Date: 2020-02-06
File No. 2018-28

IN THE MATTER OF
ISSAM EL-BOUJI

Hearing:	January 23, 2020	
Decision:	February 6, 2020	
Panel:	D. Grant Vingoe Lawrence P. Haber Raymond Kindiak	Vice-Chair and Chair of the Panel Commissioner Commissioner
Appearances:	Joseph Groia Bethanie Pascutto	For Issam El-Bouji
	Derek Ferris Ryan Lapensee	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

I. OVERVIEW

[1] On January 21, 2020, the Ontario Securities Commission (the **Commission**) and the Ontario Ministry of Finance announced that Vice-Chair Vingoe, the Chair of the Panel in this proceeding, would commence serving as Acting Chair and Chief Executive Officer (CEO) of the Commission on April 15, 2020, following the effective time of the resignation of Maureen Jensen, current Chair of the Commission.

[2] Vice-Chair Vingoe determined that these circumstances may give rise to the apprehension of bias in the current proceeding. Since the merits hearing dates in this proceeding are scheduled to continue beyond the date of the change in Vice-Chair Vingoe's role, the Panel requested submissions from the parties concerning Vice-Chair Vingoe's continued participation as a member of the Panel for the remainder of the merits hearing.

[3] On January 23, 2020, after receiving submissions, the Panel advised the parties of its decision that Vice Chair Vingoe would cease participating as a Panel member in this proceeding, with reasons to follow. These are the reasons for that decision.

II. Procedural History

[4] A brief procedural history is provided for context. Staff of the Commission (**Staff**) filed a Statement of Allegations against the Respondent on May 24, 2018 and this proceeding was commenced by the issuance of a Notice of Hearing on the following day. Several attendances and motions followed. In 2019, the Respondent brought a motion seeking to halt the proceedings against him on the basis that the Commission lacked jurisdiction to hear some or all of the allegations. Among other things, he asserted institutional bias as a basis for the Commission's lack of jurisdiction. That motion was determined in Reasons and Decision issued on October 7, 2019.[1] The issues considered in that motion are separate and distinct from the issue currently before this Panel.

[5] The schedule for the merits hearing was set by Order of the Commission issued on October 15, 2019.[2] The merits hearing in this proceeding ultimately commenced on January 14, 2020 before the current three-member Panel, which was assigned by the Office of the Secretary of the Commission. Over the course of three days in January 2020, this Panel heard opening submissions from both parties and the examinations of five of Staff's witnesses, one of which is

[1] *El-Bouji (Re)*, 2019 ONSEC 33, (2019) 42 OSCB 8094.
[2] *El-Bouji (Re)*, (2019) 42 OSCB 8420.

not yet complete. Staff's final witnesses, the Respondent's evidence, if any, and closing submissions are currently anticipated to require several more hearing days, some of which are scheduled for late April 2020.

[6] At the end of the last merits hearing date, January 17, 2020, the Respondent's counsel indicated he would be bringing a motion seeking an Order for Staff to disclose certain additional documents. The Panel directed that the motion would be heard in writing and indicated that a decision would be made at the next scheduled merits hearing date, January 23, 2020.

III. Adjudication guideline

[7] The prevailing practice at the Commission has been for the Chair of the Commission not to adjudicate due to the Chair's scope of responsibilities, which includes management of Staff. Subsection 3(1) of the Commission's *Adjudication Guideline* states: "The Secretary will not assign the Chair of the Commission to any Panel."

[8] In addition, pursuant to s. 2(1) of the *Adjudication Guideline*, Members of the Commission shall not participate in a hearing where to do so would give rise to bias. Subsection 2(2) provides the following test to determine whether a reasonable apprehension of bias exists:

> …would a reasonable and informed person, viewing the matter realistically and practically — and having thought the matter through — conclude that there is bias on the part of the Panel or individual Panel Members impairing their duty to fairly and impartially adjudicate the matter?

[9] Due to his anticipated assumption of the Acting Chair's duties, Vice-Chair Vingoe determined that he would follow the procedure set out in s. 2(4)(b) of the *Adjudication Guideline*:

> A Panel Member who becomes aware of circumstances at any time during a hearing that may give rise to bias shall:
>
> […]
>
> (b) Request the other Panel Members' advice as to whether the circumstances might give rise to bias.
>
> If the other Panel Members determine that the circumstances might give rise to bias, the Panel Member should consider removing himself or herself immediately. In the alternative, the Panel may decide to inform the parties of the circumstances and invite them to make submissions on the Panel Member's continued participation in the hearing. The Panel should provide the parties with reasons for its decision.

IV. Communications to and Submissions by the Parties

[10] Accordingly, the parties were informed of the circumstances and were invited to make submissions on Vice-Chair Vingoe's continued participation as a Panel member for:

a. the outstanding written motion by the Respondent requesting Staff's disclosure of documents, and

b. the remainder of the proceeding, subject to an ethical wall being established such that Vice-Chair Vingoe would not interact with Staff with regard to this proceeding other than in a hearing or through written communications made through the Registrar, with a copy to all parties.

[11] The communication to the parties also asked for the parties' positions with regard to the possibility of accelerating the entire merits hearing so that it could be concluded by April 15, 2020, when Vice-Chair Vingoe's new role would become effective.

[12] At a hearing on January 23, 2020, the Panel, including all three members and chaired by Vice-Chair Vingoe, heard submissions from the parties concerning the effect of these circumstances on Vice-Chair Vingoe's continued participation on the Panel. Staff was prepared to accelerate the hearing dates to complete the merits hearing before April 15 or to utilize an ethical wall after that date to address any apprehension of bias.

[13] The Respondent argued that, upon the announcement that Vice-Chair Vingoe would commence acting in the role of Chair and CEO of the Commission, the Vice-Chair should cease participating in hearings for this proceeding. The Respondent objected to Vice-Chair Vingoe's continued participation either by accelerating the hearing dates or establishing an ethical wall. The Respondent did not object to Vice-Chair Vingoe's participation in the decision of the Panel on the Respondent's pending written motion and stated that he would consent to this limited participation, as did Staff.

V. Conclusion

[14] The Panel concluded that Vice-Chair Vingoe should not continue to participate in the merits hearing. There is a short transition period before Vice-Chair Vingoe will be assuming his new responsibilities as Acting Chair of the Commission and there is the expectation that, in the meantime, he will be participating in meetings related to management functions as a transitional matter and to ensure continuity. In these circumstances, absent consent of the parties, a reasonable and informed person may perceive that Vice-Chair Vingoe has a bias in favour of Staff, with whom he will interact as Acting Chair and CEO in the near future.

[15] As such, it is necessary for Vice-Chair Vingoe to cease participating as a Panel member in this proceeding, except for the purpose of deliberating upon and participating in the preparation of these Reasons.

[16] The Panel also determined that these considerations were equally applicable to the Respondent's written motion for disclosures, since its outcome may affect the evidence given on future dates in the merits hearing in which Vice-Chair Vingoe will not participate.

[17] For these reasons, Vice-Chair Vingoe shall not continue as a member of the Panel and the merits hearing in this proceeding will proceed as a two-person Panel with the continuing members.

Dated at Toronto this 6th day of February, 2020.

"D. Grant Vingoe"
"Lawrence P. Haber"
"Raymond Kindiak"

3.2 Director's Decisions

3.2.1 Jonathan Covello

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

AND

IN THE MATTER OF
THE REGISTRATION OF
JONATHAN COVELLO

1. Jonathan Covello ("Covello") has been registered under the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act") as a mutual fund dealing representative with Quadrus Investment Services Ltd. ("Quadrus") since September 21, 2012.

2. In February 2019, staff of the Ontario Securities Commission ("Staff") received information suggesting that Covello may have significant outstanding financial obligations, which could impugn his suitability for registration. As a result, Staff undertook an investigation into the matter.

3. In August 2019, while Staff's investigation was ongoing, Quadrus disclosed to Staff that Covello was the subject of a Requirement to Pay in an amount exceeding $10,000 that had been issued by the Canada Revenue Agency to London Life, a Quadrus affiliate.

4. As a result of the Requirement to Pay, and consistent with Staff's usual practice upon being notified of a Requirement to Pay, on August 21, 2019, the Director imposed terms and conditions on Covello's registration pursuant to s. 28 of the Act, which required Quadrus to closely supervise his trading activities.

5. After completing its investigation, Staff confirmed that Covello did in fact have a number of significant outstanding financial obligations, not all of which he had disclosed in accordance with Ontario securities law. Staff also developed concerns about the manner in which Covello had dealt with these obligations.

6. On January 15, 2020, Staff sent a letter to Covello informing him that Staff had concerns about his integrity, proficiency, and solvency, and that as a result, Staff had recommended to the Director that new terms and conditions be imposed on Covello's registration (the "New Terms and Conditions").

7. The New Terms and Conditions, which are set out in Schedule A, required Quadrus to strictly supervise Covello's trading activities (replacing the previously imposed close supervision requirement), and required Covello to successfully complete a professional education course. Staff's January 15, 2020 letter alleged the following facts in support of the recommended New Terms and Conditions:

   (a) Covello and his wife were the subject of two successful applications by a former landlord to the Landlord and Tenant Board (the "Board") for unpaid rent. In 2014, the Board issued an Order against Covello and his wife requiring them to pay an amount exceeding $10,000. In 2015, the Board issued a second Order against Covello and his wife, requiring them to pay an additional $10,000.

   (b) Covello never paid either of the Board's Orders because he did not agree with them, although he did not appeal them either.

   (c) In 2017, Covello was sued in Small Claims Court by his former landlord who alleged that Covello had damaged the rental property. Covello was served with the claim, but never defended it, and default judgment was issued against him in 2018 in an amount exceeding $10,000, which Covello never paid.

   (d) In 2019, Covello was sued by a lender after Covello failed to repay a loan that had been used to finance a construction project. Covello did not have the funds necessary to repay the loan, and the lender obtained default judgment against him for an amount exceeding $10,000, which Covello satisfied.

   (e) Covello did not update his Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* to disclose his debts arising under the Board's Order, the 2018 default judgment, or the 2019 default judgment, as he was required to by National Instrument 33-109 *Registration Information*. Covello's non-disclosure was the result of his lack of appreciation for his regulatory disclosure obligations.

8. Staff's January 15, 2020 letter informed Covello of his right to an opportunity to be heard by the Director before a decision was made regarding Staff's recommendation, in accordance with s. 31 of the Act. Covello did not request an opportunity to be heard, and on January 20, 2020, accepted the New Terms and Conditions.

February 7, 2020

Schedule "A"

Terms and Conditions for Registration of Jonathan Covello

The registration of Jonathan Covello (the **Registrant**) as a dealing representative in the category of mutual fund dealer is subject to the terms and conditions set out below. These terms and conditions were imposed by the Director pursuant to subsection 28 of the *Securities Act* (Ontario) and replace the close supervision terms and conditions imposed on the Registrant's registration on August 21, 2019.

Continuing Education

1. The Registrant is required to successfully complete the the Ethics and Professional Conduct course (**EPC**) offered by the IFSE Institute within six months of these terms and conditions becoming effective.

2. If term and condition 1 above has been satisfied, the Registrant shall provide staff of the Ontario Securities Commission with evidence of his successful completion of the EPC.

Strict Supervision

3. The Registrant is subject to strict supervision.

Monthly Strict Supervision Reports (in the form specified in Schedule A to CSA Staff Notice 31-349 *Change to Standard Form Reports for Close Supervision and Strict Supervision Terms and Conditions*) are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be sent to Staff of the OSC on a monthly basis or as required by the Strict Supervision Report.

These terms and conditions of registration constitute Ontario securities law, and a failure by the Registrant to comply with these terms and conditions may result in further regulatory action against him, including a suspension of his registration.

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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
Auxico Resources Canada Inc.	05 February 2020	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
CannTrust Holdings Inc.	15 August 2019	
EEStor Corporation	29 January 2020	

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Chapter 5

Rules and Policies

5.1.1 National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions and Related Companion Policy

NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions and interpretation

1. (1) In this Instrument

"Canadian financial institution" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

"cleared derivative" means a derivative that is, directly or indirectly, submitted to and cleared by a clearing agency;

"clearing intermediary" means a direct intermediary or an indirect intermediary;

"customer" means a counterparty to a cleared derivative other than a clearing intermediary or a regulated clearing agency;

"customer collateral" means all cash, securities and other property if any of the following apply:

(a) the cash, securities or other property is received or held by a clearing intermediary or regulated clearing agency from, for or on behalf of a customer, and is intended to or does margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) the cash, securities or other property is posted on behalf of a customer by a clearing intermediary to satisfy the margin requirements arising from the customer's cleared derivatives;

"direct intermediary" means a person or company that

(a) with respect to a cleared derivative, is a participant of the regulated clearing agency at which the cleared derivative is cleared,

(b) directly provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(c) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"excess margin" means customer collateral in respect of a customer's cleared derivatives that

(a) is delivered to a regulated clearing agency or clearing intermediary from, for or on behalf of the customer, and

(b) has a value in excess of the amount required by the regulated clearing agency to clear and settle the cleared derivatives of the customer;

"indirect intermediary" means a person or company that

(a) indirectly provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(b) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"initial margin" means, in relation to a regulated clearing agency's margin system that manages credit exposures to its participants, collateral that is required by the regulated clearing agency to cover potential changes in the value of a customer's cleared derivatives over an appropriate close-out period in the event of a default;

"local customer" means a customer that, in respect of a local jurisdiction, is any of the following:

(a) an individual who is resident in the local jurisdiction;

(b) a person or company, other than an individual, to which any of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"permitted depository" means a person or company that is any of the following:

(a) a Canadian financial institution or Schedule III bank;

(b) a regulated clearing agency;

(c) the central bank of Canada or of a permitted jurisdiction;

(d) in Québec, a person recognized or exempt from recognition as a central securities depository under the *Securities Act* (Québec);

(e) a person or company

(i) whose head office or principal place of business is in a permitted jurisdiction,

(ii) that is a banking institution or trust company of a permitted jurisdiction, and

(iii) that has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100 000 000;

(f) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a registered investment dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(g) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a prudentially regulated entity

(i) whose head office or principal place of business is located outside of Canada, and

(ii) that is subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral;

"permitted investment" means cash or a security or other financial instrument with minimal market and credit risk that is capable of being liquidated rapidly with minimal adverse price effect;

"permitted jurisdiction" means a foreign jurisdiction that is any of the following:

(a) a country where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;

(b) if a customer has provided express written consent to the clearing intermediary or the regulated clearing agency clearing a cleared derivative in a foreign currency, the country of origin of the foreign currency used to

denominate the rights and obligations under the cleared derivative entered into by, for or on behalf of the customer, and a political subdivision of that country;

"position" means the economic interest of a counterparty in an outstanding cleared derivative at a point in time;

"prudentially regulated entity" means a person or company that is subject to and in compliance with the laws of a foreign jurisdiction that is a permitted jurisdiction under paragraph (a) of the definition of "permitted jurisdiction", relating to minimum capital requirements, financial soundness and risk management;

"qualifying central counterparty" means a person or company to which all of the following apply:

(a) it is recognized, exempt from recognition or otherwise registered or authorized to operate as a central counterparty in a jurisdiction of Canada or a foreign jurisdiction by a government or regulatory authority;

(b) it is subject to regulation that is consistent with the *Principles for market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

"regulated clearing agency" means

(a) in British Columbia, Manitoba and Ontario, a person or company recognized or exempt from recognition as a clearing agency in the local jurisdiction, and

(b) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon, a person or company recognized or exempt from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"segregate" means to separately hold or separately account for a customer's positions or customer collateral.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party, unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and the trustee of the trust is the first party.

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. (1) This Instrument does not apply to any of the following:

(a) a regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction except with respect to a cleared derivative entered into by, for or on behalf of a local customer;

(b) a clearing intermediary that provides clearing services except with respect to a cleared derivative entered into by, for or on behalf of a local customer.

(2) This Instrument applies to

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of *Regulation 91-506 respecting derivatives determination*, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

(3) Despite subsection (2), this Instrument does not apply to an option on a security.

(4) In British Columbia, Newfoundland and Labrador, the Northwest Territories, Nunavut, Prince Edward Island and Yukon, subsection (3) does not apply to a security that is a derivative as defined in subsection 1(4).

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Segregation of customer collateral – clearing intermediary

3. (1) A clearing intermediary must segregate a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the clearing intermediary.

(2) A clearing intermediary must segregate the positions and customer collateral of a customer of an indirect intermediary from the positions and property of the indirect intermediary.

Holding of customer collateral – clearing intermediary

4. A clearing intermediary must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from the property of all persons who are not customers.

Excess margin – clearing intermediary

5. A clearing intermediary must at least once each business day identify and record the value of excess margin it holds that is attributable to each customer for which the clearing intermediary provides clearing services.

Use of customer collateral – clearing intermediary

6. (1) A clearing intermediary must not use or permit the use of customer collateral except in accordance with this section and sections 7 and 8.

(2) A clearing intermediary must not use or permit the use of customer collateral of a customer except to do any of the following:

(a) margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) with respect to excess margin, guarantee, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a clearing intermediary must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or clearing intermediary responsible for clearing the cleared derivative.

Investment of customer collateral – clearing intermediary

7. (1) A clearing intermediary must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

(2) A clearing intermediary may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for the resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the clearing intermediary immediately on entering into the agreement;

(v) the agreement is not entered into with an affiliated entity of the clearing intermediary.

(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) by the clearing intermediary must be borne by the clearing intermediary making the investment and not by the customer.

Use of customer collateral – indirect intermediary default

8. (1) A clearing intermediary must not use customer collateral of a customer of an indirect intermediary for which the clearing intermediary provides clearing services to satisfy an obligation of the indirect intermediary.

(2) Despite subsection (1), a clearing intermediary may use the customer collateral of a customer to fully or partially satisfy an obligation of an indirect intermediary that arises or is accelerated as a consequence of the indirect intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Acting as a clearing intermediary

9. (1) A person or company must not act as a clearing intermediary for a customer unless the person or company is any of the following:

(a) a person or company that is subject to and is in compliance with the laws of a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

(b) a person or company that is registered as a dealer under securities legislation in a local jurisdiction;

(c) a person or company that is

(i) a prudentially regulated entity, and

(ii) subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(2) A clearing intermediary must not provide clearing services for a customer unless the clearing services are provided in respect of derivatives that are cleared by a regulated clearing agency.

Risk management – clearing intermediary

10. A clearing intermediary that provides or proposes to provide clearing services for an indirect intermediary must adopt and implement rules, policies or procedures reasonably designed to

(a) identify, monitor and reasonably mitigate material risks arising from the provision of clearing services, and

(b) manage a default of the indirect intermediary.

Risk management – indirect intermediary

11. (1) An indirect intermediary must establish and implement rules, policies or procedures reasonably designed to identify, monitor and reasonably mitigate the material risks to the clearing intermediary or its customers arising from the provision of indirect clearing services for a customer.

(2) An indirect intermediary that receives clearing services from a clearing intermediary must provide the clearing intermediary with all information reasonably required to identify, monitor and reasonably mitigate any material risks arising from the provision of indirect clearing services for customers.

PART 3
RECORDKEEPING BY A CLEARING INTERMEDIARY

Retention of records – clearing intermediary

12. (1) A clearing intermediary must keep a record required under this Part and Part 4, and all supporting documentation,

(a) in a readily accessible and safe location and in a durable form,

(b) in the case of a record or supporting documentation that relates to a cleared derivative, for a period of 7 years following the date on which the cleared derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which a customer's last cleared derivative that is cleared for or on behalf of the customer through the clearing intermediary expires or is terminated.

(2) Despite subsection (1), in Manitoba, with respect to a customer or clearing intermediary located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

Daily records – clearing intermediary

13. (1) A clearing intermediary that receives customer collateral must calculate and record all of the following at least once each business day in its records:

(a) for each customer, the amount of customer collateral it requires from, for or on behalf of the customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) For each indirect intermediary that a clearing intermediary provides clearing services for, the clearing intermediary must calculate and record all of the following at least once each business day in its records:

(a) the amount of customer collateral it requires from, for or on behalf of each customer of each indirect intermediary;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers of each indirect intermediary.

(3) For each customer, a clearing intermediary must record all of the following in its records:

(a) each permitted depository at which it holds customer collateral of the customer;

(b) calculated at least once each business day, the current value of any customer collateral received from, for or on behalf of the customer, including all of the following:

(i) any accruals on the customer collateral creditable to the customer;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges accruing to the customer;

(iv) any distributions or transfers of the customer collateral.

Daily records – direct intermediary

14. For each customer, a direct intermediary must record all of the following at least once each business day in its records:

(a) the total amount of customer collateral required for the cleared derivatives of the customer by each regulated clearing agency;

(b) the total amount of the customer's excess margin held by the direct intermediary.

Daily records – indirect intermediary

15. For each customer, an indirect intermediary must record all of the following at least once each business day in its records:

(a) the total amount of collateral required for the cleared derivatives of the customer by each clearing intermediary through which the indirect intermediary clears;

(b) the sum of the amounts for the customer referred to in paragraph (a);

(c) the total amount of the customer's excess margin held by the indirect intermediary.

Identifying records – direct intermediary

16. A direct intermediary must keep records that, at any time, enable it to identify all of the following in its own accounts and in the accounts held with each regulated clearing agency through which it provides clearing services:

(a) the positions and property of the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the direct intermediary's customers.

Identifying records – indirect intermediary

17. An indirect intermediary must keep records that, at any time, enable it to identify all of the following in its own accounts and in the accounts held with each clearing intermediary through which it provides clearing services:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the indirect intermediary's customers.

Identifying records – multiple clearing intermediaries

18. A clearing intermediary that provides clearing services in respect of a cleared derivative for an indirect intermediary must keep records that, at any time, enable it and each of its indirect intermediaries to identify all of the following in the accounts held with the clearing intermediary:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for or on behalf of the indirect intermediary's customers.

Records of investment of customer collateral – clearing intermediary

19. A clearing intermediary that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, including any unrealized gain or loss on the investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset or instrument in which the investment was made is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – clearing intermediary

20. A clearing intermediary must keep a record of each conversion of customer collateral from one currency to another.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Clearing intermediary delivery of disclosure by regulated clearing agency

21. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide the customer, or an indirect intermediary for which it provides clearing services, with all of the following:

(a) the written disclosure provided under subsection 41(1) by each regulated clearing agency the direct intermediary uses to clear a cleared derivative for the customer or indirect intermediary;

(b) the investment guidelines and policy provided under subsection 45(1) by each regulated clearing agency that invests customer collateral attributable to the customer.

(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time that the clearing intermediary receives written disclosure in accordance with subsection 41(2) or subsection 45(2) from a regulated clearing agency that invests customer collateral attributable to the customer, the clearing intermediary must provide the written disclosure to the customer, or indirect clearing intermediary for which it provides clearing services, within a reasonable period of time.

Disclosure to customer by clearing intermediary

22. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide written disclosure to the customer describing the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws, in the event of a default by the clearing intermediary.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the written disclosure referred to in subsection (1), the clearing intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Disclosure to customer by indirect intermediary

23. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, an indirect intermediary must provide written disclosure to the customer including a description of all of the following:

(a) the material risks associated with receiving clearing services through an indirect intermediary;

(b) the rules, policies or procedures for transferring positions and customer collateral to another clearing intermediary or liquidating positions and customer collateral, in the event of the indirect intermediary's default.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(b), the indirect intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Customer information – clearing intermediary

24. (1) A direct intermediary must provide all of the following to a regulated clearing agency:

(a) before submitting to the regulated clearing agency the first cleared derivative for or on behalf of a customer of the direct intermediary, or of an indirect intermediary for which the direct intermediary provides clearing services, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and the current value of the customer's customer collateral.

(2) An indirect intermediary must provide all of the following to a clearing intermediary through which it provides clearing services:

(a) before submitting to the clearing intermediary the first cleared derivative for or on behalf of a customer, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and the current value of the customer's customer collateral.

Customer collateral report – regulatory

25. (1) A direct intermediary that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F1 *Customer Collateral Report: Direct Intermediary*.

(2) An indirect intermediary that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*.

Customer collateral report – customer

26. (1) A clearing intermediary must make available to each customer from, for or on behalf of whom it receives customer collateral, a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of the customer;

(b) the current value of customer collateral received from, for or on behalf of the customer that is held by the clearing intermediary or at a permitted depository;

(c) the current value of the customer collateral received from, for or on behalf of the customer that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

(2) A clearing intermediary must make available to each indirect intermediary from which it receives customer collateral a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of each customer of the indirect intermediary;

(b) the current value of customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary that is held by the clearing intermediary or at a permitted depository;

(c) the current value of the customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

Disclosure of investment of customer collateral

27. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary that invests customer collateral must disclose in writing its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

(2) A clearing intermediary that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) directly to the customer or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

PART 5
TREATMENT OF CUSTOMER COLLATERAL BY A REGULATED CLEARING AGENCY

Collection of initial margin

28. A regulated clearing agency must collect initial margin for each customer on a gross basis.

Segregation of customer collateral – regulated clearing agency

29. A regulated clearing agency must segregate a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the regulated clearing agency.

Holding of customer collateral – regulated clearing agency

30. A regulated clearing agency must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from all other property that is not customer collateral.

Excess margin – regulated clearing agency

31. A regulated clearing agency must at least once each business day identify and record the value of excess margin it holds for or on behalf of the customers of each clearing intermediary.

Use of customer collateral – regulated clearing agency

32. (1) A regulated clearing agency must not use or permit the use of customer collateral except in accordance with this section and sections 33 and 34.

(2) A regulated clearing agency must not use or permit the use of customer collateral of a customer except to do any of the following:

(a) margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) with respect to excess margin, guarantee, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a regulated clearing agency must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or a clearing intermediary responsible for clearing the cleared derivative.

Investment of customer collateral – regulated clearing agency

33. (1) A regulated clearing agency must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

(2) A regulated clearing agency may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the regulated clearing agency immediately on entering into the agreement;

(v) the agreement is not entered into with an affiliated entity of the regulated clearing agency.

(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) by the regulated clearing agency must be borne by the regulated clearing agency making the investment or by a clearing intermediary that is a participant of the regulated clearing agency and not by any customer.

Use of customer collateral – clearing intermediary default

34. (1) A regulated clearing agency must not use customer collateral to satisfy an obligation of a clearing intermediary to which the regulated clearing agency provides clearing services.

(2) Despite subsection (1), a regulated clearing agency may use the customer collateral of a customer to fully or partially satisfy an obligation of a clearing intermediary that arises or is accelerated as a consequence of the clearing intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Risk management – NI 24-102 applies

35. Part 3 of National Instrument 24-102 *Clearing Agency Requirements* applies to a regulated clearing agency and, for that purpose, a reference in that instrument to a "recognized clearing agency" is to be read as a reference to a "regulated clearing agency".

PART 6
RECORDKEEPING BY A REGULATED CLEARING AGENCY

Retention of records – regulated clearing agency

36. A regulated clearing agency must keep a record required under this Part and Part 7, and all supporting documentation, in a readily accessible and safe location and in a durable form, until the date on which the cleared derivative that the record or supporting documentation relates to expires or is terminated.

Daily records – regulated clearing agency

37. (1) A regulated clearing agency that receives customer collateral must calculate and record all of the following at **least** once each business day in its records:

(a) for each customer, the amount of customer collateral it requires from, for or on behalf of the customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) A regulated clearing agency must record all of the following in its records:

(a) each permitted depository at which it holds customer collateral;

(b) calculated at least once each business day, the current value of the customer collateral received from, for or on behalf of the customers of each direct intermediary including all of the following:

(i) any accruals on the customer collateral creditable to the direct intermediary's customers;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges accruing to the direct intermediary's customers;

(iv) any distributions or transfers of the customer collateral.

Identifying records – regulated clearing agency

38. A regulated clearing agency must keep records that, at any time, enable it and each of its direct intermediaries to identify all of the following in the accounts held at the regulated clearing agency:

(a) the positions and property held for the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of the direct intermediary's customers;

(c) the positions and value of customer collateral held for or on behalf of customers of each indirect intermediary for which the direct intermediary provides clearing services.

Records of investment of customer collateral – regulated clearing agency

39. A regulated clearing agency that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, including any unrealized gain or loss on the investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset or instrument in which the investment is made is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – regulated clearing agency

40. A regulated clearing agency must keep a record of each conversion of customer collateral from one currency to another.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Disclosure to direct intermediaries by regulated clearing agency

41. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared including a description of all of the following:

(a) the rules, policies or procedures of the regulated clearing agency that govern the segregation and use of customer collateral and the transfer or liquidation of a cleared derivative of a customer in the event of a direct intermediary's default;

(b) the impact of laws, including bankruptcy and insolvency laws, on the customer, its positions and customer collateral in the event of a direct intermediary's default;

(c) the circumstances under which an interest or ownership rights in customer collateral may be enforced by the regulated clearing agency, the direct intermediary or the customer.

(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(a), the regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared, within a reasonable period of time, describing the change.

Customer information – regulated clearing agency

42. A regulated clearing agency must have rules, policies or procedures reasonably designed to confirm that the information it receives from a direct intermediary in accordance with subsection 24(1) is complete and received in a timely manner.

Customer collateral report – regulatory

43. A regulated clearing agency that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*.

Customer collateral report – direct intermediary

44. A regulated clearing agency must make available to each direct intermediary from which it receives customer collateral a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of each customer of the direct intermediary;

(b) the current value of customer collateral received from the direct intermediary for or on behalf of each customer of the direct intermediary that is held by the regulated clearing agency;

(c) the total current value of customer collateral received from the direct intermediary that is held at a permitted depository;

(d) the location of each permitted depository at which the customer collateral is held.

Disclosure of investment of customer collateral

45. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency that invests customer collateral must disclose in writing its investment guidelines and policy to the direct intermediary through which the derivative is cleared.

(2) A regulated clearing agency that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) to the direct intermediary through which the derivative is cleared.

PART 8
TRANSFER OF POSITIONS

Transfer of customer collateral and positions

46. (1) On default of a direct intermediary, a regulated clearing agency and the defaulting direct intermediary must do all of the following:

(a) facilitate a transfer of the defaulting direct intermediary's customers' positions and customer collateral, or their liquidation proceeds, from the defaulting direct intermediary to one or more non-defaulting direct intermediaries;

(b) make reasonable efforts to ensure the transfer is facilitated in accordance with the customer's instructions.

(2) At the request of a customer, a regulated clearing agency and a non-defaulting direct intermediary must facilitate a transfer of the customer's positions and customer collateral from the non-defaulting direct intermediary to one or more non-defaulting direct intermediaries if all of the following apply:

(a) the customer has consented to the transfer;

(b) the customer's account is not currently in default;

(c) the transferred positions will have appropriate margin at the receiving direct intermediary;

(d) any remaining positions will have appropriate margin at the transferring direct intermediary;

(e) the receiving direct intermediary has consented to the transfer.

Transfer from a clearing intermediary

47. A clearing intermediary that provides clearing services for an indirect intermediary must have rules, policies or procedures in respect of the portability and transfer of a customer's positions and customer collateral that include a reasonable mechanism for transferring the positions and customer collateral of the indirect intermediary's customers, in the event of a default by the indirect intermediary or at the request of the indirect intermediary's customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

Substituted compliance

48. (1) A clearing intermediary whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if all of the following apply:

(a) the cleared derivative is cleared for or on behalf of a local customer

(i) in a local jurisdiction other than British Columbia, Manitoba and Ontario by a qualifying central counterparty or a regulated clearing agency, and

(ii) in British Columbia, Manitoba and Ontario, by a regulated clearing agency;

(b) the clearing intermediary is all of the following:

(i) registered, licensed or otherwise authorized to perform the services of a clearing intermediary in a foreign jurisdiction listed in Appendix A;

(ii) in compliance with the laws of the foreign jurisdiction applicable to the clearing intermediary set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(2) Despite subsection (1), a clearing intermediary relying on the exemption from the Instrument set out in subsection (1) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer

must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (1)(b).

(3) A regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if the regulated clearing agency complies with all of the following:

(a) the terms and conditions of any recognition or exemption decision made by any securities regulatory authority in respect of the regulated clearing agency;

(b) the laws of a foreign jurisdiction applicable to the regulated clearing agency set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(4) Despite subsection (3), a regulated clearing agency relying on the exemption from the Instrument set out in subsection (3) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (3)(b).

PART 10
EXEMPTIONS

Exemption – general

49. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11
EFFECTIVE DATE

Effective date

50. This Instrument comes into force on July 3, 2017.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-102 DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER POSITIONS AND COLLATERAL

Substituted Compliance
(Section 48)

PART A
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO CLEARING INTERMEDIARIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	**Laws, Regulations or Instruments**	**Provisions of this Instrument applicable to a clearing intermediary despite compliance with the foreign jurisdiction's laws, regulations or instruments**
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Subsection 6(2) Subsection 6(3) Section 12 Section 25 Section 26
United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Registration*, 17 CFR pt 3. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	Section 12 Section 25 Section 26

PART B
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE TO REGULATED CLEARING AGENCIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a regulated clearing agency despite compliance with the foreign jurisdiction's laws, regulations or instruments
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, as amended by Commission Delegated Regulation (EU) 822/2016 of 21 April 2016 amending Delegated Regulation (EU) No 153/2013 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Section 28 Subsection 32(2) Subsection 32(3) Section 36 Section 43 Section 44
United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Derivatives Clearing Organizations*, 17 CFR pt 39. Commodity Futures Trading Commission, *Provisions Common to Registered Entities*, 17 CFR pt 40. Commodity Futures Trading Commission, *Swap Data Recordkeeping and Reporting Requirements*, 17 CFR pt 45. Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	Section 36 Section 43 Section 44

FORM 94-102F1
CUSTOMER COLLATERAL REPORT: DIRECT INTERMEDIARY

This Form 94-102F1 is to be completed by each direct intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(1) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting direct intermediary
[LEI][4]

Table A

Table A is to be completed by each direct intermediary that receives customer collateral from a customer in accordance with the Instrument. For calculations in Table A, include all customers that have posted customer collateral with the reporting direct intermediary.

A.	Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Number of customers represented by the reported total value of customer collateral posted with the direct intermediary[5]

Table B

Table B is to be completed by each direct intermediary that receives customer collateral from an indirect intermediary in accordance with the Instrument. Complete a separate line for each indirect intermediary that has posted customer collateral with the reporting direct intermediary. Where an LEI is not available, please provide the complete legal name of the indirect intermediary.

B.	Indirect intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period
1.	[LEI of any indirect intermediary that has posted customer collateral with the reporting direct intermediary]		

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted.

4 Where an LEI is not available, please provide the complete legal name of the reporting direct intermediary together with the complete address of its head office.

5 Please report the number of customers whose customer collateral was included in calculating the value reported in the second column of Table A.

Table C

Table C is to be completed by each direct intermediary that receives customer collateral from a customer or from an indirect intermediary in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting direct intermediary. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

C.	Permitted depository
1.	[LEI of reporting direct intermediary, if holding customer collateral itself]
2.	[LEI of any permitted depository holding customer collateral for the reporting direct intermediary]

Table D

Table D is to be completed by each direct intermediary that has posted customer collateral with a regulated clearing agency in accordance with the Instrument. Complete a separate line for each regulated clearing agency with which the reporting direct intermediary has posted customer collateral. Where an LEI is not available, please provide the complete legal and operating name(s) of the regulated clearing agency.

D.	Regulated clearing agency	Customer collateral	
		Total value of non-cash customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period
1.	[LEI of any regulated clearing agency with which the reporting direct intermediary has posted customer collateral]		

FORM 94-102F2
CUSTOMER COLLATERAL REPORT: INDIRECT INTERMEDIARY

This Form 94-102F2 is to be completed by each person or company that acts as an indirect intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(2) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting indirect intermediary
[LEI][4]

Table A

Table A is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. For calculations in Table A include all customers that have posted customer collateral with the reporting indirect intermediary.

A.	Total value of non-cash customer collateral posted with the indirect intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the indirect intermediary as of the last business day of the Reporting Period	Number of customers represented by the reported total value of customer collateral posted with the indirect intermediary[5]

Table B

Table B is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting indirect intermediary. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

B.	Permitted depository
1.	[Reporting indirect intermediary, if holding customer collateral itself]
2.	[Any permitted depository holding customer collateral for the reporting direct intermediary]

Table C

Table C is to be completed by each indirect intermediary that has posted customer collateral with a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary with which the reporting indirect intermediary has posted customer collateral. Where an LEI is not available, please provide the complete legal and operating name(s) of the direct intermediary.

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted. .

4 Where an LEI is not available, please provide the complete legal name of the reporting indirect intermediary together with the complete address of its head office.

5 Please report the number of customers whose customer collateral was included in calculating the value reported in the second column of Table A.

C.	Direct intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period
1.	[LEI of any direct intermediary with which the reporting indirect intermediary has posted customer collateral]		

FORM 94-102F3
CUSTOMER COLLATERAL REPORT: REGULATED CLEARING AGENCY

This Form 94-102F3 is to be completed by each regulated clearing agency in order to comply with its reporting obligations to the local securities regulator under section 43 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting regulated clearing agency
[LEI][4]

Table A

Table A is to be completed by each regulated clearing agency that receives customer collateral from a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary that has posted customer collateral with the reporting regulated clearing agency. Where an LEI is not available, please provide the complete legal name of the direct intermediary.

A.	Direct intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period
1.	[LEI of any direct intermediary that has posted customer collateral with the reporting regulated clearing agency]		

Table B

Table B is to be completed by each regulated clearing agency that holds customer collateral in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting regulated clearing agency. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

B.	Permitted depository
1.	[LEI of reporting regulated clearing agency, if holding customer collateral itself]
2.	[LEI of any permitted depository holding customer collateral for the reporting regulated clearing agency]

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted.

4 Where an LEI is not available, please provide the complete legal name of the reporting regulated clearing agency together with the complete address of its head office.

COMPANION POLICY 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

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PART 1
GENERAL COMMENTS

Introduction

This Companion Policy ("CP") sets out the views of the Canadian Securities Administrators (the "CSA" or "we") on various matters relating to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument") and related securities legislation.

Other than this Part, the numbering of Parts, sections, subsections, paragraphs and subparagraphs in this CP generally corresponds to the numbering in the Instrument. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section, subsection, paragraph or subparagraph in the Instrument follows any general guidance. If there is no guidance for a Part, section, subsection paragraph or subparagraph, the numbering in this CP will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this CP is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument, terms used in the Instrument and in this CP have the meaning given to them in securities legislation. including National Instrument 14-101 Definitions.

Interpretation of terms used in the Instrument and in this CP

A number of key terms are used in the Instrument and this CP, including the terms that follow.

- "Clearing services" refers to acts in furtherance of the clearing of a customer's derivatives. This includes, among other things: submitting the customer's derivatives and associated collateral to a regulated clearing agency for clearing; monitoring and maintaining collateral requirements from the regulated clearing agency on behalf of a customer, including those for initial and variation margin; monitoring and maintaining excess collateral; recording and monitoring cleared positions, collateral received and valuations of both; and monitoring credit and liquidity limits.

- Clearing services also include services provided from one clearing intermediary to another in furtherance of clearing a customer's derivatives. For example, a direct intermediary would be providing clearing services to an indirect intermediary where it accepts a customer's derivatives that were originally submitted by a customer to the indirect intermediary and submits it to a regulated clearing agency.

- "Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier Regulatory Oversight Committee.

- "Legal Entity Identifier Regulatory Oversight Committee" means the international working group established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012.

- The term "lien" refers to a creditor's claim against property to secure repayment of a debt.

- "PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructure (formerly the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, as amended from time to time.

Interpretation of terms defined in the Instrument

Section 1 – Definition of cleared derivative

A "cleared derivative" is submitted to and cleared by a clearing agency, either voluntarily or in accordance with the clearing requirement set out in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*. The terms "directly" and "indirectly" refer to the chain of clearing intermediaries involved in a clearing a derivative. Where a customer interacts directly with a direct intermediary, the derivative would be considered to be directly submitted to and cleared by a clearing agency. Where an indirect intermediary submits a derivative to a direct intermediary for clearing on behalf of a customer, the derivative is considered to be cleared through the direct intermediary and indirectly submitted to the clearing agency.

Section 1 – Definition of customer

A direct intermediary is not a customer where it transacts with a clearing agency of which it is a participant. However, a person or company that acts as a direct intermediary can be a customer when clearing its own proprietary financial instruments through another direct intermediary of a clearing agency (or in Québec, a clearing house) where it is not itself a participant. An indirect intermediary is considered a clearing intermediary rather than a customer for a transaction in a cleared derivative where it is providing clearing services to a customer. However, a person or company acting as an indirect intermediary can be a customer to the extent that it is clearing its own proprietary financial instruments through another clearing intermediary. For certainty, there is always one and only one customer per clearing chain. The customer is the person or company entering into the derivative on its own behalf and accessing clearing services through one or more clearing intermediaries.

In a clearing chain that involves an indirect intermediary providing clearing services to a person or company, that person or company would be considered a customer of each clearing intermediary in the chain as well as of the clearing agency. For example, where a customer submits a derivative to an indirect intermediary, it would be a customer of both the indirect intermediary and the direct intermediary that submits the derivative to the clearing agency, as well as of the clearing agency. If there were multiple indirect intermediaries involved in clearing a derivative, the person or company would be considered a customer of each of these clearing intermediaries.

Section 1 – Definition of clearing intermediary

We expect that, subject to any available exemption, a clearing intermediary offering clearing services to a customer must register as a derivatives dealer when such requirement is in place. CSA Consultation Paper 91-407 *Derivatives: Registration* ("Consultation Paper 91-407") outlines the recommended business trigger for determining whether a person is in the business of trading derivatives.[1] These factors include intermediating transactions in derivatives and providing clearing services to third-parties. Please refer to Consultation Paper 91-407 for further details.

A person or company providing services in respect of a cleared derivative would be considered a clearing intermediary for the purposes of the Instrument if it requires, receives or holds collateral from, for or on behalf of a customer. Accordingly, an intermediary that does not receive, hold or transfer collateral from, for on behalf of a customer would not be subject to the requirements under the Instrument even if it facilitates some limited aspects of the relationship between a clearing intermediary and a customer with respect to cleared derivatives (e.g., organizing orders for derivatives).

[1] See subsection 6.1(b) of Consultation Paper 91-407.

Section 1 – Definition of customer collateral

With respect to "customer collateral", we wish to point out that although a customer may deliver certain collateral to a clearing intermediary, this specific collateral may not be the collateral delivered to the regulated clearing agency to satisfy the customer's margin requirements at the regulated clearing agency. A clearing intermediary may "upgrade" or "transform" the collateral delivered by the customer pursuant to their agreement. For example, a customer may deliver cash as collateral and, pursuant to their agreement, the clearing intermediary may deliver securities of an equivalent value to the regulated clearing agency. Any collateral that is transformed, upgraded or otherwise and delivered to the regulated clearing agency on behalf of a customer would be considered customer collateral. Generally, the original collateral delivered by the customer is no longer considered customer collateral once it has been transformed or upgraded and therefore is no longer subject to the requirements of the Instrument. The transformed or upgraded collateral exchanged for the customer's original collateral becomes the customer collateral that is subject to the Instrument and must be treated as customer collateral regardless of the number or type of transformations or upgrades it undergoes.

Paragraph (b) of the definition of "customer collateral" refers to a situation where a clearing intermediary submits its own property to satisfy the obligations of one or more customers to the regulated clearing agency. An example of this would be a direct intermediary providing its own property to meet an intra-day margin call by the regulated clearing agency. Where a clearing intermediary submits its own property on behalf of a customer, this property must be treated as customer collateral.

Section 1 – Definition of direct intermediary

A "direct intermediary" is a participant of the regulated clearing agency where a customer's derivative is submitted for clearing. A direct intermediary is responsible for submitting a customer's derivative to the regulated clearing agency and has obligations to the regulated clearing agency with respect to the derivative.

Section 1 – Definition of indirect intermediary

An "indirect intermediary" is a person or company that facilitates clearing on behalf of a customer but is not a participant of the regulated clearing agency where a customer's derivative is submitted. In order to clear its customer's derivative, the indirect intermediary would enter into an agreement with a direct intermediary (or another indirect intermediary that would in turn submit the derivative to a direct intermediary) that would submit the derivative to the regulated clearing agency to be cleared. This clearing relationship is often referred to as "indirect customer clearing".

It is possible that a person or company that is a direct intermediary at one regulated clearing agency could also act as an indirect intermediary in order to access another regulated clearing agency, of which it is not a participant. The classification as a direct intermediary or indirect intermediary is not exclusive. A clearing intermediary can be a direct intermediary for some derivatives and an indirect intermediary for others.

Section 1 – Definition of initial margin

The term "initial margin" refers to collateral required by a regulated clearing agency to cover potential future losses resulting from expected changes in the value of a cleared derivative over a pre-determined close-out period with a certain level of confidence.

Section 1 – Definition of participant

The term "participant" refers to a clearing intermediary that is a member of a regulated clearing agency.

Section 1 – Definition of permitted depository

A "permitted depository" is a person or company acceptable for holding customer collateral posted with a clearing intermediary or regulated clearing agency. A clearing intermediary that itself meets the requirements of the definition may hold customer collateral directly and is not required to use a third-party permitted depository.

In recognition of the international nature of the derivatives market, paragraph (e) of the definition permits a foreign bank or trust company with a minimum amount of reported shareholders' equity to act as a permitted depository and hold customer collateral, provided its head office or principal place of business is located in a permitted jurisdiction and it is regulated as a bank or trust company in the permitted jurisdiction. Paragraph (g) of the definition permits a prudentially regulated entity, other than a bank or trust company, whose head office or principal place of business is located outside of Canada, to act as a permitted depository for customer collateral it receives in connection with providing clearing services to a customer, provided that it is subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and customer collateral.

Section 1 – Definition of permitted investment

The term "permitted investment" sets out a principles-based approach to determining the types of instruments in which a clearing intermediary or regulated clearing agency may invest customer collateral, in accordance with the provisions of the Instrument. The term is intended to cover an investment in an instrument that is secured by, or is a claim on, high-quality obligors, and which allows for quick liquidation with little, if any, adverse price effect, for the purpose of mitigating market, credit and liquidity risk.

We expect that a clearing intermediary or regulated clearing agency that invests customer collateral in accordance with the Instrument would ensure such investment is:

- consistent with its overall risk-management strategy,
- fully disclosed to its customers,
- limited to instruments that are secured by, or are claims on, high-quality obligors, and
- able to be liquidated quickly with little, if any, adverse price effect.

We are also of the view that it would be inconsistent with the principles-based approach to permitted investments for a clearing intermediary or regulated clearing agency to invest customer collateral in its own securities or those of its affiliated entities.

Examples of instruments that would be considered permitted investments by the local securities regulatory authority include each of the following:

- debt securities issued by or guaranteed by the Government of Canada or the government of a province or territory of Canada;
- debt securities that are issued or guaranteed by a municipal corporation in Canada;
- certificates of deposit, that are not securities, issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada) ("Bank Act");[2]
- commercial paper fully guaranteed as to principal and interest by the Government of Canada;
- interests in money market mutual funds.

We are also of the view that foreign investments in high-quality obligors exhibiting the same conservative characteristics as the instruments listed above would be acceptable.

Section 1 – Definition of permitted jurisdiction

Paragraph (a) of the definition of "permitted jurisdiction" captures jurisdictions where foreign banks authorized under the Bank Act to carry on business in Canada, subject to supervision by the Office of the Superintendent of Financial Institutions ("OSFI"), are located.[3] The following countries and their political subdivisions are included: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom (including Scotland) and the United States of America.

For paragraph (b) of the definition of "permitted jurisdiction," in the case of the euro, where the currency does not have a single "country of origin", the provision will be read to include all countries in the euro area[4] and countries using the euro under a monetary agreement with the European Union.[5]

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2 *Bank Act* (SC 1991, c 46).

3 *Ibid.* at Part XII.1; For a list of authorized foreign banks regulated under the *Bank Act* and subject to OSFI supervision, see: Office of the Superintended of Financial Institutions, *Who We Regulate* (available: http://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=1&gc=1#WWRLink11).

4 European Union, Economic and Financial Affairs, *What is the euro area?*, May 18, 2015, online: European Union (http://ec.europa.eu/economy_finance/euro/adoption/euro_area/index_en.htm).

5 European Union, Economic and Financial Affairs, *The euro outside the euro area*, April 9, 2014, online: European Union (http://ec.europa.eu/economy_finance/euro/world/outside_euro_area/index_en.htm).

Section 1 – Definition of qualifying central counterparty

The definition of "qualifying central counterparty" is based on the qualifying central counterparty standard set out in the July 2012 final report entitled *Capital requirements for bank exposures to central counterparties*[6] published by the Basel Committee on Banking Supervision ("BCBS"). The BCBS has further stated[7] that if a regulator of a central counterparty has provided a public statement that the central counterparty has the status of a qualifying central counterparty, then the central counterparty may be considered to be a qualifying central counterparty. We are similarly of the view that a local counterparty may rely on a public statement made by a regulator of a central counterparty that the central counterparty is a qualifying central counterparty. The qualifying central counterparty standard is also discussed in CSA Multilateral Staff Notice 24-311 *Qualifying Central Counterparties*.

Section 1 – Definition of segregate

While the term "segregate" means to separately hold or separately account for customer collateral or positions, consistent with the PFMI Report, accounting segregation is acceptable.

Section 2 – Application

The Instrument applies to all regulated clearing agencies regardless of location; however, under subsection 2(1), a regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction is only required to comply with the provisions of the Instrument with respect to the cleared derivatives of local customers. The Instrument has broader application with respect to a regulated clearing agency located in a local jurisdiction; such a regulated clearing agency is subject to the requirements of the Instrument in respect of the cleared derivatives of all of its customers (whether they are local customers or not).

The Instrument applies, regardless of location, to a clearing intermediary that provides clearing services to a local customer, but only in respect of a local customer's cleared derivatives. For example, a clearing intermediary providing clearing services to a local customer would be subject to the requirements of the Instrument only as they relate to the local customer and the cleared derivatives of the local customer. The Instrument is not applicable to the clearing intermediary when providing clearing services to foreign customers.

Under subsection 2(3), regulated clearing agencies and clearing intermediaries that provide clearing services for over-the-counter ("OTC") options on securities, are not required to comply with the Instrument in respect of such OTC options. Options on securities, including OTC options on securities, are subject to existing securities legislation. For example, OTC options on securities are regulated as securities under the *Securities Act* (Ontario) and as derivatives under the *Derivatives Act* (Québec).[8]

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Part 2 contains requirements for the treatment of customer collateral by a clearing intermediary.

Section 3 – Segregation of customer collateral – clearing intermediary

Recognizing that methods for segregating customer collateral at the clearing intermediary level may differ depending on collateral and entity type, we are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a clearing intermediary, the clearing intermediary must treat customer collateral posted with it as belonging to customers. For example, consider a title transfer collateral arrangement where the title to a customer's property is posted as collateral and legal title is transferred to a clearing intermediary collecting the collateral. Despite the transfer of legal title from the customer to the clearing intermediary, the clearing intermediary must treat the property as customer collateral transferred by or on behalf of the customer relating to the customer's cleared derivatives.

Subsection 3(1) requires a clearing intermediary to segregate customer collateral from its own property, including from collateral advanced for a proprietary position. For example, a direct intermediary's proprietary positions (i.e., a house account) would be required to be held or accounted for separately from customer positions. Similarly, an indirect intermediary would be required to establish a separate account for its customers with its direct intermediary, so that the indirect intermediary's proprietary positions

6 Basel Committee on Banking Supervision (BCBS), *Capital requirements for bank exposures to central counterparties*, July 2012, online: Bank for International Settlements (http://www.bis.org).

7 BCBS, Basel III counterparty credit risk and exposures to central counterparties – Frequently asked questions, updated December 2012, online: Bank for International Settlements (http://www.bis.org).

8 *Securities Act* (RSO 1990 c S.5) at s. 1(1), definition of "security"; *Derivatives Act* (RLRQ 2008 c I-14.01) at s. 3, definition of "derivative".

are held or accounted for separately from those of its customers. Records maintained by a clearing intermediary must make it clear that customer accounts are for the benefit of customers only.

Section 4 – Holding of customer collateral – clearing intermediary

Customer collateral posted by a clearing intermediary and held at a permitted depository may be commingled in an omnibus account (i.e., all of the clearing intermediary's customers' customer collateral is held in one omnibus account) if each customer's customer collateral is segregated on a recordkeeping basis. Additionally, the recordkeeping obligations in the Instrument require a clearing intermediary to identify the positions and the value of the collateral held for each customer within an omnibus customer account.

We expect that a clearing intermediary that holds customer collateral at a permitted depository in accordance with the Instrument would take reasonable efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;
- identifies, measures, monitors, and manages its risks from other activities that it may perform;
- facilitates prompt access to customer collateral, when required.

If a clearing intermediary is a permitted depository, as defined in the Instrument, it may hold customer collateral itself and is not required to hold customer collateral at a third party depository. For example, a Canadian financial institution that acts as a clearing intermediary would be permitted to hold customer collateral provided it did so in accordance with the requirements of the Instrument. Where a clearing intermediary deposits customer collateral with a permitted depository, the clearing intermediary is responsible for ensuring the permitted depository maintains appropriate books and records to ensure customer collateral can be attributed to each customer.

Section 5 – Excess margin – clearing intermediary

We would interpret the requirement that a clearing intermediary identify and record the value of excess margin as applying only to the excess margin that the clearing intermediary holds. For example, a direct intermediary would not be required to keep records of the excess margin required from a customer by an indirect intermediary to which it provides clearing services.

Section 6 – Use of customer collateral – clearing intermediary

Under subsection 6(2), the use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, a clearing model that allows recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a clearing intermediary pursuant to applicable bankruptcy and insolvency laws would not be considered use of customer collateral by the clearing intermediary and is permitted where required by applicable laws.

Subsection 6(3) allows a clearing intermediary to place a lien on customer collateral where the lien arises in connection with a cleared derivative. This exception recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. A clearing intermediary is prohibited from imposing or permitting a lien that is not expressly permitted by the instrument on customer collateral and should such an improper lien be placed on customer collateral, the clearing intermediary

must take all reasonable steps to promptly address the improper lien. However, a lien over excess collateral is not restricted where the lien is imposed to secure or extend credit to the customer.

Section 7 – Investment of customer collateral – clearing intermediary

Subsection 7(3) provides that any loss resulting from a permitted investment of customer collateral must not be borne by the customer. This requirement relates only to investments made by a clearing intermediary using customer collateral, not to collateral provided by a customer. For example, if a customer provided government bonds as collateral, and those bonds lost market value, the clearing intermediary would not be required to bear those losses. Similarly, where a customer provided collateral to a clearing intermediary and it was transformed into government bonds to be used as customer collateral posted to a regulated clearing agency, the clearing intermediary would not be required to bear any loss in market value of the transformed customer collateral.

Although losses in the value of invested customer collateral are not to be allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a clearing intermediary's investment activities in accordance with the Instrument.

Section 8 – Use of customer collateral – indirect intermediary default

An example of when a clearing intermediary may apply customer collateral to settle the obligations of a defaulting indirect intermediary is when a customer's default causes the default of the indirect intermediary. In such case, a direct intermediary could use the defaulting customer's collateral to satisfy the indirect intermediary's obligations attributable to the customer's default.

Section 9 – Acting as a clearing intermediary

Paragraph 9(1)(a) applies to a clearing intermediary that is prudentially regulated in a local jurisdiction. Prudential regulation by an authority in Canada should ensure that a clearing intermediary is adequately capitalized and has sufficient liquidity such that it is financially sound and does not present a significant solvency risk to customers. In Canada, prudential regulation of federally regulated financial institutions is undertaken by OSFI. Other regulators that perform prudential oversight include certain provincial prudential market regulators, such as the Autorité des marchés financiers in Québec, or other local securities regulatory authorities when the proposed registration regime for over-the-counter derivatives ("OTC derivatives") is implemented.

Paragraph 9(1)(c) applies to a clearing intermediary that is prudentially regulated and is subject to and in compliance with laws relating to clearing services and customer collateral in a permitted jurisdiction. This would include, for example, a futures commission merchant registered with the U.S. Commodity Futures Trading Commission ("CFTC") that is authorized by the CFTC to provide clearing services for OTC derivatives.

The CSA Derivatives Committee is developing a registration regime that will apply to clearing intermediaries. Once in force, subject to any available exemptions, we anticipate that registration will be required for clearing intermediaries to offer clearing services to local customers.

For greater certainty, pursuant to the application provision in paragraph 2(1)(b), the requirement under subsection 9(2) only applies to cleared derivatives involving local customers. Other than in British Columbia, Manitoba and Ontario, a foreign clearing intermediary may use a qualifying central counterparty instead of a regulated clearing agency if the foreign clearing intermediary qualifies for the exemption provided for in subsection 48(1) and otherwise complies with the requirements in subsection 48(2).

Section 10 – Risk management – clearing intermediary

We expect that rules, policies and procedures designed to identify, monitor and reasonably mitigate material risks arising from offering clearing services to an indirect intermediary and management of a default by an indirect intermediary would include all of the following:

- following industry standard best practices for understanding an indirect intermediary's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the indirect intermediary's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the indirect intermediary and the clearing intermediary);

- measuring and monitoring the positions of each indirect intermediary including (i) the daily valuation of the indirect intermediary's positions and cash flow obligations and (ii) market risk resulting from those positions;

- a default management plan which describes the steps followed in the event of an indirect intermediary's default.

Section 11 – Risk management – indirect intermediary

We expect that rules, policies and procedures designed to identify, monitor and reasonably mitigate material risks arising from offering indirect clearing services to customers would include all of the following:

- following industry standard best practices for understanding a customer's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the customer's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the customer and the indirect intermediary);

- measuring and monitoring the positions of each customer including (i) the daily valuation of the customer's positions and cash flow obligations and (ii) market risk resulting from those positions.

PART 3
RECORDKEEPING BY A CLEARING INTERMEDIARY

Part 3 outlines the minimum recordkeeping requirements that apply to clearing intermediaries. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough recordkeeping by clearing intermediaries.

Section 12 – Retention of records – clearing intermediary

The records and supporting documentation related to a particular cleared derivative required to be prepared pursuant to this Part and Part 4 must be retained for at least 7 years from the date the cleared derivative expires or is terminated.

Any customer profiles, account agreements or other general information collected from a customer at any time the clearing intermediary provides clearing services for the customer, including prior to the date upon which the customer enters into a cleared derivative, must be kept for at least 7 years after the date upon which the customer's last derivative that is cleared by the clearing intermediary expires or is terminated.

All records and supporting documentation must be kept in accordance with industry best practices for record retention in Canada including safety and durability standards.

In Manitoba, the statutory minimum record retention period is 8 years.

Section 13 – Daily records – clearing intermediary

We are of the view that accurate recordkeeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies.

With respect to records required to be kept under paragraph 13(3)(b):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;

- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security;

- subparagraph (iii) refers to charges that have accrued, or may accrue, that are payable by a customer and have been agreed to be paid by the customer in respect of the clearing services provided to the customer; such charges may include, for example, transaction or currency exchange charges or charges relating to the settlement or termination of a cleared derivative.

Section 18 – Identifying records – multiple clearing intermediaries

Where a clearing intermediary allows a person or company to act as an indirect intermediary, the clearing intermediary assumes recordkeeping obligations relating to the indirect intermediary and its customers. The effect of paragraphs 18(a) and (b) together is to enable the indirect intermediary to easily identify its own positions and property, and the positions and collateral held for, or on behalf, of each of its customers.

Section 19 – Records of investment of customer collateral – clearing intermediary

The date of the investment required to be recorded under paragraph 19(a) includes both the trade date and the settlement date. We are of the view that the requirement in paragraph 19(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Pursuant to paragraph 7(2)(a) of the instrument, each investment of customer collateral must be in a permitted investment.

Section 20 – Records of currency conversion – clearing intermediary

We expect that currency conversion trade records would include, at minimum, all of the following:

- the legal entity identifier ("LEI") of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name of the customer;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange or provided the exchange rate.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Part 4 outlines disclosure and reporting to be made by a clearing intermediary to customers, regulated clearing agencies and the local regulator or securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction-by-transaction basis.

The written disclosure required under sections 21, 22, 23 and 27 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. If there are changes to the information contained in the disclosure a customer received, the customer must be promptly informed in writing of such changes. Where there are multiple clearing intermediaries, direct intermediaries and indirect intermediaries may provide disclosure either to a clearing intermediary closer in the clearing chain to the customer or directly to the customer. Written disclosure and notice of changes to such disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or clearing intermediary.

Where clearing intermediaries are already engaged in cleared derivative transactions with regulated clearing agencies, other clearing intermediaries or customers before the Instrument comes into force, new written disclosure is not required to be delivered to customers if the written disclosure delivered prior to the Instrument coming into force meets the requirements for written disclosure set out in this Part. We acknowledge the confidential nature of the information reported to the local regulator or securities regulatory authority, and each regulator or securities regulatory authority intends to treat it as such, subject to applicable provisions of the legislation adopted by the local jurisdiction, including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Section 21 – Clearing intermediary delivery of disclosure by regulated clearing agency

Section 21 requires a clearing intermediary to provide disclosure, including investment guidelines and policies for investing customer collateral, received from a regulated clearing agency pursuant to sections 41 and 45 to its customer. Where there is a chain of clearing intermediaries, the direct intermediary may provide this disclosure to the indirect intermediary, which is then required to provide this disclosure to the customer. Both subsections 41(2) and 45(2) require a regulated clearing agency to disclose any changes to the information previously disclosed. A clearing intermediary is required to promptly send to its customers all of the information related to changes in the disclosure provided by a regulated clearing agency under sections 41 and 45.

Section 22 – Disclosure to customer by clearing intermediary

Customer collateral held at the clearing intermediary level may receive different treatment from customer collateral held at the regulated clearing agency in the event of a clearing intermediary's bankruptcy or insolvency. We expect that the disclosure required by this provision would provide customers with clear information on the treatment of their collateral in a default situation. For example, there may be situations where customer collateral held in a customer account maintained by a clearing intermediary would, pursuant to applicable bankruptcy laws, be combined with the property of other customers.

We expect that the information given in the written disclosure would assist customers in evaluating: (i) the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved, including the method for determining the value at which customer positions will be transferred, and (iii) any risks or uncertainties associated with such arrangements.

Disclosure helps customers assess the related risks and conduct due diligence when entering into derivatives that are cleared at a regulated clearing agency through one or more clearing intermediaries. Examples of the information that we expect the disclosure would provide include all of the following:

- information about the clearing intermediary including its name, address and principal place of business and contact information;
- the bankruptcy and insolvency laws which apply to the clearing intermediary;
- any material risks which may impact the clearing intermediary's ability to transfer customer collateral and enforce rights in relation to customer collateral during a default, including an explanation of how such risks are material to the customer;
- a basic overview of the clearing intermediary's fund segregation and collateral management practices and policies;
- the process for recovering or transferring customer collateral should the clearing intermediary default;
- information regarding the proactive steps that a customer must take to protect its collateral;
- an explanation of the interaction of domestic and foreign laws applicable to customer collateral held by the clearing intermediary.

Section 23 – Disclosure to customer by indirect intermediary

In addition to the disclosure required under section 22, an indirect intermediary is required to disclose to its customers any additional material risks to a customer's positions and customer collateral that arise as a result of the indirect clearing relationship and an explanation of how such risks are material to the customer.

Section 24 – Customer information – clearing intermediary

In order to facilitate a timely transfer of collateral and positions in a default scenario, a regulated clearing agency should have sufficient information to identify each customer of a clearing intermediary and each customer's positions and customer collateral. Additionally, the obligation on a clearing intermediary under this section to provide information on the current value of its customers' positions and customer collateral includes indicating to the direct intermediary or regulated clearing agency, as applicable, where a customer is in default of its obligations.

We expect that identifying information required under this section would include the LEI of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name or other identifier of the customer.

Section 25 – Customer collateral report – regulatory

Regular reporting on customer collateral deposits and holdings assists securities regulatory authorities in monitoring customer collateral arrangements and in developing and implementing rules to protect customer assets that are responsive to market practices. To that end, subsections 25(1) and 25(2) set out reporting requirements for direct intermediaries and indirect intermediaries, respectively, regarding customer collateral. A completed Form 94-102F1 or Form 94-102F2, as applicable, will provide the local securities regulatory authority with a snapshot of the value of collateral held or posted by each reporting clearing intermediary. In Ontario, Form 94-102F1 and Form 94-102F2 are required to be filed electronically through the Ontario

Securities Commission's Electronic Filing Portal. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* for more information.[9]

Section 26 – Customer collateral report – customer

The customer collateral report required under this section could be made available to the customer or indirect intermediary through either direct electronic access available to the customer or indirect intermediary at any time or a daily report sent to the customer or indirect intermediary.

Section 27 – Disclosure of investment of customer collateral

We expect that the disclosure required under this section would include statements that customer collateral is permitted to be invested in accordance with section 7 of the Instrument and that any losses resulting from the clearing intermediary's investment of the customer collateral will not be borne or otherwise allocated to the customer.

We are of the view that the requirement to provide disclosure under subsection 27(1) and subsection 27(2) may be satisfied by directing a customer or, if applicable, the indirect intermediary to the disclosure on the clearing intermediary's website.

PART 5
TREATMENT OF COLLATERAL BY A REGULATED CLEARING AGENCY

Part 5 contains requirements for the treatment of customer collateral by regulated clearing agencies.

Section 28 – Collection of initial margin

The requirement that a regulated clearing agency collect initial margin on a gross basis for each customer means that a regulated clearing agency may not, and may not permit its direct intermediaries to, offset initial margin positions of different customers against one another. However, the initial margin collected from a customer may be determined by netting across the various cleared derivative positions of that customer. Further, a regulated clearing agency is not prohibited from collecting variation margin for cleared derivatives on a net basis from its direct intermediaries.

Margin requirements are determined by the regulated clearing agency in accordance with its rules, policies and procedures. For further discussion, please see National Instrument 24-102 *Clearing Agency Requirements* ("NI 24-102") for requirements applicable to clearing agency margin calculation.

Section 29 – Segregation of customer collateral – regulated clearing agency

Records maintained by the regulated clearing agency must make it clear that customer accounts are for the benefit of customers only.

We are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a regulated clearing agency, the regulated clearing agency must treat customer collateral posted with it as belonging to customers. For example, consider a title transfer collateral arrangement where the title to the customer's property is posted as collateral and legal title is transferred to a regulated clearing agency collecting the collateral. Despite the transfer of legal title from the customer (or clearing intermediary on behalf of the customer) to the regulated clearing agency, the regulated clearing agency must treat the property as customer collateral transferred by, for or on behalf of the customer relating to the customer's cleared derivatives.

Section 30 – Holding of customer collateral – regulated clearing agency

A regulated clearing agency is a permitted depository under the Instrument and may hold collateral itself if it offers depository services. Accordingly, a regulated clearing agency is not required to hold customer collateral at a third-party permitted depository.

The customer collateral of multiple customers may be commingled in an omnibus customer account if each customer's customer collateral is segregated on a recordkeeping basis. Additionally, the recordkeeping obligations in the Instrument require the regulated clearing agency to identify the positions and the value of the collateral held for each individual customer within an omnibus customer account.

[9] OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, online: Ontario Securities Commission (http://www.osc.gov.on.ca/en/SecuritiesLaw_11-501.htm).

We expect that a regulated clearing agency that holds customer collateral at a third-party permitted depository in accordance with the Instrument would take reasonable efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;
- identifies, measures, monitors, and manages its risks from other activities that it may perform; and
- facilitates prompt access to customer collateral, when required.

Paragraph 30(b) requires a regulated clearing agency to hold customer collateral relating to cleared derivatives separately from any other type of property that is not customer collateral, including any other property posted by a customer as collateral relating to another investment or financial instrument that is not a cleared derivative. For example, the customer collateral of a customer may be commingled in an omnibus account with the customer collateral of another customer but may not be commingled with collateral belonging to the customer or any other customer relating to a futures contract.

Section 31 – Excess margin – regulated clearing agency

We would interpret the requirement that a regulated clearing agency identify and record the value of excess margin as applying only to the excess margin that the regulated clearing agency holds. For example, a regulated clearing agency would not be required to keep records relating to excess margin held by a clearing intermediary.

Section 32 – Use of customer collateral – regulated clearing agency

Under subsection 32(2), subject to an exception for excess collateral, regulated clearing agencies are only permitted to apply a customer's customer collateral to the cleared derivatives of that customer. Accordingly, the Instrument prohibits the cross-margining of a customer's cleared derivatives and futures positions. The reasoning for this is that the regulatory framework applicable to futures in certain jurisdictions, including Canada, may make customers more susceptible to shortfalls in the event of a clearing intermediary's insolvency and therefore cross-margining could undermine a customer's ability to port its cleared derivatives positions. However, in some jurisdictions, customer protection requirements applicable to futures are equivalent to those applicable to cleared derivatives. Under such regimes, cross-margining may not represent a material risk to porting a customer's positions in cleared derivatives. Therefore, when considering an application for discretionary relief from the prohibition on cross-margining or when making an equivalence determination of a foreign jurisdiction's regulatory requirements for the purpose of substituted compliance, the regulator or securities regulatory authority will take these factors into account.

Use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, a clearing model that allows recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a regulated clearing agency pursuant to applicable bankruptcy and insolvency laws would not be considered use of customer collateral by the regulated clearing agency and is permitted where required by applicable laws.

Subsection 32(3) allows a regulated clearing agency to place a lien on customer collateral where the lien arises in connection with a cleared derivative. This exception recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. A regulated clearing agency is prohibited from imposing or permitting a lien that is not expressly permitted by the Instrument on customer collateral and should such an improper lien be placed on customer collateral, the regulated

clearing agency must take all reasonable steps to promptly address the improper lien. However, a lien over excess collateral is not restricted where the lien is imposed to secure or extend credit to the customer.

Section 33 – Investment of customer collateral – regulated clearing agency

Subsection 33(3) provides that any loss resulting from a permitted investment of customer collateral must not be borne by the customer. This requirement relates only to investments made by a regulated clearing agency using customer collateral, not to collateral provided by a customer. For example, if a customer provided government bonds as collateral, and those bonds lost market value, the regulated clearing agency would not be required to bear those loses. Similarly, where a customer provided collateral to a regulated clearing agency and it was transformed into government bonds to be used as customer collateral, the regulated clearing agency would not be required to bear any loss in market value of the transformed customer collateral.

Although losses in the value of invested customer collateral are not to be allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a regulated clearing agency's investment activities in accordance with the Instrument. Where a regulated clearing agency's rules provide for investment loss mutualisation and allocation to clearing intermediaries, this would not violate the requirement.

Section 34 – Use of customer collateral – clearing intermediary default

An example of when a regulated clearing agency may apply customer collateral to settle the obligations of a defaulting clearing intermediary is when a customer's default causes the default of the clearing intermediary, whether directly or through the default of an indirect intermediary. In such case, a regulated clearing agency could use the defaulting customer's collateral, including its customer collateral under the Instrument, to satisfy the clearing intermediary's obligations attributable to the customer's default.

Section 35 – Risk management –NI 24-102 applies

NI 24-102 applies to all regulated clearing agencies providing clearing services to local customers, including to clearing agencies that are exempt from recognition if they clear derivatives for customers.

PART 6
RECORDKEEPING BY A REGULATED CLEARING AGENCY

Part 6 outlines the minimum recordkeeping requirements that apply to regulated clearing agencies. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough recordkeeping by regulated clearing agencies.

Section 36 – Retention of records – regulated clearing agency

All records prepared pursuant to this Part and Part 7 must be kept in accordance with industry best practices for record retention in Canada including safety and durability standards.

Since clearing intermediaries are required to maintain records and supporting documentation related to cleared derivatives of their customers for at least 7 years pursuant to section 12, it is not necessary for a regulated clearing agency to retain records after the related cleared derivatives expire or are terminated. It would be redundant for both clearing intermediaries and regulated clearing agencies to keep records for an extended period after expiry or termination of a cleared derivative or after the clearing relationship with a customer ends.

Section 37 – Daily records – regulated clearing agency

We are of the view that accurate recordkeeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies.

With respect to records required to be kept under paragraph 37(2)(b):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;
- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security; and
- subparagraph (iii) refers to charges that have accrued, or may accrue, that are payable by a customer of a direct intermediary and have been agreed to be paid by the customer in respect of the clearing services provided to the customer; such charges may include, for example, transaction or currency exchange charges or charges relating to the settlement or termination of a cleared derivative.

Section 38 – Identifying records – regulated clearing agency

A regulated clearing agency has recordkeeping obligations relating to all customers for which it clears cleared derivatives. The recordkeeping requirement under section 38 extends to any customer collateral held in an account of the regulated clearing agency at a third-party permitted depository.

Paragraph (c) ensures that direct and indirect customers receive equal treatment. Direct intermediaries are required under section 18 to make this information available to indirect intermediaries to which they provide clearing services.

Section 39 – Records of investment of customer collateral – regulated clearing agency

The date of the investment required to be recorded under paragraph 39(a) includes both the trade date and the settlement date. We are of the view that the requirement in paragraph 39(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Pursuant to paragraph 33(2)(a) of the instrument, each investment of customer collateral must be in a permitted investment.

Section 40 – Records of currency conversion – regulated clearing agency

We expect that currency conversion trade records would include, at minimum, all of the following:

- LEI of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name of the customer;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange or provided the exchange rate.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Part 7 outlines certain disclosure and reporting to be made by a regulated clearing agency to customers, clearing intermediaries and the local regulator or securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction-by-transaction basis.

The written disclosure required under sections 41 and 45 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. If there are changes to the information contained in the disclosure a customer received, the customer must be promptly informed in writing of such changes. Where there are multiple clearing intermediaries, a direct intermediary may provide disclosure either to a clearing intermediary closer in the clearing chain to the customer or directly to the customer. Written disclosure and notice of changes to such disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or direct intermediary.

Where a regulated clearing agency is already providing clearing services before the Instrument comes into force, new written disclosure is not required to be delivered to customers if the written disclosure delivered prior to the Instrument coming into force meets the requirements for written disclosure set out in this Part.

We acknowledge the confidential nature of the information reported to the local regulator or securities regulatory authority, and each regulator or securities regulatory authority intends to treat it as such, subject to applicable provisions of the legislation adopted by the local jurisdiction, including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Section 41 – Disclosure to direct intermediaries by regulated clearing agency

We expect that the information given in the written disclosure would assist customers in evaluating: (i) the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved, including the method for determining the value at which customer positions will be transferred, and (iii) any risks or uncertainties associated with such arrangements.

Disclosure helps customers assess the related risks and conduct due diligence when entering into derivatives that are cleared through a direct intermediary of the regulated clearing agency. Examples of the information that we expect the disclosure would provide include all of the following:

- information about the regulated clearing agency including its name, address and principal place of business and contact information;
- a basic overview of the regulated clearing agency's rules, policies and procedures concerning segregation and portability of customers' positions and customer collateral including an explanation of any legal or operational constraints that may impair the ability of the regulated clearing agency to segregate or transfer the positions and related customer collateral of a customer;
- which bankruptcy and insolvency laws apply to the regulated clearing agency and an analysis of applicable laws governing the regulated clearing agency's clearing services including whether the regulated clearing agency is described or named under the *Payment and Clearing Settlement Act* (Canada);[10]
- the regulated clearing agency's rule book;
- information on the regulated clearing agency's rules and procedures for defaults including the process for recovering or transferring customer collateral should a clearing intermediary default and the size and composition of the financial resource package available in the event of a clearing intermediary's default; and
- the interaction of domestic and foreign laws applicable to customer collateral held by the regulated clearing agency and any other information relevant to using the regulated clearing agency's clearing services.

The written disclosure required under subsection 41(1), is necessary only upon the opening of each customer account, or upon any change to the rules, policies or procedures of the regulated clearing agency, rather than prior to each cleared derivative transaction.

Section 42 – Customer information – regulated clearing agency

In order to facilitate a timely transfer of collateral and positions in a default scenario, we expect that a regulated clearing agency would receive complete and timely information from a direct intermediary under subsection 24(1) to identify each customer of a clearing intermediary, and the customer's positions and customer collateral.

Section 43 – Customer collateral report – regulatory

Regular reporting on customer collateral deposits and holdings assists securities regulatory authorities in monitoring customer collateral arrangements and in developing and implementing rules to protect customer assets that are responsive to market practices. To that end, section 43 sets out reporting requirements for regulated clearing agencies regarding customer collateral. A completed Form 94-102F3 will provide the local securities regulatory authority with a snapshot of the value of collateral held or posted by the regulated clearing agency. In Ontario, Form 94-102F3 is required to be filed electronically through the Ontario Securities Commission's Electronic Filing Portal. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission for more information*.[11]

Section 44 – Customer collateral report – direct intermediary

The customer collateral report required under this section could be made available to a direct intermediary through either direct electronic access available to the direct intermediary at any time or a daily report sent to the direct intermediary.

[10] *Payment and Clearing Settlement Act* (SC 1996 c 6 sch).

[11] *Supra* note 9.

Section 45 – Disclosure of investment of customer collateral

We expect that the disclosure required under this section would include statements that customer collateral is permitted to be invested in accordance with section 33 of the Instrument and that any losses resulting from the regulated clearing agency's investment of the customer collateral will not be borne or otherwise allocated to the customer. We are of the view that the requirements to provide disclosure under subsection 45(1) and subsection 45(2) may be satisfied by directing a customer to the disclosure on the regulated clearing agency's website.

PART 8
TRANSFER OF POSITIONS

Part 8 provides for the transfer of customer collateral and positions from one clearing intermediary to another, either in a default scenario or upon request of the customer.

The efficient and complete transfer of customer collateral and related positions is important in both pre-default and post-default scenarios but is particularly critical during a clearing intermediary's default or when it is undergoing insolvency proceedings.

Section 46 – Transfer of customer collateral and positions

It is our expectation that customer collateral and positions be transferred as seamlessly as possible from the perspective of the customer. This means that we expect that a customer's positions would be maintained on identical economic terms as governed the positions immediately before the transfer. In effecting such a transfer, a regulated clearing agency is permitted to operationally close-out and re-book the positions, provided that the ultimate result is that the customer's positions are maintained on identical economic terms as governed immediately before the transfer.

The regulated clearing agency's ability to transfer customer collateral and related positions in a timely manner may depend on such factors as market conditions, sufficiency of information on the individual constituents, and the complexity or size of the customer's portfolio. We would therefore expect the regulated clearing agency to structure its arrangements for the transfer of customer collateral and positions in a way that makes it highly likely that they will be effectively transferred to one or more other direct intermediaries, taking into account all relevant circumstances. In order to achieve a high likelihood of transferability, the regulated clearing agency would need to have the ability to (i) identify the positions belonging to each customer, (ii) identify and assert the regulated clearing agency's rights to related customer collateral held by or through the regulated clearing agency, (iii) transfer positions and related customer collateral to one or more other direct intermediaries, (iv) identify potential direct intermediaries to accept the positions, (v) disclose relevant information to such direct intermediaries so that they can evaluate the counterparty credit and market risk associated with the customers and positions, respectively and (vi) carry out its default management procedures in an orderly manner. We expect that regulated clearing agency's policies and procedures would provide for the proper handling of customer collateral and related positions of customers of a defaulting direct intermediary.

We expect that operations, policies and procedure of clearing intermediaries and regulated clearing agencies be structured to ensure, to the greatest extent possible, that a default by a clearing intermediary does not affect the positions and collateral of the defaulting clearing intermediary's customers. Generally, default by a direct intermediary would occur when it does not, or is unable to, meet its obligations at a regulated clearing agency.

To ensure that a customer's positions and customer collateral are insulated from a direct intermediary's default, including any winding-up or restructuring proceeding of the defaulting direct intermediary, we expect that a regulated clearing agency would be structured, including by having the necessary rules and procedures in place, to effectively and promptly facilitate the transfer of customer collateral and positions to a direct intermediary that (i) is not in default, as that term is defined in the rules and procedures of the relevant regulated clearing agency and (ii) is not reasonably expected to default on its obligations at a regulated clearing agency as they come due.

Although we stress the importance of the transfer of a customer's positions and customer collateral in a default scenario, we acknowledge that there may be circumstances where the portability of all or a portion of a customer's positions is not possible. Where a regulated clearing agency is not able to transfer positions within a pre-defined transfer period specified in its operating rules, it may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the customer collateral and positions of the defaulting direct intermediary's customers.

We expect that a direct intermediary would also have policies and procedures in place to facilitate the prompt transfer of customer collateral that it holds to one or more direct intermediaries in the event of its own default.

Where a transfer of customer collateral and positions is facilitated under subsection 46(1), the Instrument requires that reasonable efforts are made to ensure that the customer's instructions are followed with respect to the transfer of the customer's positions and customer collateral to a particular transferee direct intermediary. We are of the view that these instructions may be best obtained at the outset of a clearing relationship, and by allowing a customer to identify direct intermediaries to which it

consents *a priori* to such a transfer. If there are circumstances where such instructions would not be obtained, or where a customer's prior instructions would not be followed, we expect those circumstances would be set out in the rules, policies or procedures of the regulated clearing agency. In a default scenario, where a customer has not provided instructions or the transfer of a customer's collateral and positions in accordance with its instructions is not possible, a regulated clearing agency or a direct intermediary may rely on the customer's negative consent (i.e., the customer's silence) in effecting a transfer.

Additionally, a regulated clearing agency or defaulting direct intermediary may promptly transfer the customer's positions and related customer collateral, as a single portfolio or in portions to one or more direct intermediaries.

A regulated clearing agency must have the necessary policies and procedures in place, to facilitate the transfer of the customer collateral and positions of a customer from one direct intermediary to another at the request of the customer. This is also known as a "business-as-usual transfer".

We expect that a customer be able to transfer its customer collateral and positions to another direct intermediary in the normal course of business. Subsection 46(2) requires that a regulated clearing agency be structured, including by having the necessary rules and procedures in place, to facilitate the transfer of customer collateral and related positions upon the customer's request to any one or more non-defaulting direct intermediaries, subject to any notice or other contractual requirements.

Where a business-as-usual transfer of a customer's positions and customer collateral is facilitated under subsection 46(2), we would expect that a regulated clearing agency would promptly transfer the customer's positions and related customer collateral as a single portfolio or in portions to one or more direct intermediaries, as requested by the customer.

A request from a customer to facilitate a business-as-usual transfer of the customer's positions and customer collateral to a particular transferee direct intermediary may also take the form of a consent to transfer obtained by the regulated clearing agency from the customer. When obtaining the consent of the receiving direct intermediary, we would expect the consent to contain information as to which positions and customer collateral are to be transferred.

Section 47 – Transfer from a clearing intermediary

We are of the view that customers of a clearing intermediary should benefit from protections and rights under the Instrument with respect to the transfer of their positions and customer collateral. To that end, in the event of the clearing intermediary's default, the clearing intermediary must be structured to promptly facilitate such a transfer, as a single portfolio or in portions as requested by the customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

Section 48 – Substituted Compliance

Subsection 48(1) contemplates an exemption from the Instrument in the form of substituted compliance for foreign clearing intermediaries that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. Substituted compliance applies to the provisions of the Instrument where the clearing intermediary is in compliance with the laws of a foreign jurisdiction set out in Appendix A opposite the name of the foreign jurisdiction. The foreign jurisdictions specified for substituted compliance are determined on a jurisdiction by jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

The exemption only applies where a clearing intermediary is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix A and does not incorporate any exemption or discretionary relief granted to a clearing intermediary in connection with the laws of the foreign jurisdiction. Where a clearing intermediary relies on an exemption or discretionary relief from the laws of a foreign jurisdiction set out in Appendix A, it will need to apply to the relevant securities regulatory authorities for similar exemptive or discretionary relief from the Instrument.

In respect of a local customer in a local jurisdiction other than British Columbia, Manitoba and Ontario, a clearing intermediary registered, licensed or otherwise permitted to act as a clearing intermediary in a jurisdiction set out in Appendix A may benefit from substituted compliance under subsection 48(1), if the clearing intermediary offers clearing services to local customers through either a clearing agency that is a qualifying central counterparty or a regulated clearing agency.

Subsection 48(3) contemplates an exemption from the Instrument in the form of substituted compliance for foreign regulated clearing agencies that are recognized or exempt from recognition by a Canadian securities regulatory authority and are in compliance with the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. Substituted compliance applies to the provisions of the Instrument where the regulated clearing agency is in compliance with the laws of a foreign jurisdiction set out in Appendix A opposite the name of the foreign jurisdiction.

The exemption only applies where a regulated clearing agency is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix A and does not incorporate any exemption or discretionary relief granted to a regulated clearing agency in connection with the laws of the foreign jurisdiction. Where a regulated clearing agency relies on an exemption or discretionary relief from the laws of a foreign jurisdiction set out in Appendix A, it will need to apply to the relevant securities regulatory authorities for similar exemptive or discretionary relief from the Instrument.

In accordance with subsections 48(2) and 48(4), the “residual” provisions listed in Appendix A must be complied with when providing clearing services for a local customer, even if a foreign clearing intermediary or foreign regulated clearing agency is in compliance with the laws of a foreign jurisdiction set out in Appendix A.

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:
Evolve Marijuana Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 30, 2020
Received on February 4, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2882265

Issuer Name:
Evolve U.S. Marijuana ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 30, 2020
Received on February 4, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Evolve Funds Group Inc.
Project #2894388

Issuer Name:
Evolve Marijuana Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 30, 2020
NP 11-202 Receipt dated February 7, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2882265

Issuer Name:
Evolve U.S. Marijuana ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 30, 2020
NP 11-202 Receipt dated February 7, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Evolve Funds Group Inc.
Project #2894388

Issuer Name:
Horizons S&P/TSX 60 Equal Weight Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated January 29, 2020
NP 11-202 Receipt dated February 10, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2862187

Issuer Name:
Horizons Canadian Dollar Currency ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated January 29, 2020
NP 11-202 Receipt dated February 10, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2881931

Issuer Name:
Dynamic Active Global Infrastructure ETF
Dynamic Active International Dividend ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Feb 3, 2020
NP 11-202 Final Receipt dated Feb 5, 2020
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3004738

Issuer Name:
PIMCO Managed Conservative Bond Pool
PIMCO Managed Core Bond Pool
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Feb 3, 2020
NP 11-202 Final Receipt dated Feb 4, 2020
Offering Price and Description:
Series A units, ETF Series units and Series F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3002561

Issuer Name:
Foundation Wealth Equity Pool
Foundation Wealth Income Pool
Purpose Cash Management Portfolio
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Feb 6, 2020
NP 11-202 Preliminary Receipt dated Feb 6, 2020
Offering Price and Description:
Class A units, Class F units, ETF units, Class E units and Class I units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3015180

Issuer Name:
Mackenzie Asian Opportunities Fund
Mackenzie European Opportunities Fund
Mackenzie Global Opportunities Fund
Mackenzie US Opportunities Fund
Mackenzie US Quantitative Large Cap Fund
Mackenzie US Quantitative Small Cap Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 31, 2020
NP 11-202 Final Receipt dated Feb 6, 2020
Offering Price and Description:
Series PWX8 Units, Series T8 Units, Series F8 Units, Series AR Units, Series PWX Units, Series R Units, Series PWR Units, Series PWFB Units, Series FB Units, Series A Units, Series PW Units, Series PWT5 Units, Series D Units, Series O Units, Series T5 Units, Series FB5 Units, Series PWFB5 Units, Series F5 Units, Series PWT8 Units and Series F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3001722

Issuer Name:
Imperial Global Equity Income Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 30, 2020
NP 11-202 Final Receipt dated Feb 5, 2020
Offering Price and Description:
Class A Units, Class W Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2979153

Issuer Name:
Renaissance International Dividend Fund
Renaissance International Equity Fund
Renaissance International Equity Currency Neutral Fund
Renaissance Global Markets Fund
Renaissance Global Growth Fund
Renaissance Global Growth Currency Neutral Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 30, 2020
NP 11-202 Final Receipt dated Feb 7, 2020
Offering Price and Description:
Class A units, Class F units, Class O units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3009991

Issuer Name:
Invesco Active Multi-Sector Credit Fund
Invesco Balanced Portfolio
Invesco Canadian Class
Invesco Canadian Core Plus Bond Class
Invesco Canadian Core Plus Bond Fund
Invesco Canadian Endeavour Fund
Invesco Canadian Fund
Invesco Canadian Opportunity Class
Invesco Canadian Opportunity Fund
Invesco Canadian Plus Dividend Class
Invesco Canadian Premier Balanced Fund
Invesco Canadian Premier Growth Class
Invesco Canadian Premier Growth Fund
Invesco Canadian Small Companies Fund
Invesco Conservative Portfolio
Invesco Core Canadian Balanced Class
Invesco Diversified Yield Class
Invesco Emerging Markets Class
Invesco European Growth Class
Invesco Europlus Fund
Invesco Floating Rate Income Fund
Invesco Global Balanced Class
Invesco Global Balanced Fund
Invesco Global Bond Fund
Invesco Global Companies Fund
Invesco Global Diversified Companies Class
Invesco Global Diversified Companies Fund
Invesco Global Diversified Income Fund
Invesco Global Dividend Class
Invesco Global Dividend Income Fund
Invesco Global Endeavour Class
Invesco Global Endeavour Fund
Invesco Global Growth Class
Invesco Global High Yield Bond Fund
Invesco Global Monthly Income Fund
Invesco Global Real Estate Fund
Invesco Global Small Companies Class
Invesco Growth Portfolio
Invesco High Growth Portfolio
Invesco Income Growth Fund
Invesco Indo-Pacific Fund
Invesco Intactive Balanced Growth Portfolio Class
Invesco Intactive Balanced Income Portfolio
Invesco Intactive Balanced Income Portfolio Class
Invesco Intactive Diversified Income Portfolio
Invesco Intactive Diversified Income Portfolio Class
Invesco Intactive Growth Portfolio
Invesco Intactive Growth Portfolio Class
Invesco Intactive Maximum Growth Portfolio
Invesco Intactive Maximum Growth Portfolio Class
Invesco International Companies Class
Invesco International Companies Fund
Invesco International Growth Class
Invesco International Growth Fund
Invesco Moderate Portfolio
Invesco Resources Fund
Invesco Select Balanced Fund
Invesco Select Canadian Equity Fund
Invesco Strategic Yield Fund
Invesco U.S. Companies Class
Invesco U.S. Companies Fund
Invesco U.S. Small Companies Class

Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 24, 2020
NP 11-202 Final Receipt dated Feb 5, 2020
Offering Price and Description:
Series T6 units, Series T4CAP shares, Series PFH shares, Series PH shares, Series T8 shares, Series F6 units, Series B shares, Series F shares, Series F6 shares, Series PF shares, Series PF4 shares, Series F4 shares, Series A units, Series D units, Series T6 shares, Series T4 units, Series O units, Series I units, Series 1 units, Series SC units, Series DCA Heritage units, Series PT4 shares, Series D shares, Series FH shares, Series T4 shares, Series PT4 units, Series PF6 units, Series PF units, Series DSC units, Series PT6 shares, Series PF6 shares, Series T8CAP shares, Series PTFU units, Series A shares, Series I shares, Series PTFU shares, Series F units, Series PF4 units, Series F units, Series T8 units, Series PT6 units, Series F4 units, Series PTF shares, Series DCA units, Series M units, Series PT8 shares, Series PF8 shares, Series H shares, Series SC units, Series P units, Series P shares, Series H units, Series T6CAP shares, Series F8 shares, Series PTF units and Series ACAP shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3009991

Issuer Name:
NEI Tactical Yield Portfolio
NEI Balanced RS Fund
NEI Jantzi Social Index® Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to Annual Information Form dated January 28, 2020
NP 11-202 Final Receipt dated Feb 4, 2020
Offering Price and Description:
Series A units, Series F units, Series I units, Series O units, Series P units, Series PF units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2918737

Issuer Name:
Mackenzie US Growth Class
Principal Regulator - Ontario
Type and Date:
Amendment#1 to Final Simplified Prospectus and Amendment #2 to Annual Information dated January 28, 2020
NP 11-202 Final Receipt dated Feb 6, 2020
Offering Price and Description:
Series F5 Securities, Series PWT5 Securities, Series T5 Securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2951797

Issuer Name:
Evolve North American Gender Diversity Index Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated January 30, 2020
NP 11-202 Final Receipt dated Feb 7, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2936920

Issuer Name:
Templeton Emerging Markets Fund
Templeton Emerging Markets Corporate Class
Templeton International Stock Fund
Templeton International Stock Corporate Class
Franklin Global Growth Fund
Franklin Global Growth Corporate Class
Franklin U.S. Monthly Income Fund
Franklin U.S. Monthly Income Corporate Class
Franklin U.S. Monthly Income Hedged Corporate Class
Franklin U.S. Rising Dividends Fund
Franklin U.S. Rising Dividends Corporate Class
Franklin U.S. Rising Dividends Hedged Corporate Class
Franklin Bissett Canadian Dividend Fund
Franklin Bissett Canadian Dividend Corporate Class
Franklin Bissett Canada Plus Equity Fund
Franklin Bissett Canadian Equity Fund
Franklin Bissett Canadian Equity Corporate Class
Franklin Bissett Dividend Income Fund
Franklin Bissett Dividend Income Corporate Class
Franklin Bissett Monthly Income and Growth Fund
Franklin Mutual Global Discovery Fund
Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Growth Portfolio (Principal Regulator - Ontario
Type and Date:
Amendment #5 to Final Simplified Prospectus dated January 28, 2020
NP 11-202 Final Receipt dated Feb 4, 2020
Offering Price and Description:
Series T– USD, Series FT (Hedged), Series PF (Hedged), Series A, Series A (Hedged), Series V, Series PT (Hedged), Series F, PT-USD, Series PFT, Series PT, Series OT, Series FT, Series PA (Hedged), Series PA, Series F (Hedged), Series PF, Series O, Series PT-USD, Series T-USD, Series T, Series I, Series F, Series PT–USD, Series O (Hedged), Series T (Hedged) and Series OT (Hedged)
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2904875

NON-INVESTMENT FUNDS

Issuer Name:
Canadian National Railway Company
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated February 4, 2020
NP 11-202 Preliminary Receipt dated February 5, 2020
Offering Price and Description:
CAD$6,000,000,000.00 - Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3014609

Issuer Name:
Ceres Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 5, 2020
NP 11-202 Preliminary Receipt dated February 5, 2020
Offering Price and Description:
U.S.$120,000,000.00 - 12,000,000 Class A Restricted Voting Units
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
CERES GROUP ACQUISITION SPONSOR, LLC
Project #3014791

Issuer Name:
Lightspeed POS Inc.
Principal Regulator - Quebec
Type and Date:
Amendment dated February 6, 2020 to Final Shelf Prospectus dated August 6, 2019
Receipt dated February 10, 2020
Offering Price and Description:
C$1,000,000,000.00 -Subordinate Voting Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2944228

Issuer Name:
Champignon Brands Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 5, 2020
NP 11-202 Receipt dated February 6, 2020
Offering Price and Description:
Minimum of 7,000,000 Common Shares and up to a Maximum of 16,666,667 Common Shares
Price: $0.15 per Common Share
Minimum of $1,050,000.00 and up to a Maximum of $2,500,000.00
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
William Gareth Birdsall
Project #2997519

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated February 4, 2020
NP 11-202 Receipt dated February 4, 2020
Offering Price and Description:
$58,512,000.00 - 3,657,000 Units
Price: $16.00 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC."
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #3009438

Issuer Name:
Eclipse Gold Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 6, 2020
NP 11-202 Receipt dated February 7, 2020
Offering Price and Description:
$5,425,081.00 - 15,500,232 Common Shares issuable upon deemed exercise of 15,500,232 outstanding Subscription Receipts
Price of $0.35 per Subscription Receipt
Underwriter(s) or Distributor(s):
-
Promoter(s):
Michael G. Allen
Project #2993464

Issuer Name:
Fronsac Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated February 7, 2020
NP 11-202 Receipt dated February 7, 2020
Offering Price and Description:
Minimum: $15,004,000 (24,200,000 Units)
Maximum: $17,980,000 (29,000,000 Units)
Price: $0.62 Per Unit
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #3008712

Issuer Name:
Golden Birch Resources Inc.
Type and Date:
Final Long Form Prospectus dated February 4, 2020
Receipted on February 6, 2020
Offering Price and Description:
5,679,666 Class A Shares issuable without payment upon the conversion of 5,679,666 Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
Iain Martin
Project #2982986

Issuer Name:
Lightspeed POS Inc.
Principal Regulator - Quebec
Type and Date:
Amendment dated February 6, 2020 to Final Shelf Prospectus dated August 6, 2019
NP 11-202 Receipt dated February 10, 2020
Offering Price and Description:
C$1,000,000,000.00 - Subordinate Voting Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2944228

Issuer Name:
SmartCentres Real Estate Investment Trust (formerly, Smart Real Estate Investment Trust)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated February 5, 2020
NP 11-202 Receipt dated February 6, 2020
Offering Price and Description:
$3,000,000,000.00 - Variable Voting Units, Subscription Receipts, Warrants, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3010708

Issuer Name:
Tetra Bio-Pharma Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 6, 2020
NP 11-202 Receipt dated February 7, 2020
Offering Price and Description:
$15,500,009.00 - 29,245,300 Units
Price: $0.53 per Unit
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
-
Project #3009991

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Wedge Capital Management L.L.P.	Portfolio Manager	February 4, 2020
New Registration	Red Cloud Securities Inc.	Investment Dealer	January 30, 2020

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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) – Housekeeping Amendments to Form 2 for Consistency with the Current Cultural and Business Practices – Notice of Commission Deemed Approval

NOTICE OF COMMISSION DEEMED APPROVAL

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

HOUSEKEEPING AMENDMENTS TO FORM 2 – NEW CLIENT APPLICATION FORM (FORM 2) FOR CONSISTENCY WITH THE CURRENT CULTURAL AND BUSINESS PRACTICES

The Ontario Securities Commission did not object to the classification of IIROC's proposed housekeeping amendments to Form 2 for consistency with the current cultural and business practices. Form 2 is amended by:

- removing the salutations from the "name" field (i.e. use of the terms "Mr.", "Mrs." and "Miss"), and
- replacing the term "IDA" at the top of the form with "IIROC".

The proposed housekeeping amendments are deemed to be approved and are effective immediately.

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 Manitoba Securities Commission, the Newfoundland and Labrador Office of the Superintendent of Securities, the Northwest Territories Office of the Superintendent of Securities, the Nova Scotia Securities Commission, the Nunavut Office of the Superintendent of Securities, the Office of the Yukon Superintendent of Securities, and the Prince Edward Island Office of the Superintendent of Securities did not object to the amendments.

A copy of IIROC's Notice of Approval/Implementation and the text of the approved amendments can be found at http://www.osc.gov.on.ca.

Please note that as of June 1, 2020, the requirements under Form 2 will no longer exist. This is because in the IIROC Rules, which will be effective as of June 1, 2020 and will replace the IIROC Dealer Member Rules (**DMR**, current until May 31, 2020), IIROC consolidated the client identification and know-your-client requirements and eliminated the reference to "applicable information required by Form 2" found in the current Rule 1300.2 of DMR. More information on the implementation of the IIROC Rules could be found at http://www.osc.gov.on.ca.

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. – Material Amendments to CDS Rules and External Procedures – Liquidity Risk Management – Notice of Commission Approval

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES AND EXTERNAL PROCEDURES – LIQUIDITY RISK MANAGEMENT

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved, on January 31, 2020, the Material Amendments to CDS Rules and External Procedures related to CDS's liquidity risk management.

A copy of the CDS notices was published for comment on November 07, 2019 for the CDS Rules and on December 12, 2019 for the CDS External Procedures, on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

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