The Ontario Securities Commission

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The Ontario Securities Commission carries out the powers, duties and functions given to it pursuant to the *Securities Commission Act, 2021* (S.O. 2021, c. 8, Sched. 9).

The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

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

Contact Centre:
Toll Free: 1-877-785-1555
Local: 416-593-8314
TTY: 1-866-827-1295
Fax: 416-593-8122
Email: inquiries@osc.gov.on.ca

Capital Markets Tribunal:
Local: 416-595-8916
Email: registrar@osc.gov.on.ca

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A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Mithaq Canada Inc. et al.

FOR IMMEDIATE RELEASE
December 12, 2023

MITHAQ CANADA INC. AND
AIMIA INC. AND
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE,
File No. 2023-28

TORONTO – The hearing in the above-named matter scheduled to be heard on December 13, 2023 at 10:00 a.m. will be heard on December 13, 2023 at 9:30 a.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.2 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
December 13, 2023

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

TORONTO – The Tribunal issued its Reasons and Decision on Motion Regarding Confidentiality in the above-named matter.

A copy of the Reasons and Decision on Motion Regarding Confidentiality dated December 12, 2023 is available at capitalmarketstribunal.ca.

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media_inquiries@osc.gov.on.ca

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inquiries@osc.gov.on.ca

A.2.3 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
December 14, 2023

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

TORONTO – The attendance in the above-named matter scheduled to be heard on June 10, 2024 at 10:00 a.m. will instead be heard on June 7, 2024 at 10:00 a.m. by videoconference.

Members of the public may observe the attendance by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.4 Mithaq Canada Inc. et al.

FOR IMMEDIATE RELEASE
December 14, 2023

MITHAQ CANADA INC. AND
AIMIA INC. AND
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE,
File No. 2023-28

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

A copy of the Order dated December 14, 2023 is available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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media_inquiries@osc.gov.on.ca

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A.2.5 Nvest Canada Inc. et al.

FOR IMMEDIATE RELEASE
December 15, 2023

NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON,
File No. 2023-1

TORONTO – The merits and sanctions hearing in the above-named matter scheduled to be heard on January 11, 2024 at 10:00 a.m. will instead be heard on February 8, 2024 at 10:00 a.m.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.6 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 15, 2023

BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9

TORONTO – The previously scheduled days of January 29, 30 and 31, 2024 will not be used for the merits hearing in the above-named matter. The merits hearing will continue on February 1, 5, 6, 12, 13, 14, April 30 and May 1, 2024 at 10:00 a.m. on each day.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.7 Harry Stinson et al.

FOR IMMEDIATE RELEASE
December 18, 2023

HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY,
File No. 2022-3

TORONTO – The Tribunal issued its Reasons and Decision on Sanctions and Costs and Order in the above named matter.

A copy of the Reasons and Decision on Sanctions and Costs and Order dated December 15, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

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A.2.8 Krystal Jean Vanlandschoot

FOR IMMEDIATE RELEASE
December 18, 2023

KRYSTAL JEAN VANLANDSCHOOT,
File No. 2021-6

TORONTO – A preliminary attendance in the above-named matter is scheduled to be heard on January 22, 2024 at 10:00 a.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
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A.2.9 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
December 18, 2023

XIAO HUA (EDWARD) GONG,
File No. 2022-14

TORONTO – An attendance in the above-named matter is scheduled to be heard on January 9, 2024 at 10:00 a.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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Ontario Securities 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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A.3
Orders

A.3.1 Mithaq Canada Inc. et al. – ss. 8, 21.7, 104, 127(1), 127(2)

IN THE MATTER OF
MITHAQ CANADA INC.

AND

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

File No. 2023-28

Adjudicators: Timothy Moseley (chair of the panel)
James D. G. Douglas
Dale R. Ponder

December 14, 2023

ORDER
(Sections 8, 21.7, 104 and subsections 127(1) and (2) of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on December 12 and 13, 2023, the Capital Markets Tribunal held a hearing by videoconference with respect to:

i. Mithaq Canada Inc.'s application for an order:

a. cease trading the shareholder rights plan adopted by Aimia Inc. on December 7, 2023 (the **Shareholder Rights Plan**);

b. cease trading the private placement announced by Aimia Inc. on October 13, 2023 (the **Private Placement**);

c. additional relief related to the Private Placement, including an order setting aside the October 20, 2023, decision of the Toronto Stock Exchange not to require shareholder approval of the Private Placement; and

d. other relief under s. 104 of the *Securities Act*; and

ii. Aimia Inc.'s cross-application with respect to the availability of the exemption under s. 2.2(3) of *National Instrument 62-104 – Take-Over Bids and Issuer Bids* to Mithaq Canada Inc. relating to purchases by Mithaq Canada Inc. of shares of Aimia Inc. during Mithaq Canada Inc.'s offer for all the outstanding common shares of Aimia Inc. made on October 5, 2023;

AND WHEREAS counsel for Aimia Inc. represented that Aimia Inc. has undertaken to revoke the Shareholder Rights Plan upon the issuance of this order;

ON READING the application records, exhibits tendered at the hearing and the written submissions of each of Mithaq Canada Inc., Aimia Inc., the Toronto Stock Exchange, Staff of the Ontario Securities Commission, and each of the intervenors Eagle 1250 Investment Group LLC and the Special Committee of the Board of Directors of Aimia Inc., and on hearing the submissions of the representatives of each party and each intervenor;

IT IS ORDERED, for reasons to follow, that:

1. Mithaq Canada Inc.'s application is dismissed; and

2. Aimia Inc.'s cross-application is dismissed.

"Timothy Moseley"

"James D. G. Douglas"

"Dale R. Ponder"

A.3.2 Harry Stinson et al. – ss. 127(1), 127.1

IN THE MATTER OF
HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY

File No. 2022-3

Adjudicators: Cathy Singer (chair of the panel)
Sandra Blake
Geoffrey D. Creighton

December 15, 2023

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

WHEREAS on September 19, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on Harry Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp., Restoration Funding Corporation, and Buffalo Central LLC (collectively, the **Respondents**) as a result of the findings in the Reasons and Decision on the merits, issued on June 27, 2023;

ON READING the materials filed by the parties, including the Agreed Statement of Facts dated August 10, 2023, and on hearing the submissions of the representatives for Staff of the Ontario Securities Commission and for the Respondents;

IT IS ORDERED THAT:

1. with respect to the Respondents:

   a. pursuant to paragraph 2 of s. 127(1) of the *Securities Act* (***Act***) that trading in any securities or derivatives shall cease permanently;

   b. pursuant to paragraph 2.1 of s. 127(1) of the *Act* that the acquisition of any securities shall cease permanently;

   c. pursuant to paragraph 3 of s. 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply permanently;

   d. pursuant to paragraph 8.5 of s. 127(1) of the *Act* that the respondents are permanently prohibited from becoming or acting as a registrant or as a promoter; and

   e. pursuant to s. 127.1 of the *Act* that the respondents, jointly and severally, shall pay to the Commission $166,000, for the costs of the investigation and hearing.

2. with respect to Stinson:

   a. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act* that Stinson resign any positions that he holds as a director or officer of an issuer or registrant, except Stinson is permitted to remain in his role as director and officer of a corporation that is registered as a brokerage under the *Real Estate and Business Brokers Act, 2002*, SO 2002, c 30, Schedule C, provided Stinson is the sole shareholder of the corporation and does not issue or propose to issue securities of the corporation to any third party; and

   b. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act* that Stinson is permanently prohibited from acting as a director or officer of an issuer or registrant, except as provided in clause 2.a. above;

3. with respect to Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp. and Buffalo Central LLC:

   a. pursuant to paragraph 9 of s. 127(1) of the *Act* that they, jointly and severally, shall pay to the Commission an administrative penalty of $600,000; and

   b. pursuant to paragraph 10 of s. 127(1) of the *Act* that they, jointly and severally, shall disgorge to the Commission the amounts of $13.177 million and US$364,000.

“Cathy Singer”

“Sandra Blake”

“Geoffrey D. Creighton”

A.4
Reasons and Decisions

A.4.1 Go-To Developments Holdings Inc. et al.

Citation: *Go-To Developments Holdings (Re)*, 2023 ONCMT 49
Date: 2023-12-12
File No. 2022-8

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO

REASONS AND DECISION ON MOTION REGARDING CONFIDENTIALITY

Adjudicators:	M. Cecilia Williams (chair of the panel) Sandra Blake	
Hearing:	In writing, final written submissions received December 4, 2023	
Appearances:	Erin Hoult	For Staff of the Ontario Securities Commission
	Dana Carson	For Oscar Furtado

[1] We issued reasons, dated November 24, 2023,[1] for our decisions on Oscar Furtado's motions: for an adjournment of the merits hearing; for further disclosure from Staff; and that the hearing and documents filed in connection with the hearing be confidential. Our November 24, 2023, Order specifies which portions of the transcript and documents filed shall be kept confidential.

[2] The Tribunal's practice is to deliver reasons to parties 24 hours in advance of publication. After receiving the reasons and order, Furtado requested that they be kept confidential temporarily so that he had additional time to consider privacy issues arising from the reasons and order. We sought and received submissions regarding Furtado's request.

[3] Furtado submits that the Tribunal ought to review the reasons and the order to ensure that all personal medical information regarding Furtado's specific symptoms, medical history, diagnosis, examinations, and treatments is treated as confidential in keeping with the Tribunal's prior jurisprudence in other matters, including the recent decision in *Ali (Re)*.[2]

[4] Furtado submits that some of the redactions appear to be inconsistent. He provides examples of the dates of doctor appointments that are redacted in some instances and not in others. Furtado further submits that the reasons mention psychiatric self-assessments which ought to be redacted. Finally, Furtado notes that the name of his primary care physician has been misspelled.

[5] Staff submits that Furtado's request that we reconsider our decision, made via letter, is not proper. Staff further submits that if Furtado wishes to challenge the decision, he must do so through an appropriate review route. The Tribunal has made its decision and does not have the authority to reconsider its decision.

[6] We agree with staff.

[7] Section 21.1 of the *Statutory Powers Procedure Act*[3] provides that an administrative tribunal may "correct a typographical error, error of calculation or similar error made in its decision or order."

1 2023 ONCMT 44
2 2023 ONCMT 30
3 RSO 1990, c S.22

[8] We do not have the authority to reconsider our decision and decline to do so. We do have the authority to correct typographic errors. We find that the misspelling of Furtado's primary care physician is a typographical error and have made that correction to our decision.

Dated at Toronto this 12th day of December, 2023

"M. Cecilia Williams"

"Sandra Blake"

A.4.2 Harry Stinson et al. – ss. 127(1), 127.1

Citation: *Stinson (Re),* 2023 ONCMT 50
Date: 2023-12-15
File No. 2022-3

IN THE MATTER OF
HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Cathy Singer (chair of the panel) Sandra Blake Geoffrey D. Creighton	
Hearing:	By videoconference, September 19, 2023	
Appearances:	Hansen Wong	For Staff of the Ontario Securities Commission
	Macdonald Allen	For Harry Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp., Restoration Funding Corporation, and Buffalo Central LLC

REASONS AND DECISION ON SANCTIONS AND COSTS

1. OVERVIEW

[1] Between November 2016 and March 2020, the respondents raised approximately $13.177 million[1] and US$364,000 from the sale of securities related to the Buffalo Grand Hotel.

[2] In a decision on the merits,[2] the Tribunal found:

a. Harry Stinson, Buffalo Grand Hotel Inc. (**Hotel Inc**.), Stinson Hospitality Management Inc. (**Management Inc.**), and Buffalo Central LLC (**Buffalo Central**) illegally distributed securities contrary to s. 53(1) of the *Securities Act*[3] (***Act***) by not filing a preliminary prospectus and a prospectus;

b. Stinson and Stinson Hospitality Corp. (**Hospitality Corp.**) breached a temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents (collectively, the five corporate entities and Stinson, but not Stephen Kelley, who previously reached a settlement with the Ontario Securities Commission[4]) engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received from investors, and failing to properly record the use of investors' funds.

[3] Staff of the Commission requests an order that the respondents:

a. be removed permanently from Ontario's capital markets, as more particularly described below;

b. pay, jointly and severally, an administrative penalty in the amount of $1,000,000;

c. disgorge, jointly and severally, $13.177 million and US$364,000; and

d. pay, jointly and severally, costs of the investigation and hearing in the amount of $316,000.

1 All monetary amounts in these reasons refer to Canadian dollars, except where otherwise indicated.
2 *Stinson (Re)*, 2023 ONCMT 26 (**Merits Decision**)
3 RSO 1990 c S.5
4 *Stinson (Re)*, 2023 ONCMT 13 (***Kelley Settlement Decision***)

[4] For the reasons set out below, we conclude that it is in the public interest to order that:

a. Stinson be removed permanently from Ontario's capital markets, as more particularly described below, with a carve-out permitting him to remain as an officer and director of his registered real estate brokerage under the *Real Estate and Business Brokers Act, 2002*[5] (***REBBA***), subject to conditions;

b. Hotel Inc., Management Inc., Hospitality Corp., Buffalo Central and Restoration Funding Corporation (**Restoration Corp.**) be removed permanently from Ontario's capital markets, as more particularly described below;

c. Stinson, Hotel Inc., Management Inc., Hospitality Corp. and Buffalo Central, jointly and severally:

i. pay an administrative penalty in the amount of $600,000; and

ii. disgorge $13.177 million and US$364,000; and

d. the respondents, jointly and severally, pay costs of the investigation and hearing in the amount of $166,000.

2. LEGAL FRAMEWORK FOR SANCTIONS

[5] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the *Act*'s purposes, which include the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets.

[6] The sanctions listed in s. 127(1) of the *Act* are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[6]

[7] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case. Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case.[7]

[8] In previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions, which include:

a. the seriousness of the misconduct;

b. the respondent's level of activity in the marketplace or, in other words, the "size" of the contravention;

c. the respondent's experience in the marketplace;

d. whether the misconduct was isolated or recurrent;

e. whether the respondent benefitted or profited from the misconduct;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[8]

3. FACTORS RELEVANT TO SANCTIONS

3.1 Seriousness of the misconduct

[9] In considering the seriousness of the misconduct, we first examine the breach of the prospectus requirement, followed by the breach of the temporary cease trade order and the aggravating factors in this case. The respondents assert that their conduct was at most negligent. We disagree. We conclude that the respondents' misconduct is more serious than negligent, for the reasons discussed below.

3.1.1 Breach of the prospectus requirement

[10] The prospectus requirement is a cornerstone of Ontario securities law. It seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[9]

---

5 SO 2002, c 30, Schedule C
6 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
7 *Bradon Technologies Ltd. (Re),* 2016 ONSEC 19 at paras 28, 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 (***Cartaway***) at para 60
8 *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746
9 *Money Gate Mortgage Investment* Corporation *(Re)*, 2019 ONSEC 40, at para 168

[11] Staff submits that investors were unable to properly assess the risk of investing because the respondents failed to comply with the prospectus requirement. Staff further submits that Stinson's history ought to have made him aware of the need to seek professional advice about the application of Ontario securities law. Stinson's history includes a 2006 settlement with the Commission relating to a proposed hotel condominium project in which Stinson acknowledged that he had breached the registration and prospectus requirements of the *Act* in connection with that project.[10] Stinson's history also includes his more recent breaches of the temporary cease-trade order imposed by the Tribunal.

[12] Staff relies on *Sabourin (Re)*[11] and *Borealis International Inc. (Re)*[12]*.* The misconduct in each case included breaches of the prospectus requirement and the dealer registration requirement. Staff focuses on a common individual respondent to both cases as a comparison to Stinson. Staff submits that the individual respondent in *Sabourin* had been involved in raising approximately $4.4 million in breach of the *Act*. Staff further submits that the individual respondent was soon after involved in *Borealis* in raising approximately $610,000 from investors in breach of the *Act* at the same time as he was subject to a cease trade order while the decision and reasons in *Sabourin* were pending.

[13] Staff submits that in *Borealis* the individual respondent was ordered to pay an administrative penalty of $300,000, which represented nearly 50% of the sales in which he was involved. Staff further submits that his conduct was of sufficient concern to warrant permanent director and officer bans with a limited carve-out on the trading ban.

[14] The respondents submit that *Sabourin* and *Borealis* are distinguishable from the facts of this case on a number of grounds. The respondents focus on all of the respondents in *Sabourin* and *Borealis*, and not just the individual respondent, and submit that the total amount raised by all of the respondents in breach of the *Act* was over $16 million and $33 million, respectively,[13] a significantly larger scale than in this case. The respondents further submit that, unlike in this case, the individual respondent common to both of those cases profited from and earned commission on the money raised.[14] The respondents further submit that some of the respondents in *Borealis* engaged in conduct in breach of the *Act* while under a recent cease trade order at the time pending the *Sabourin* decision, and that this more recent history of securities law violations contributed to the serious penalties issued.[15]

[15] The respondents also point to the finding in the merits decision that the respondents did not have specific intent to harm investors, and the purpose of the distribution was to fund a bona fide underlying business – the hotel project. The respondents submit that a lack of dishonest motive should serve to distinguish the respondents' misconduct from the cases cited by Staff. They further submit that their conduct was, at most, negligent and therefore not as serious as it otherwise might have been.

[16] We do not agree with the respondents' submission that their conduct was, at most, negligent, and therefore should be distinguished from *Sabourin* and *Borealis*. While we agree that the conduct of the respondents was not as serious as that of the respondents in *Sabourin* and *Borealis*, we agree with Staff that Stinson (and, by extension, the corporate respondents) simply should have known better, given Stinson's previous settlement with the Commission involving a breach of the prospectus requirements. While ignorance of the law is not a defence to a breach of the prospectus requirements, in this case Stinson was certainly aware of the prospectus requirements. As a result, the breach of the prospectus requirements by Stinson and the corporate respondents was the result of either a clear disregard for, or a reckless indifference to, the prospectus requirements under the *Act.*

3.1.2 Breach of a temporary cease trade order

[17] While subject to a temporary cease trade order, Hospitality Corp. issued approximately 50,944 shares in Hospitality Corp. to nine individuals. The issuance of shares was in lieu of interest payments owing under the individual investors' agreements. Stinson signed the share certificates in his capacity as President of Hospitality Corp.[16] The Tribunal found that although the trading was limited and there may not have been active solicitation in the issuance of the shares, the issuance of shares was a breach of the temporary cease trade order.[17]

[18] A breach of a Tribunal order shows a disregard for the rule of law as well as for the Tribunal and its processes and undermines public confidence in capital markets.[18]

[19] Staff submits that Stinson's and Hospitality Corp.'s failure to consult with counsel before acting in breach of the temporary cease trade order is another example of his decision not to seek legal advice regarding the applicability of Ontario

10 Exhibit 1, Agreed Statement of Facts dated August 2023, 2023 at para 7 and attached Settlement Agreement, dated December 15, 2006
11 2010 ONSEC 10 (***Sabourin***)
12 2011 ONSEC 11 (***Borealis***)
13 *Borealis* at para 9; *Sabourin* at para 70
14 *Borealis* at para 22; *Sabourin* at para 81
15 *Sabourin* at para 54
16 Merits Decision at paras 69-71
17 Merits Decision at para 72
18 *Da Silva (Re)*, 2012 ONSEC 32 at paras 8-9

securities law to the hotel project and demonstrates a pattern of acting on uninformed beliefs without first seeking appropriate advice.

[20] The respondents submit that the limited nature of the breach should be considered to ensure proportionate sanctions are ordered. Only two of the respondents contravened the temporary cease trade order and the breach was limited to issuing shares to nine existing investors in lieu of interest payments.

[21] We find that the breach of the cease trade order was another instance of Stinson and Hospitality Corp. disregarding Ontario securities law. Although the scope of the breach was limited, we give it moderate weight in considering our sanctions decision and costs decision.

3.1.3 Aggravating factors

[22] Staff submits that there are two aggravating factors going to the seriousness of the misconduct. The first we refer to as recordkeeping deficiencies that engage the Tribunal's public interest jurisdiction and the second are certain false and misleading statements made to investors about the material terms of the investments. We agree that both of these factors are aggravating when considering the seriousness of the misconduct.

[23] The respondents failed to segregate investor funds, failed to maintain accurate records of funds received from investors, and failed to properly record the use of investors' funds, thus engaging the Tribunal's public interest jurisdiction.[19]

[24] Staff submits that conduct of this sort does not attract an independent administrative penalty, but it is an aggravating factor. In support, Staff cites *Majestic Supply Co. Inc. (Re)*[20] and *Cartu (Re)*.[21]

[25] The respondents submit that the nature of the conduct that was found to be contrary to the public interest in *Majestic* and *Cartu* is distinguishable from the conduct in this case, in that it was more egregious, and that the conduct in this case should not be considered an aggravating factor. The respondents submit that in *Majestic* and *Cartu* the respondents were involved in the business of trading or engaging in deceptive and fraudulent practices, neither of which was found to be the case in the merits hearing for this proceeding.

[26] We agree with the respondents that the misconduct in *Majestic* and *Cartu* was more egregious than in this case. However, we also accept Staff's submission that those cases stand for the principle that conduct which engages the public interest jurisdiction can be an aggravating factor in assessing the seriousness of the misconduct.

[27] Staff submits that a second aggravating factor going to the seriousness of the misconduct is the false and misleading statements made by Stinson and Hotel Inc. to investors about certain material terms that investors considered relevant in making their decision to invest in the hotel project. Stinson and Hotel Inc. admitted to making the following misleading statements:

a. suite purchases were qualified investments for RRSPs and TFSAs;

b. investor funds were secured by a mortgage; and

c. investor funds would be secured by an interest reserve.[22]

[28] The respondents submit that Stinson and Hotel Inc. intended for the representations to be true at the time that they were made and removed the representations from subsequent versions of the investment agreements.

[29] The respondents further submit that the Tribunal in the merits decision did not find that the respondents were liable for making false or misleading statements to investors that would be relevant to entering into or maintaining a trading relationship. Therefore, this Tribunal ought not to give any weight to the false or misleading statements.

[30] While the Tribunal in the merits decision did not find the respondents to be in a trading relationship with investors, Stinson and Hotel Inc. nevertheless admitted to making the false or misleading statements to investors.[23] We agree with Staff and find that the false and misleading statements further aggravate the seriousness of Stinson's and Hotel Inc.'s misconduct.

3.2 Level of activity and whether isolated or recurrent

[31] Staff submits that the respondents' level of activity in the capital markets was extensive and recurrent. Over a 40-month period the respondents raised over $13 million from approximately 207 investors through subscription agreements. The

19 Merits Decision at paras 73-77
20 2013 ONSEC 42 (***Majestic***) at para 83
21 2022 ONCMT 21 (***Cartu***) at paras 16-17
22 Mertis Decision at para 62
23 Merits Decision at paras 61-68

respondents actively promoted the investments and continued to issue shares in violation of the temporary cease trade order.

[32] The respondents emphasize that Stinson is a real estate developer and his activity in the capital markets was limited to raising money for the hotel project.

[33] Despite the activity being limited to the hotel project, we find that raising over $13 million from approximately 207 investors is a significant level of activity in the capital markets.

3.3 Experience in the market

[34] Staff submits that Stinson, as the directing mind of the corporate respondents, had the relevant experience to appreciate the seriousness of his misconduct and the misconduct of the corporate respondents.

[35] Staff further submits that Stinson's experience included being previously registered as a chief compliance officer and as a limited market dealer. Stinson's previous settlement agreement with the Commission provided him with additional experience that underscored the requirement to carefully determine Ontario securities law requirements before engaging with Ontario investors.

[36] The respondents submit that Stinson is a real estate developer. The respondents sought to cast Stinson as inexperienced in the capital markets and noted that he was only registered for a short period of time during 2006 until early 2007.

[37] We view Stinson's experience in Ontario's capital markets, including his previous securities law violations that resulted in a settlement agreement with the Commission, as a significant factor in determining the appropriate sanctions.

3.4 Benefit

[38] The respondents submit that there is no evidence that Stinson, or any of the corporate respondents, obtained any benefit from the investments. There was no compensation for trades while raising funds and the funds were not raised for any purpose other than the hotel project.

[39] We agree that there is no evidence of any direct benefit to the respondents. We find there was an indirect benefit to them from raising money for the hotel project, which advanced the respondents' interests. We therefore give this factor limited weight.

3.5 Mitigating factors

[40] Staff submits that Stinson cannot plead an erroneous belief that Ontario securities law was not applicable in connection with the hotel project as a mitigating factor. Staff asserts that Stinson's choice not to avail himself of legal advice given his history and even when he was represented by counsel illustrates his cavalier approach to Ontario securities law, including Tribunal orders.

[41] We find that Stinson's actions should be distinguished from an individual who holds an honest but incorrect belief that Ontario securities law is not engaged given Stinson's previous history with the Commission and the fact that he had legal counsel involved in connection with the hotel project.

[42] The respondents submit that Stinson is remorseful. He has acknowledged the impropriety of his conduct and fully participated and co-operated with the Commission during its investigation and during the subsequent merits hearing.

[43] We acknowledge that Stinson is remorseful and has fully participated and co-operated, particularly by entering into two agreed statements of fact with respect to this proceeding. We give a moderate amount of weight to this factor in both our sanctions decision and costs decision.

3.6 Specific and general deterrence

[44] We consider specific and general deterrence when assessing the appropriate administrative penalty below.

[45] Staff submits that strong deterrent messages both specific and general are necessary in this case given the respondents' demonstrated failure to appreciate the necessity of compliance after a previous settlement with the Commission and again after the Tribunal issued a cease-trade order in March 2020.

[46] The respondents submit that Staff is putting undue weight on general deterrence in seeking the maximum administrative penalty of $1 million. The respondents cite *Cartaway Resources Corp. (Re)* where the Supreme Court of Canada cautioned that:

> [t]he weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable.[24]

[47] The respondents submit that disgorgement, an administrative penalty and market restrictions when considered globally achieve the goals of specific and general deterrence. Unreasonable weight need not be given to specific or general deterrence when considering the amount of an administrative penalty.

[48] In this case we give weight to both specific and general deterrence. We give more weight to specific deterrence due to the respondents' failure to appreciate the importance of complying with Ontario securities law, especially in light of Stinson's previous settlement in 2006 with the Commission.

4. NON-MONETARY SANCTIONS

[49] Staff seeks to have the respondents permanently removed from Ontario's capital markets. The respondents did not object, other than seeking two carve-outs from the non-monetary sanctions.

4.1 Director and Officer Bans

[50] The respondents submit that Stinson has no intention of participating in the capital markets. However, Stinson seeks a narrow and limited carve-out that permits him to remain in his role as director and officer of a corporation that is registered as a brokerage under *REBBA*. Stinson undertakes to be the sole shareholder of the corporation and to refrain from issuing or proposing to issue securities to any third parties.

[51] Staff submits that Stinson has not adduced any evidence that the proposed carve-out is necessary for his livelihood. In any event, Stinson does not need to control a corporation to operate a brokerage, or act as a broker under *REBBA*. Staff proposes that Stinson re-organize his brokerage so as not to operate it as a corporation.

[52] As support for the requested carve-out, Stinson cites *Simply Wealth Financial Group Inc.*[25] and *Rezwealth Financial Services (Re)*.[26] However, these two cases are distinguishable from this one because they provide for trading carve-outs with such carve-outs only becoming effective after the financial penalties were paid.

[53] We find that *Solar Income Fund Inc. (Re)*,[27] is more persuasive in supporting a carve-out for acting as a director and officer. In *Solar Income Fund*, despite a finding of fraud, a limited carve-out was granted for personal corporations. The Tribunal stated:

> we acknowledge Staff's observation that it is unaware of any Tribunal case in which fraud was found against an individual who then benefited from a carve-out permitting the individual to act as an officer or director of an issuer. On the other hand, we are unaware of any authority that engages in a discussion of the propriety of that kind of carve-out in such a situation…here, the conduct does not mandate the denial of a carve-out.[28]

[54] We must consider the facts before this Tribunal. Here, the carve-out requested by Stinson has no connection with raising public funds. The rationale is tied to Stinson's career and the existing corporate structure of his real estate brokerage company. The proposed limit on the carve-out, that Stinson be the sole shareholder and refrain from issuing any securities to third parties, is reasonable. There are plainly benefits to operating a business as a corporation and with the limits proposed we do not see the need for Stinson to re-organize his brokerage business to avoid incorporation.

4.2 Trading Bans

[55] Staff seeks to permanently ban the respondents from trading in securities or derivatives, acquiring securities or relying on any exemptions contained in Ontario securities law, as more particularly described below. The respondents do not oppose the permanent trading bans, as Stinson does not intend to have any further participation in the capital markets, subject to the requested carve-out discussed below.

[56] The respondents seek clarification from the Tribunal on what is permissible as it relates to investors' shares of the corporate respondents that are held within registered accounts (RRSPs or TFSAs). In particular, the respondents seek a carve-out from any trading ban on securities of the corporate respondents to allow for investors to be able to transfer

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[24] *Cartaway* at para 64
[25] 2013 ONSEC 2
[26] 2014 ONSEC 18
[27] 2023 ONCMT 3 (***Solar Income Fund***)
[28] *Solar Income Fund* at para 149

their shares out of their registered accounts and for the corporate respondents to give any required authorizations to the investors to do so.

[57] The respondents seek a further carve-out from any trading ban to permit investors' shares of the corporate respondents to be redeemed or cancelled upon return of their investment.

[58] Staff submits that the respondents are not entitled to any trading carve-outs because participation in the capital markets is a privilege and not a right.[29]

[59] Staff further submits that a trading carve-out is not necessary because the definition of a "trade" under the *Act* would not capture an investor's redemption or cancellation of existing shares because the redemption or cancellation of existing shares held by investors does not involve selling or disposing of securities by the respondents for valuable consideration, or any acts in furtherance of such sale or disposition. Similarly, a transfer of shares is expressly excluded from the definition of a "trade" under the *Act*, except where the transfer is for the purpose of giving collateral for a debt made in good faith.[30]

[60] We decline to make a finding, in the absence of a proper factual record, about whether hypothetical trading activity meets the definition of "trade" under the *Act* and whether a resulting carve-out from a trading or acquisition prohibition is necessary. The respondents can apply to the Tribunal for a variation of our order should they require relief in the future arising from a more definitive factual record.

5. FINANCIAL SANCTIONS

[61] In the merits hearing, Restoration Corp. was only found to have engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received from investors, and failing to properly record the use of investors' funds. Restoration Corp. was not found to have breached s. 53(1) of the *Act* or the temporary cease trade order. Accordingly, the Tribunal cannot order disgorgement or an administrative penalty against Restoration Corp. as this conduct does not constitute a failure to comply with Ontario securities law, as required by paragraphs 8 and 9 of s. 127(1) of the *Act*.

5.1 Disgorgement

[62] Disgorgement orders are intended to: (a) ensure that respondents do not benefit from their breaches of the *Act*; and (b) deter the respondents and others from engaging in similar misconduct.[31]

[63] The Tribunal has set out various factors that are relevant to determining whether a disgorgement order is appropriate, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount that a respondent obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[32]

[64] It is not in dispute that the respondents received $13.177 million and USD$364,000 from the sale of securities through subscription agreements.

[65] The respondents submit that any disgorgement order ought to be conditional on the hotel returned to operation and ultimately sold in order to repay the investors. The disgorgement amount ordered should also be subject to adjustment after this occurs and should be reduced to reflect any amounts that are repaid to investors. During oral submissions, the respondents clarified that they were seeking to have the implementation of any disgorgement order delayed for a period of three years to allow them to attempt to sell the hotel and repay investors.

[66] Staff submits that the respondents' assertion that no investor funds are available to satisfy a disgorgement order verges on an assertion of impecuniosity. Staff further submits that no evidence has been provided to establish the respondents' inability to pay a disgorgement amount, and therefore this assertion should be given no weight. Staff cites *Maple Leaf*

29 *Kitmitto (Re)*, 2023 ONCMT 4 at para 22, citing *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 (ONSC) at para 55
30 *Act*, s 1(1)
31 *Al-Tar Energy Corp. (Re)*, 2011 ONSEC 1 at para 71
32 *Pro-Financial Asset Management Inc. (Re)*, 2018 ONSEC 18 at para 50

Investment Fund Corp. (Re),[33] where the Tribunal held that although "a respondent's ability to pay is one of the factors to be considered in determining the appropriate monetary sanctions", where the respondents only make submissions and provide no evidence in support of their claims of impecuniosity, the factor will be given limited weight in determining the sanctions to be imposed, "and in particular, the disgorgement orders and administrative penalties…".[34]

[67] We concur with Staff. In the absence of any evidence of impecuniosity, we cannot accept the bare statement that any disgorgement order will have very little chance of being satisfied unless the hotel is able to resume operations and is sold as a going concern.

[68] The respondents urge us to put weight on the factor of whether investors who suffered losses are likely to be able to obtain redress. The respondents submit that there remains a real asset and any chance the investors have to recoup their investments is if the hotel is returned to operations and sold as a going concern.

[69] In support, the respondents cite *Phillips (Re)*,[35] as authority for the proposition that the Tribunal may exercise its discretion to decline ordering full disgorgement in order to avoid depleting the assets available to investors.[36]

[70] Staff submits that the onus is not on Staff to demonstrate that victims of misconduct are unlikely to obtain redress. Rather, if a respondent is able to show that those who suffered losses are likely to obtain redress, that may provide an appropriate basis to reduce a disgorgement amount or to choose not to order any disgorgement.[37] Staff submits that there is no evidence pertaining to the damage caused by a fire to the hotel, an appraisal of the hotel, a sale price for the hotel, any potential buyers for the hotel, or where the sales proceeds would go.

[71] We distinguish *XI Biofuels (Re)*, cited in *Phillips*. In that case, disgorgement was only ordered against the individual respondents and not the corporate respondents because the corporate respondents were in bankruptcy proceedings and there was opportunity for the investors to recoup some losses through those proceedings.[38]

[72] We likewise distinguish *Phillips.* In that case, Phillips, the directing mind of the corporate entity, was ordered to disgorge the full amount raised less the amount distributed to investors. In that case, the corporate entity was already in a court supervised wind-up.

[73] The facts before us are different. We are sympathetic to the idea of investors obtaining redress through the sale of the assets. However, there is insufficient evidence in this case that such an outcome is on the horizon or that a process involving an independent third party, such as a bankruptcy trustee or receiver, would occur. The corporate respondents remain under the control of Stinson.

[74] The respondents further submit that a disgorgement order is dependent on whether the amount is reasonably ascertainable. The respondents assert that there is no evidence as to the amount raised by each respondent, even if the total amount raised is ascertainable. The respondents cite the settlement order of Stephen Kelley where no disgorgement was ordered.

[75] We reject this submission. Kelley was an employee acting on behalf of the respondents. He and Staff negotiated a settlement agreement. The settlement agreement did not include disgorgement. The Tribunal, in approving the settlement agreement, confirmed that it may order a respondent to disgorge funds obtained in contravention of the *Act* regardless of whether that respondent personally obtained the funds, but agreed with Staff that a disgorgement order was not necessary in the totality of the circumstances.[39]

[76] We conclude that the respondents, other than Restoration Corp., must disgorge the full amount. It was obtained through non-compliance with Ontario securities law, investors have not recovered their investments, the amount is ascertainable, the hotel project has not been transferred to a third party over which Stinson has no control, and there is insufficient evidence that investors may obtain redress from a hotel sale or any other source. Stinson remains the directing mind of the corporate respondents. We therefore find that the respondents, other than Restoration Corp., shall disgorge $13.177 million and USD$364,000 jointly and severally.

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33 2012 ONSEC 8 (***Maple Leaf***)
34 *Maple Leaf* at para 18
35 2015 ONSEC 36 (***Phillips***)
36 *Phillips* at para 34, citing *XI Biofuels (Re)*, 2010 ONSEC 29 (***XI Biofuels***) at para 72
37 *Pro-Financial Asset Management Inc. (Re)*, 2018 ONSEC 18 at para 70
38 *XI Biofuels* at para 72
39 *Kelley Settlement Decision* at para 15

5.2 Administrative penalty

[77] The purpose of an administrative penalty is to deter respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.[40]

[78] Staff seeks a penalty of $1 million payable jointly and severally by the respondents.

[79] Staff submits that in *Rowan et al.*,[41] the Tribunal noted that an administrative penalty should be of a magnitude to ensure effective deterrence. The Tribunal attaches a cost to non-compliance. Financial sanctions must be significant in order to have their intended deterrent effect.[42]

[80] The respondents submit that it would be inconsistent with the principle of proportionality to grant Staff's request of a $1 million administrative penalty when the Tribunal has historically reserved such penalty for far more egregious conduct such as fraud or where profits are realized as a result of misconduct.

[81] The factors to consider in ordering an appropriate administrative penalty were outlined in *Global Energy Group Ltd et al*.:[43]

> …factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized a profit as a result of the misconduct; the amount of money raised from investors; and the level of administrative penalties imposed in other cases.[44]

[82] The respondents cite three cases to support an administrative penalty below the maximum requested by Staff:

a. *Phillips* – the respondents perpetrated a fraud in raising $19 million and Phillips, the directing mind behind the enterprise, received an administrative penalty in the amount of $700,000;[45]

b. *Black Panther et al.*[46] – in addition to fraud, the respondents engaged in impermissible trading and advising, conducting an illegal distribution and the owner misled Staff. The company and its owner raised $425,000. The administrative penalty was $300,000;[47]

c. *York Rio Resources Inc. et al.*[48] – the respondents carried on no legitimate business, raising $18 million through their fraudulent conduct. The three directing minds were ordered to pay an administrative penalty of $1 million each while the remaining respondents who were not directing minds, were ordered to pay administrative penalties in the range of $75,000 - $200,000.[49]

[83] The respondents point to the merits decision to reaffirm that there was a bona fide business during the start-up phase of the hotel project. They submit that there are no allegations of fraud and there is no evidence that the money raised was used for any other purpose than the hotel project. The respondents submit that an appropriate administrative penalty is $100,000.

[84] Considering the factors outlined in *Global Energy* including the related consideration of such factors above, we find that the misconduct was serious, there were multiple breaches of the *Act*, there was significant activity in the capital markets and Stinson had significant experience, including a prior settlement with the Commission. However, the scope of the misconduct was limited to capital raising for the hotel project, Stinson did not directly benefit or receive a profit from the activities and the conduct was not fraudulent. In addition, Stinson was remorseful and cooperated throughout the proceeding. We consider the administrative penalties ordered in other cases. In particular, we note that significant weight is attached to those respondents who act as directing minds of the corporations involved in the misconduct. As a result, we conclude that an administrative penalty against the respondents, other than Restoration Corp., in the amount of $600,000 is appropriate.

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40 *Limelight Entertainment Inc. et al.*, 2008 ONSEC 28 at para 67
41 2009 ONSEC 46 (***Rowan***)
42 *Rowan* at paras 70, 73-74
43 2013 ONSEC 44 (***Global Energy***)
44 *Global Energy* at para 36
45 *Phillips* at para 69
46 2017 ONSEC 8 (***Black Panther***)
47 *Black Panther* at paras 1-2, 79
48 2014 ONSEC 9 (***York Rio***)
49 *York Rio* at paras 78-81.

6. COSTS

[85] Section 127.1 of the *Act* grants the Tribunal the discretion to order a person or company to pay the costs of an investigation and/or a hearing if the Tribunal is satisfied that they have not complied with Ontario securities law or have not acted in the public interest.

[86] Staff requests costs of the investigation and hearing of $316,000, consisting of fees of $300,000 and disbursements of $16,000, representing a reduction of approximately 40% of the total fees incurred.

[87] The respondents submit that the costs sought by Staff are significant and point to the fact that Staff also investigated another respondent, Kelley, who settled this proceeding, and it is not clear if any of the costs claimed in this proceeding relate to Staff's investigation and settlement with Kelley.

[88] The respondents further submit that two of the allegations were not proven by Staff: (i) that the respondents were in the business of trading; and (ii) that the respondents made misleading statements relevant to an investor deciding whether to enter into or maintain a trading relationship with the respondents. The respondents submit that these were primary allegations which would have involved considerable effort on the part of Staff but which were not proven, and there is no evidence about the time spent and the amounts claimed on these allegations.

[89] Finally, the respondents submit that insufficient consideration has been given to the cooperation by the respondents in this proceeding. Two agreed statements of fact were filed avoiding lengthy evidentiary hearings on the merits and sanctions.

[90] We agree with the respondents' submissions. For the reasons cited above, including taking the respondents' submissions into account, we find that it is appropriate to set costs in the amount of $150,000 for fees plus $16,000 for disbursements for a total of $166,000 to be paid by the respondents jointly and severally. This amount represents an approximate 70% reduction in total fees incurred for the investigation and hearing.

7. CONCLUSION

[91] For the reasons set out above, we will issue an order providing that:

a. with respect to the respondents, an order:

   i. pursuant to paragraph 2 of s. 127(1) of the *Act* that trading in any securities or derivatives shall cease permanently;

   ii. pursuant to paragraph 2.1 of s. 127(1) of the *Act* that the acquisition of any securities shall cease permanently;

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

   iv. pursuant to paragraph 8.5 of s. 127(1) of the *Act* that the respondents are permanently prohibited from becoming or acting as a registrant or as a promoter; and

   v. pursuant to s. 127.1 of the *Act* that the respondents, jointly and severally, shall pay to the Commission $166,000, for the costs of the investigation and hearing.

b. With respect to Stinson, an order:

   i. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act* that Stinson resign any positions that he holds as a director or officer of an issuer or registrant, except Stinson is permitted to remain in his role as director and officer of a corporation that is registered as a brokerage under *REBBA* provided Stinson is the sole shareholder of the corporation and does not issue or propose to issue securities of the corporation to any third party; and

   ii. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act* that Stinson is permanently prohibited from acting as a director or officer of an issuer or registrant, except as provided in clause b. i. above;

c. With respect to Stinson, Hotel Inc., Management Inc., Hospitality Corp. and Buffalo Central, an order:

i. pursuant to paragraph 9 of s. 127(1) of the *Act* that they, jointly and severally, shall pay to the Commission an administrative penalty of $600,000; and

ii. pursuant to paragraph 10 of s. 127(1) of the *Act* that they, jointly and severally, shall disgorge to the Commission the amounts of $13.177 million and US$364,000.

Dated at Toronto this 15th day of December, 2023

“Cathy Singer”

“Sandra Blake”

“Geoffrey D. Creighton”

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B. Ontario Securities Commission

B.1
Notices

B.1.1 Notice of Ministerial Approval of Multilateral Instrument 93-101 Derivatives: Business Conduct and Companion Policy 93-101 Derivatives: Business Conduct

NOTICE OF MINISTERIAL APPROVAL OF

MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

AND

COMPANION POLICY 93-101
DERIVATIVES: BUSINESS CONDUCT

December 21, 2023

Multilateral Instrument 93-101 *Derivatives: Business Conduct* (the **Rule**) and Companion Policy 93-101 *Derivatives: Business Conduct* (the **CP**) have received Ministerial approval pursuant to section 143.3(3)(a) of the *Securities Act* (Ontario).

The CSA Notice of Publication of the Rule and CP was published in the Ontario Securities Commission's (**OSC**) Bulletin on September 28, 2023 at **(2023), 46 OSCB 7759** and on the OSC website at **www.osc.ca**. The Rule and CP will become effective on September 28, 2024.

The full text of the Rule and the full text of the CP are reproduced in Chapter 5 of this Bulletin.

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B.2
Orders

B.2.1 SpectrAxe, LLC – s. 147

Headnote

Section 147 of the Securities Act (Ontario), section 15.1 of NI 21-101, section 12.1 of NI 23-101 and section 10 of NI 23-103 – Application for an order that a swap execution facility registered with the United States Commodity Futures Trading Commission is exempt from the requirement to be recognized as an exchange in Ontario and from the requirements of NI 21-101, NI 23-101 and NI 23-103 in their entirety – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990 c. S.5, as am., ss. 21, 147.
National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces, s. 10.

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

AND

IN THE MATTER OF
SPECTRAXE, LLC

ORDER
(Section 147 of the Act)

WHEREAS SpectrAxe, LLC (**Applicant**) has filed an application dated September 6, 2023 (**Application**) with the Ontario Securities Commission (**Commission**) requesting the following relief (collectively, the **Requested Relief**):

(a) exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act pursuant to section 147 of the Act; and

(b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (NI 21-101) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (NI 23-101) pursuant to section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103) pursuant to section 10 of NI 23-103;

AND WHEREAS the United States Commodity Futures Trading Commission (**CFTC**) granted the Applicant permanent registration as a swap execution facility (**SEF**) on December 5, 2022;

AND WHEREAS the Applicant has represented to the Commission that:

1.1 The Applicant is a limited liability company organized under the laws of Delaware. The ultimate parent company of the Applicant is Spectra Holding, LLC, a Delaware private limited liability company. At all times, at least 35% of the Directors shall be Public Directors (which have no ownership interest in the Applicant and no “material relationship” with the Applicant);

1.2 The Applicant is a marketplace for trading derivatives that are regulated as swaps by the CFTC. The Applicant's SEF Platform supports an order book and request for quote functionality. Additional trading functionality may be added in the future, subject to obtaining any required regulatory approvals;

1.3 In the United States, the Applicant operates under the jurisdiction of the CFTC and obtained registration with the CFTC to operate a SEF on December 5, 2022;

1.4 The Applicant is obliged under CFTC Regulations to have requirements governing the conduct of Participants, to monitor compliance with those requirements and to discipline Participants, including by means other than exclusion from the marketplace;

1.5 The Applicant employs an internal framework to administer surveillance;

1.6 Because the Applicant regulates the conduct of its Participants, it is considered by the Commission to be an exchange;

1.7 Because the Applicant has Participants located in Ontario, including (a) entities with their headquarters or legal address in Ontario (*e.g.*, as indicated by their Legal Entity Identifier (**LEI**)) and all traders conducting transactions on behalf of such Participants, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), and (b) traders physically located in Ontario who conduct transactions on behalf of any other entity, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

1.8 The Applicant does not offer access to retail clients;

1.9 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and

1.10 The Applicant satisfies all the SEF Criteria as described in Appendix 1 to Schedule "A";

AND WHEREAS the products traded on the Applicant's SEF Platform are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission attached hereto as Schedule "A" to this Order, or the determination whether it is appropriate that the Applicant continue to be exempted from the requirement to be recognized as an exchange, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgements of the Applicant to the Commission, the Commission has determined that Applicant satisfies the criteria set out in Appendix 1 to Schedule "A" and that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (i) pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act, and (ii) pursuant to sections 15.1(1) of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103.

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED December 12, 2023.

"Michelle Alexander"
Manager, Market Regulation

Schedule "A"

Terms and Conditions

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its registration as a swap execution facility (**SEF**) with the United States Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.

4. The Applicant must do everything within its control, which includes cooperating with the Ontario Securities Commission (**Commission**) as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the *Securities Act* (Ontario) in compliance with Ontario securities law.

Access

5. The Applicant will not provide direct access to a Participant in Ontario, including such entities with its headquarters or legal address in Ontario (*e.g.*, as indicated by their Legal Entity Identifier (**LEI**)), and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario Users**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible contract participant" under the United States' Commodity Exchange Act, as amended (**CEA**).

6. For each Ontario User provided direct access to its SEF Platform, the Applicant will require, as part of its application documentation or continued access to the SEF Platform, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

7. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote on the Applicant.

8. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the SEF Platform if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

9. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the CEA (and for greater certainty, excluding security-based swaps), without prior Commission approval.

Submission to Jurisdiction and Agent for Service

10. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

11. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Prompt Reporting

12. The Applicant will notify staff of the Commission promptly of:

    (a) any authorization to carry on business granted by the CFTC is revoked or suspended or made subject to terms or conditions on the Applicant's operations;

    (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;

    (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;

    (d) the Applicant marketplace is not in compliance with this order or with any applicable requirements, laws or regulations of the CFTC where it is required to report such non-compliance to the CFTC;

    (e) any known investigations of, or disciplinary action against, the Applicant by the CFTC or any other regulatory authority to which it is subject; and

    (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

13. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:

    (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading as customers of Participants (**Ontario Customers**);

    (b) the LEI assigned to each Ontario User, and, to the extent known by the Applicant, to Ontario Customers in accordance with the standards set by the Global Legal Entity Identifier System;

    (c) a list of all Ontario Users against whom disciplinary action has been taken since the previous report by the Applicant (or its regulation services provider (**RSP**) acting on its behalf), or, to the best of the Applicant's knowledge, by the CFTC with respect to such Ontario Users' activities on the Applicant and the aggregate number of disciplinary actions taken against all Participants since the previous report by the Applicant (or its RSP acting on its behalf);

    (d) a list of all active investigations since the previous report by the Applicant (or its RSP acting on its behalf) relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all Participants undertaken by the Applicant;

    (e) a list of all Ontario applicants for status as a Participant who were denied such status or access to the Applicant since the previous report, together with the reasons for each such denial; and

    (f) for each product,

        (i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Ontario Customers, presented on a per Ontario User or per Ontario Customer basis; and

        (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Ontario Customers, presented in the aggregate for such Ontario Users and Ontario Customers;

        provided in the required format.

Information Sharing

14. The Applicant will provide (or, if applicable, cause its RSP to provide) such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

Appendix 1 to Schedule "A"

Criteria for Exemption of a Foreign Exchange Trading OTC Derivatives from Recognition as an Exchange

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance, and

(h) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

(a) makes reasonable current and future capacity estimates;

(b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(c) reviews the vulnerability of those systems and data center computer operations to internal and external threats, including physical hazards and natural disasters;

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "**Principles for the Regulation and Supervision of Commodity Derivatives Markets**" (2011).

B.2.2 West Island Brands Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for a partial revocation of a cease trade order – issuer cease traded due to failure to file audited annual financial statements, related management's discussion and analysis and related certifications – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a private placement to accredited investors – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

WEST ISLAND BRANDS INC.

PARTIAL REVOCATION ORDER

UNDER THE SECURITIES LEGISLATION OF ONTARIO (the "Legislation")

Background

1. West Island Brands Inc. (the "**Issuer**") is subject to a failure-to-file cease trade order (the "**FFCTO**") issued by the Ontario Securities Commission (the "**Principal Regulator**") on May 5, 2023.

2. The Issuer has applied to the Principal Regulator for a partial revocation order of the FFCTO.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

Representation

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

    a. The Issuer was incorporated under the *Business Corporations Act* (British Columbia) on November 13, 2007.

    b. The Issuer's head office is located at 44 Victoria St., Suite #1102, Toronto, Ontario, M5C 1Y2, Canada.

    c. The Issuer is a reporting issuer in the provinces of Ontario, British Columbia and Alberta.

    d. The Issuer's authorized share capital consists of an unlimited number of common shares without par value (the "**Common Shares**"), of which a total of 15,109,030 Common Shares are issued and outstanding. The Issuer also has 2,792,184 warrants and 683,332 options outstanding.

    e. The Common Shares are listed for trading on the Canadian Securities Exchange (the "**CSE**") with the trading symbol "WIB". Pursuant to the FFCTO, the Common Shares have been suspended from trading on the CSE.

    f. The FFCTO was issued as a result of the Issuer's failure to file the following documents:

        i. audited annual financial statements for the year ended December 31, 2022;

        ii. management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2022; and

        iii. certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*,

        (collectively, the "**Unfiled Documents**").

    g. The Unfiled Documents were not filed in a timely manner as a result of unanticipated delays in securing a new Chief Financial Officer as well as a lack of sufficient funds.

h. In addition to the failure to file the Unfiled Documents, the Issuer also failed to file the following documents:

i. interim unaudited financial statements for the interim periods ended March 31, 2023, and June 30, 2023;

ii. management's discussion and analysis relating to the financial statements referred to in subparagraph i above;

iii. Certificates required to be filed in respect of the financial statements referred to in subparagraph i above under National Instrument 52-109 *Certification of Disclosure in Filing Annual and Interim Filings*;

(together, with the Unfiled Documents, the "**Unfiled Continuous Disclosure**").

i. The Issuer is seeking a partial revocation of the FFCTO to permit the Issuer to complete a private placement (the "**Financing**") of an amount up to $200,000 by way of the issuance of up to 2,051,282 units ("**Units**") at a price of $0.0975 per Unit. Each such Unit shall be composed of one (1) Common Share and one (1) Common Share purchase warrant ("**Warrant**"), and each such Warrant shall be exercisable into a Common Share at an exercise price of $0.13 for a period of two (2) years.

j. Each distribution made in respect of the Financing will comply with the accredited investor prospectus exemption contained in section 73.3 of the *Securities Act* (Ontario) (the "**Act**") and section 2.3 of National Instrument 45-106 *Prospectus Exemptions*.

k. The Financing is intended to take place in Ontario, British Columbia and Alberta.

l. The Issuer intends to use the proceeds of the Financing to resolve any outstanding fees, prepare audited financial statements and pay all other costs associated with applying for a full revocation of the FFCTO.

m. The Issuer intends to prepare and file the Unfiled Continuous Disclosure and pay all outstanding fees within a reasonable period of time following the completion of the Financing. The Issuer also intends to apply to the applicable securities regulators to have the FFCTO fully revoked.

n. Other than the failure to file the Unfiled Continuous Disclosure, the Issuer is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereto, or the requirements of the FFCTO. The Issuer's SEDAR and SEDI profiles are up to date.

o. The Issuer intends to allocate the proceeds from the Financing as follows:

Description	Estimated Amounts (CA$)
Legal Fees	25,000
Accounting and Audit Fees	90,000
Late, Filing, Participation Fees and other Charges	50,000
Transfer Agent and Registrar Fees	5,000
General Unallocated Working Capital	30,000
Total	200,000

p. The Issuer reasonably believes that the Financing will be sufficient to bring its continuous disclosure obligations up to date and pay all related outstanding fees.

q. As the Financing would involve a trade of securities and acts in furtherance of trades, the Financing cannot be completed without a partial revocation of the FFCTO.

r. The Financing will be completed in accordance with all applicable laws.

s. Prior to completion of the Financing, the Issuer will:

i. provide any subscriber to the Financing with a copy of the FFCTO,

ii. provide any subscriber to the Financing with a copy of the partial revocation order for which the application has been made, and

iii. obtain from each subscriber to the Financing a signed and dated acknowledgment which clearly states that all of the Issuer's securities, including the securities issued in connection with the Financing, will remain subject to the FFCTO, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

t. Upon issuance of this order, the Issuer will issue a press release and a material change report announcing the order and the intention to complete the Financing. Upon completion of the Financing, the Issuer will issue a press release and file a material change report. As other material events transpire, the Issuer will issue appropriate press releases and file material change reports as applicable.

Order

4. The Principal Regulator is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

5. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked as it applies to the Issuer solely to permit the Financing, provided that:

a. Prior to completing the Financing, the Issuer will:

i. provide each subscriber to the Financing with a copy of the FFCTO;

ii. provide each subscriber to the Financing with a copy of this partial revocation order; and

iii. obtain a signed and dated acknowledgement from each subscriber to the Financing that clearly states that the securities of the Issuer acquired by the subscribers under the Financing will remain subject to the FFCTO until a full revocation order is granted, and that a partial revocation of the FFCTO does not guarantee the issuance of a full revocation order in the future.

b. The Issuer will make available a copy of the written acknowledgement referred to in paragraph (a)(iii) to the Principal Regulator on request; and

c. This order will terminate on the earlier of the closing of the Financing and 60 days from the date hereof.

DATED this 30th day of November, 2023.

“Lina Creta”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0467

B.3
Reasons and Decisions

B.3.1 CIBC Asset Management Inc. and Conservative Income Portfolio

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from fund multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 to permit certain three-tier fund structures, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(b) and 19.1.

December 13, 2023

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
CIBC ASSET MANAGEMENT INC.
(CIBC)

AND

IN THE MATTER OF
CONSERVATIVE INCOME PORTFOLIO
(the Existing Fund)
and all other existing and future mutual funds,
including exchange-traded funds (ETFs),
but excluding alternative mutual funds, managed by
CIBC or an affiliate (the Filer)
(together with the Existing Fund, the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting the Funds from the multi-tier fund-of-fund restriction in paragraph 2.5(2)(b) of NI 81-102 to permit a three-tier structure where a Fund purchases and holds directly or indirectly securities of one or more other mutual funds, excluding ETFs and alternative mutual funds, each of which is, or will be, subject to NI 81-102 and managed by the Filer (each, a **Reference Fund**), which Reference Fund in turn holds directly or indirectly more than 10% of its net asset value (**NAV**) in securities of one or more other mutual funds, excluding ETFs and alternative mutual funds, each of which is, or will be, subject to NI 81-102 and managed by the Filer (each, a **Third Tier Fund**) (each, a **Three-Tier Structure**) (the **Requested Relief**).

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

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

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

Interpretation

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

Policies means the Filer's Large Unitholder Policy dated as of January 2022 and Compliance Policy dated as of December 2021, as the same may be amended, restated or replaced from time to time (the **Large Unitholder Policy** and the **Compliance Policy**, respectively).

Further, each of the terms "invests", "holds", "investment" and "holding" refers to any investing or investment made in, or holding of, securities either directly or indirectly through specified derivatives, as the context requires.

Representations

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

1. CIBC is a corporation incorporated under the laws of Canada with its head office located in Toronto, Ontario.

2. CIBC is registered as a portfolio manager in all Jurisdictions, as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a commodity trading manager in Ontario, and as a derivative portfolio manager in Québec.

3. The Filer is or will be, the registered investment fund manager of each fund in a Three-Tier Structure.

4. The Filer may act as the registered portfolio manager of the funds in a Three-Tier Structure or may appoint one or more registered portfolio managers or sub-advisors to provide the Filer with investment advice in respect of the funds' investments.

5. Each Fund, Reference Fund and Third Tier Fund is, or will be, an open-ended mutual fund trust or class of a mutual fund corporation organized and governed by the laws of a Jurisdiction or the laws of Canada. The securities of each Reference Fund and Third Tier Fund may be sold to investors other than the Funds.

6. Each Fund, Reference Fund and Third Tier Fund is, or will be, an investment fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, and offered by a prospectus filed and receipted in the Jurisdictions and, accordingly, a reporting issuer in the Jurisdictions.

7. Neither the Filer nor any existing Fund, Reference Fund or Third Tier Fund is in default of securities legislation in any Jurisdiction.

Three-Tier Structure

8. Each Reference Fund may invest, among other things, in one or more Third Tier Funds. In some circumstances, these investments in Third Tier Funds will exceed 10% of the Reference Fund's NAV.

9. Each Third Tier Fund in the Three-Tier Structure primarily invests, or will primarily invest, directly in a portfolio of securities and/or other assets. It may also invest up to 10% of its NAV in securities of other investment funds.

10. Each Three-Tier Structure is subject to the Policies. The Compliance Policy includes a fair allocation policy whereby the Filer, in its capacity as portfolio manager of funds, must treat each fund, including in a Three-Tier Structure, fairly, honestly and in good faith. The fair allocation policy includes processes to ensure that funds are treated fairly with respect to allocation of securities, prices and commissions between funds or between a fund and other clients of a sub-advisor where the sub-advisor is trading in securities for more than one client. The Filer also reviews and assesses the trade allocation policies of the sub-advisor to ensure fair treatment of all clients in allocating investment opportunities and that such policies include the recommended disclosure in OSC Staff Notice 33-723 Fair Allocation of Investment Opportunities. Additionally, the Filer has put in place certain rules under the Large Unitholder Policy to manage large unitholder investments, with a view to limiting the aggregate holdings and activities of large unitholders in each Fund. The Large Unitholder Policy seeks to ensure that unitholders are not adversely impacted by trading activities of large unitholders.

11. To manage liquidity risk due to cross-ownership of funds within a Three-Tier Structure, the Filer will use a combination of risk management tools to address the significant investor risk, including (i) Independent Review Committee (or IRC) approved governance policies that have been adopted to protect all investors in the funds, (ii) internal portfolio manager notification requirements of significant cash flows into the funds, (iii) ongoing liquidity monitoring of each fund's portfolio, and (iv) real time cash projection reporting for the funds. Each fund in a Three-Tier Structure will be managed as a stand-alone investment for purposes of the application of these risk management tools.

12. The investment strategies of each Fund in a Three-Tier Structure, as stated in the Fund's prospectus, state or will state (in the next regularly scheduled renewal, or amendment if earlier), that the Fund will invest in one or more Reference Funds and that each of these Reference Funds may invest more than 10% of its net assets in a class of securities of one or more Third Tier Funds that does not charge management or other fees.

13. For purposes of section 2.5 of NI 81-102, each Fund will be considered to be holding securities of each Reference Fund, whether the Fund holds the securities of each Reference Fund directly or indirectly through one or more specified derivatives. Accordingly, each Fund's investment in one or more of the Reference Funds will result in a Three-Tier Structure. This Three-Tier Structure is contrary to the multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 and does not fit within the exceptions to paragraph 2.5(2)(b) found in subsection 2.5(4) of NI 81-102. Except for paragraph 2.5(2)(b), a Fund's use of the Three-Tier Structure will be made in accordance with the provisions of section 2.5 of NI 81-102.

14. An investment by a Reference Fund in securities of its Third Tier Funds is, and will be, made in accordance with the provisions of section 2.5 of NI 81-102. Any investment by a Reference Fund in a Third Tier Fund will be in a class of securities of such Third Tier Fund that charges nil management and other fees. Accordingly, there shall be no duplication of fees payable by the Fund, Reference Fund or Third Tier Fund of any Three-Tier Structure, as applicable.

15. The prospectus of each Fund in a Three-Tier Structure will also disclose in the next regularly scheduled renewal, or amendment if earlier, that the accountability for portfolio management is (a) at the level of each Fund with respect to the selection of Reference Funds to be purchased by that Fund

and with respect to the purchase and sale of any other portfolio securities or other assets held by that Fund, (b) at the level of each Reference Fund with respect to the selection of Third Tier Funds to be purchased by that Reference Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that Reference Fund and (c) at the level of each Third Tier Fund with respect to the purchase and sale of portfolio securities and other assets held by that Third Tier Fund.

16. Each Fund in a Three-Tier Structure will comply with the requirements under National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds.

17. The investment objectives of the underlying funds held by a Fund in a Three-Tier Structure will generally be independent of each other in order to minimize potential overlap between the securities held by the respective portfolios of the underlying funds. To address any potential duplication of securities between underlying funds, the Filer will, through its compliance testing, aggregate the portfolio holdings across all underlying funds in a Three-Tier Structure for purposes of determining compliance with the concentration, control and other threshold limits under NI 81- 102.

18. It would not be prejudicial to the public interest to grant the Requested Relief to the 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 Requested Relief is granted, provided that:

(i) the Filer is the registered investment fund manager of each Fund, Reference Fund and Third Tier Fund in a Three-Tier Structure;

(ii) the investment strategies of each Fund in a Three-Tier Structure, as stated in the Fund's prospectus (which, in the case of an existing Fund, means the Fund's prospectus or amendment next receipted after the Fund becomes part of a Three-Tier Structure), state that the Fund will invest in one or more Reference Funds and that each of these Reference Funds may invest more than 10% of its net assets in a class of securities of one or more Third Tier Funds that does not charge management or other fees;

(iii) the proposed investment of each Fund in its Reference Fund(s) and of each Reference Fund in its Third Tier Fund(s) in a Three-Tier Structure is otherwise made in compliance with all other requirements of section 2.5 of NI 81-102, except to the extent that discretionary relief has been granted from any such requirement;

(iv) there is no duplication of management fees or administrative fees between each tier of the Three-Tier Structure;

(v) the Three-Tier Structure is implemented in a manner that seeks the fair treatment for investors in all of the investment funds managed by the Filer that are involved in a Three-Tier Structure by allocating portfolio transaction costs fairly among all of such investment funds;

(vi) the Filer maintains investor protection policies and procedures that address liquidity and redemption risk due to cross-ownership of funds within a Three-Tier Structure, and each fund in a Three-Tier Structure is managed as a stand-alone investment for purposes of these policies and procedures;

(vii) each Fund in a Three-Tier Structure complies with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds; and

(viii) each Reference Fund and Third Tier Fund in a Three-Tier Structure is not an alternative mutual fund and does not rely on any discretionary relief permitting the fund to exceed the leverage exposure otherwise permitted under NI 81-102 through the use of borrowing, short selling and specified derivatives.

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

Application File #: 2022/0261
SEDAR+ File #: 3386936

B.3.2 Better Collective A/S and Playmaker Capital Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Application in Multiple Jurisdictions – application from a Danish listed company (the Issuer) for relief equivalent to the exemption for "designated foreign issuers" in Part 5 of National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers and other CSA rules (the Designated Foreign Issuer Exemption). The Issuer is unable to rely on the Designated Foreign Issuer Exemption since Denmark is not a "designated foreign jurisdiction". The relief would exempt (i) the Issuer from certain continuous disclosure and other requirements, (ii) insiders of the Issuer from certain insider reporting requirements and (iii) any person or company acquiring voting or equity securities of the Issuer from certain early warning requirements. Relief granted on conditions substantially analogous to the conditions in the Designated Foreign Issuer Exemption.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 121(2)(a)(ii).
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 5.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, s. 12.
National Instrument 54-101Communication with Beneficial Owners of Securities of a Reporting Issuer, s. 9.2.
National Instrument 55-102 System for Electronic Disclosure by Insiders, s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1.
National Instrument 58-101 Corporate Governance Practices, s. 3.1.
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, s. 9.1(2).
National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, s. 11.1.
National Instrument 62-104 Take-Over Bids and Issuer Bids, s. 6.1.

December 1, 2023

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
BETTER COLLECTIVE A/S
("Better Collective")

AND

PLAYMAKER CAPITAL INC.
("Playmaker" and together with Better Collective, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") exempting:

(i) Better Collective from the requirements of Parts 4 through 12 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"), other than from section 4.9 of NI 51-102, pursuant to section 13.1 of NI 51-102;

(ii) Better Collective from the requirements of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") regarding acceptable accounting principles (but not acceptable auditing standards) pursuant to section 5.1 of NI 52-107;

(iii) Better Collective from the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") pursuant to section 8.6 of NI 52-109;

(iv) Better Collective from the requirements of National Instrument 52-110 *Audit Committees* ("**NI 52-110**") pursuant to section 8.1 of NI 52-110;

(v) Better Collective from the requirements of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**"), other than the requirements of NI 54-101 with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of Better Collective is in Canada, pursuant to section 9.2 of NI 54-101;

(vi) insiders of Better Collective from the insider reporting requirements and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders*, National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and section 107 of the *Securities Act* (Ontario) (collectively, the "**Insider Reporting Requirements**");

(vii) Better Collective from the requirements of National Instrument 58-101 *Disclosure of Corporate Governance Practices* ("**NI 58-101**") pursuant to section 3.1 of NI 58-101;

(viii) Better Collective from the requirements relating to business combinations and related party transactions in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") pursuant to subsection 9.1(2) of MI 61-101;

(ix) any person or company acquiring voting or equity securities of Better Collective from the early warning requirements and acquisition announcement provisions of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the "**Early Warning Requirements**"); and

(x) Better Collective from the requirements relating to non-GAAP financial measures in National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, subject to the terms and conditions set out below (collectively, the "**Exemption Sought**").

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

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

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

Interpretation

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

Representations

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

Better Collective A/S

1. Better Collective is incorporated pursuant to the laws of Denmark with its principal executive offices in Copenhagen, Denmark. Better Collective's shares ("BC Shares") are listed on Nasdaq Stockholm and Nasdaq Copenhagen, each a regulated market under applicable European Union ("EU") laws, and trade under the symbols "BETCO" and "BETCO DKK", respectively. Better Collective is a member of the Nasdaq Stockholm Mid Cap index.

2. Better Collective is a leading digital sports media and betting analytics group that owns and operates international and national sport media brands. Better Collective has a global presence, operating out of its Copenhagen head office and approximately 20 other internationally located offices.

3. As at November 27, 2023, Better Collective's authorized share capital consists of BC Shares, of which 55,223,847 are issued and outstanding, representing a market capitalization of SEK13,253,723,280 as of market close on November 24, 2023 (or C$1,725,634,771.06, using the Bank of Canada exchange rate as of November 24, 2023).

4. As a Danish company listed on Nasdaq Stockholm and Nasdaq Copenhagen, Better Collective is subject to a comprehensive capital markets regulatory regime that includes the following principal rules and regulations: (i) the Danish Capital Markets Act (Consolidated Act no. 41 dated as of January 13, 2023, as amended, and in Danish: kapitalmarkedsloven), providing for the overall framework for securities trading in Denmark including regulations on security offerings and admission to trading, disclosure of inside information and takeover bids, as supplemented by executive orders or directives from time to time, the Danish Financial Statements Act (Act no. 1441 dated as of November 14, 2022, as amended, and in Danish: årsregnskabsloven), providing for the financial reporting framework for periodic disclosure of annual and interim financial accounts as supplemented by executive orders or directives from time to time, and the Danish Companies Act (Consolidated Act No. 1168 dated as of September 1, 2023, as amended, and in Danish: selskabsloven), providing for the corporate governance regime as supplemented by executive orders or directives from time to time (collectively, the "Danish Capital Markets Laws"); (ii) the reporting requirements of the Market Abuse Regulation, consolidated Regulation (EU) no. 596/2014, as amended, applicable to issuers incorporated in Denmark and issuers with securities listed on a regulated market, including Nasdaq Stockholm and Nasdaq Copenhagen, and requiring immediate disclosure of any "inside information" with respect to the issuer and additional reporting obligations with respect to insiders of the issuer and persons discharging managerial responsibilities ("PDMR") and details of transactions causing a change in such PDMR's or its related parties' share ownership (the "EU Market Abuse Regulation"); (iii) the Nasdaq Nordic Main Market Rulebook for Issuers of Shares dated effective February 1, 2021, containing harmonized requirements and disclosure obligations for companies with securities listed on a senior Nordic Nasdaq securities exchange (e.g., Nasdaq Stockholm and Nasdaq Copenhagen), collectively referred to as the "Nasdaq Main Market", together with Supplement D dated effective January 12, 2023 and Supplement A dated effective October 1, 2021, with respect to stock exchange rules applicable to public issuers listed on Nasdaq Stockholm and Nasdaq Copenhagen, respectively (the "Nasdaq Rules"); and (iv) certain rules and regulations under the Swedish Code of Corporate Governance and the Swedish Securities Council's good practices in the Swedish stock market by virtue of the BC Shares being listed on the Nasdaq Stockholm (the "Swedish Capital Markets Laws", and collectively with the Danish Capital Markets Laws, the EU Market Abuse Regulation and the Nasdaq Rules, the "Danish Disclosure Requirements").

5. Pursuant to the Danish Disclosure Requirements, Better Collective is required to file annual reports ("Annual Reports") within four months following the end of the preceding financial year, containing (i) audited annual financial statements (including balance sheet, statement of comprehensive income, statement of changes in equity and cash flow, together with notes thereto, including accounting policies of Better Collective and its subsidiaries), (ii) management's review of and commentary on Better Collective's business, operations and financial position, (iii) a corporate governance report on structure and oversight of corporate governance and compliance with the Danish Companies Act and the Swedish Code of Corporate Governance, and (iv) an environmental, social and governance report pursuant to the requirements of the Danish Capital Markets Laws and Taxonomy Regulation (EU) 2020/852. Better Collective regularly files its annual reports in March of each subsequent calendar year. Better Collective's consolidated audited financial statements are prepared in accordance with International Financial Reporting Standards as adopted by the EU and additional requirements for listed companies pursuant the Danish Financial Statements Act and are audited in accordance with the International Standards on Auditing as adopted in Denmark. Better Collective's external independent auditor is EY Godkendt Revisionspartnerselskab.

6. Pursuant to the Danish Disclosure Requirements, Better Collective is also required to file interim reports ("Interim Reports") quarterly within two months of the end of each fiscal quarter, containing (i) interim financial statements (including balance sheet, statement of comprehensive income, statement of changes in equity and cash flows, together with notes thereto, including accounting policies of Better Collective and its subsidiaries), and (ii) management's review of and commentary on Better Collective's business, operations and financial position. Better Collective regularly files its interim reports in May, August, November and February of each calendar year. Better Collective's interim financial statements are prepared in accordance with IAS 34 Interim Financial Reporting as adopted by the EU and additional requirements for listed companies pursuant to the Danish Financial Statements Act, using the same accounting policies as those set out under the Better Collective's Annual Reports.

7. Pursuant to the Danish Disclosure Requirements, Better Collective is required to prepare, and provide concurrently with Annual Reports, a remuneration report providing detailed disclosure of executive and management compensation with comparative figures for the last three fiscal years.

8. The Danish Financial Supervisory Authority (the "DFSA") is the principal securities and capital markets regulator in Denmark and is responsible for the supervision of compliance with the Danish Capital Markets Laws, EU Market Abuse Regulation and, together with Nasdaq Stockholm and Nasdaq Copenhagen, the Nasdaq Rules. The DFSA, together with the Danish Business Authority (the "DBA"), which oversees and administers corporate laws applicable to private and public Danish issuers, maintain publicly accessible registers of all filings required to be made by Danish issuers with publicly traded securities pursuant to the Danish Disclosure Requirements.

9. Better Collective is in compliance with the Danish Disclosure Requirements concerning the disclosures made to the public, to securityholders of Better Collective and to the DFSA relating to Better Collective and the trading of its securities as required under, without limitation, the Danish Disclosure Requirements, and has prepared and filed all documents that it is required to have prepared and filed pursuant to the Danish Disclosure Requirements. As permitted under the Danish Disclosure Requirements, Better Collective prepares all documents that it is required to have prepared and filed pursuant to the Danish Disclosure Requirements in English.

10. Following the closing of the Arrangement (as defined below), Better Collective will be a "foreign reporting issuer" for the purposes of National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers ("NI 71-102") as: (i) Better Collective will be a reporting issuer that is incorporated under the laws of a foreign jurisdiction; (ii) the outstanding voting securities carrying more than 50 per cent of the votes for the election of directors of Better Collective will not be owned, directly or indirectly by residents of Canada; and (iii) less than a majority of the executive officers or directors of Better Collective will be residents of Canada, less than 50 per cent of the consolidated assets of Better Collective will be located in Canada, and the business of Better Collective will not be administered principally in Canada.

11. Following the closing of the Arrangement (as defined below), but for the fact that Denmark is not an enumerated "designated foreign jurisdiction" under NI 71-102, Better Collective will otherwise satisfy the definition of a "designated foreign issuer" for the purposes of NI 71-102 as: (i) Better Collective does not have a class of securities registered under section 12 of the Securities Exchange Act of 1934 (the "1934 Act") and is not required to file reports under section 15(d) of the 1934 Act; and (ii) the total number of equity securities of Better Collective owned, directly or indirectly, by residents of Canada will not exceed 10 per cent, on a fully-diluted basis, of the total number of equity securities of Better Collective, calculated in accordance with NI 71-102.

12. As at November 27, 2023, and to the best of Better Collective's knowledge, less than 1 per cent of the equity securities of Better Collective are owned, directly or indirectly, by residents of Canada, as calculated in accordance with NI 71-102.

13. As at November 27, 2023, Better Collective is not a reporting issuer in any of the provinces or territories of Canada, and it is not in default of any applicable Canadian securities legislation.

Playmaker Capital Inc.

14. Playmaker is a corporation incorporated under the laws of the Province of Ontario with its head office in Toronto, Ontario. Playmaker's common shares ("Playmaker Shares") are listed on the TSX Venture Exchange and trade under the symbol "PMKR" and on the OTCQX Best Market under the symbol "PMKRF".

15. Playmaker is a digital sports media company that acquires and integrates premier fan-centric media brands, curated to deliver highly engaged audiences of sports fans to tier one advertisers, online sports betting operators, and sports federations and leagues. Playmaker has an expansive cross-channel user base in both North America and Latin America.

16. As at November 27, 2023, Playmaker's authorized share capital consists of Playmaker Shares, of which 229,679,664 are issued and outstanding, representing a market capitalization of C$149,291,782 as of market close on November 24, 2023.

17. To the best of Playmaker's knowledge, approximately 70% of the equity securities of Playmaker are owned, directly or indirectly, by residents of Canada, as calculated in accordance with NI 71-102.

18. Playmaker is a reporting issuer in the Provinces of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan, and is not in default of securities legislation in any of the Jurisdictions.

Plan of Arrangement

19. On November 6, 2023, Better Collective and Playmaker entered into an arrangement agreement (the "Arrangement Agreement"), providing the terms and conditions upon which, among other things, Better Collective has agreed to acquire all of the issued and outstanding Playmaker Shares for aggregate consideration in the amount of C$0.70 per Playmaker Share (the "Consideration") comprised of a mix of cash consideration in the amount of C$0.245 and 0.0134 of a BC Share representing a value of C$0.455, as determined by the volume-weighted average price of BC Shares over the 10-day trading period as of market close on November 3, 2023, by way of a statutory plan of arrangement (the "Arrangement") under the Business Corporations Act (Ontario). The Arrangement is expected to close either late in the fourth quarter of 2023 or early in the first quarter of 2024 following approval of the Arrangement by the shareholders of Playmaker at a special shareholders' meeting, receipt of the final order of the Ontario Superior Court of Justice (Commercial List) in respect of the Arrangement, and other customary closing conditions for a transaction of this nature including, among other things, regulatory approvals and third party consents as specified under the Arrangement Agreement. Pursuant to the Arrangement Agreement, Playmaker will accelerate and convert all incentive awards

outstanding under Playmaker's Omnibus Equity Incentive Plan dated February 8, 2022 into Playmaker Shares, which such converted Playmaker Shares will participate in the Arrangement for the Consideration.

20. To the best of the Filers' knowledge, it is anticipated that following closing of the Arrangement and but for the fact that Denmark is not an enumerated "designated foreign jurisdiction" under NI 71-102, Better Collective would satisfy the definition of a "designated foreign issuer" for the purposes of NI 71-102 as at such time: (i) Better Collective would not have a class of securities registered under section 12 of the 1934 Act nor would it be required to file reports under section 15(d) of the 1934 Act; (ii) the total number of equity securities of Better Collective owned, directly or indirectly, by residents of Canada would not exceed 10 per cent, on a fully-diluted basis, of the total number of equity securities of Better Collective, calculated in accordance with NI 71-102; (iii) a majority of the executive officers or directors of Better Collective would not be residents of Canada; (iv) assets of Better Collective located in Canada would comprise less than 50 per cent of its consolidated assets; and (v) the business of Better Collective would continue to be principally administered in Denmark.

21. The Playmaker Shares will be delisted from the TSX Venture Exchange as soon as practicable following closing of the Arrangement, and no securities of Playmaker (including debt securities, options and share-based compensation) are expected to be outstanding thereafter other than the Playmaker Shares acquired by Better Collective.

22. Promptly following closing of the Arrangement, Better Collective will file on SEDAR+ a form of submission to jurisdiction and appointment of agent for service of process (the "Submission to Jurisdiction") that has been executed by Better Collective and its agent for service of process in Canada. The Submission to Jurisdiction will be substantially in the form set out in Appendix B to National Instrument 41-101 General Prospectus Requirements but will refer to the Arrangement Agreement as the instrument under which BC Shares are offered, rather than a prospectus.

Effect of Exemption Sought on shareholders of Playmaker

23. Better Collective is subject to a rigorous capital markets regulatory regime in Denmark, which has been modelled from and guided by the key Objectives and Principles of Securities Regulation established by the International Organization of Securities Commissions, in a similar manner as that of the Canadian securities regulatory regime and the regimes of certain designated foreign jurisdictions enumerated under NI 71-102. As part of the DFSA's unitary supervisory purview of the Danish financial markets, its enforcement of compliance with the Danish Disclosure Requirements by public Danish companies is intended to promote the protection of investors and foster efficient and competitive capital markets. In addition to the Danish Capital Markets Laws, Better Collective has generally incorporated and is subject to securities regulations that have been adopted by the EU and which has been progressively more harmonized across EU member states including, among other things, the EU Market Abuse Regulation, Transparency Directive 2004/109/EC, Taxonomy Regulation (EU) 2020/852, Prospectus Regulation, consolidated Regulation (EU) 2017/1129, as amended, among others. Thus, the disclosure and reporting obligations of Better Collective are, to a significant extent, as comprehensive and provide at least the same transparency as in other member states of the EU including those of countries like Sweden and the Netherlands. Finally, stock exchange rules established by certain EU regulated markets have further promoted an integration of capital markets regulatory policy and uniformity with respect to certain EU member states that share geopolitical proximity. BC Shares are listed on Nasdaq Stockholm and Nasdaq Copenhagen, each of which is a "Nasdaq Nordic Main Market" that is subject to the same underlying set of general stock exchange rules as those companies listed on Nasdaq Helsinki and Nasdaq Iceland, subject to jurisdictional variations provided under country-specific supplemental rules. As a result, Better Collective is subjected to comparatively robust disclosure and capital markets regulatory regimes typical of other Nordic countries that are designated foreign jurisdictions under NI 71-102.

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:

1. The Exemption Sought, other than from the Insider Reporting Requirements and the Early Warning Requirements, is granted provided that following closing of the Arrangement and at any time thereafter:

    (a) Better Collective continues to be incorporated and organized under the laws of Denmark and Canadian residents own, directly or indirectly, outstanding voting securities carrying no more than 50 per cent of the votes for the election of directors of Better Collective, and none of the following is true:

        (i) the majority of the executive officers or directors of Better Collective are residents of Canada,

        (ii) more than 50 per cent of the consolidated assets of Better Collective are located in Canada, and

        (iii) the business of Better Collective is administered principally in Canada;

(b) Better Collective does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(3) of the 1934 Act;

(c) BC Shares are admitted to trading on Nasdaq Stockholm and Nasdaq Copenhagen, and Better Collective is subject to and complies with, and has filed all documents that it is required to have filed by, the Danish Disclosure Requirements including, for greater certainty, (i) the financial and other reporting requirements of the Danish Capital Markets Laws, EU Market Abuse Regulation, and the Nasdaq Rules and Swedish Capital Markets Laws applicable to issuers listed on Nasdaq Stockholm, and (ii) requirements concerning the disclosure made to the public, to securityholders of Better Collective and to the DFSA and DBA, as the case may be, relating to Better Collective and the trading of its securities;

(d) the total number of equity securities of Better Collective owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully-diluted basis, of the total number of Better Collective's equity securities, calculated in accordance with sections 1.2 and 1.3 of NI 71-102;

(e) Better Collective files on SEDAR+ in electronic format copies of all documents and company announcements Better Collective is required to file with the DFSA, Nasdaq Stockholm or Nasdaq Copenhagen, make publicly available on its website or send to its securityholders under the Danish Disclosure Requirements, at the same time or as soon as practicable after such documents are filed with the DFSA (including, without limitation, any dissemination of regulatory information on the publicly accessible online registers maintained by the DFSA) or Nasdaq Stockholm or Nasdaq Copenhagen, made publicly available on Better Collective's website, or sent to its securityholders, respectively, provided that Better Collective shall not be required to file on SEDAR+ prospectuses for offerings by Better Collective that do not take place in Canada;

(f) the documents required to be filed on SEDAR+ pursuant to paragraph (e) above comply with the Danish Disclosure Requirements;

(g) the financial statements of Better Collective, and auditor's reports on financial statements of Better Collective, that are required to be filed, or included in any documents required to be filed, on SEDAR+ pursuant to paragraph (e) above comply with the Danish Disclosure Requirements;

(h) the financial statements of Better Collective that are required to be filed, or included in any documents required to be filed, on SEDAR+ pursuant to paragraph (e) above are prepared in accordance with IFRS standards as adopted by the EU;

(i) the audited financial statements of Better Collective that are required to be filed, or included in any documents required to be filed, on SEDAR+ pursuant to paragraph (e) above are audited in accordance with International Standards on Auditing and the financial statements are accompanied by:

(i) an auditor's report that

(A) expresses an unmodified opinion,

(B) identifies all financial periods presented for which the auditor has issued the auditor's report,

(C) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements, and

(D) is prepared in accordance with the same auditing standards used to conduct the audit, and

(ii) the predecessor auditor's reports on the comparative periods, if the issuer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by the predecessor auditor;

(j) for any acquisitions statements that are required to be filed, or included in any documents required to be filed, on SEDAR+ pursuant to paragraph (e) above, Better Collective complies with NI 52-107 as it relates to those acquisition statements (as if Better Collective was a designated foreign issuer for purposes of NI 52-107 and as if Denmark was a designated foreign jurisdiction for purposes of NI 52-107);

(k) Better Collective complies with National Instrument 52-108 *Auditor Oversight* in respect of the financial statements of Better Collective and the auditor's reports on financial statements of Better Collective that are filed, or included in any documents required to be filed, on SEDAR+ pursuant to paragraph (e) above;

(l) Better Collective must, at least once a year, disclose in, or as an appendix to, a document that Better Collective is required to file under the Danish Disclosure Requirements and that Better Collective files on SEDAR+ that:

(i) Better Collective is subject to the regulatory requirements of the DFSA, and

(ii) pursuant to the terms of this decision, the principal regulator has provided Better Collective with exemptive relief from certain continuous disclosure requirements under the Legislation provided that, among other things, Better Collective files on SEDAR+, makes publicly available or provides to its securityholders in Canada the disclosure documents filed, made publicly available or provided to its securityholders by Better Collective pursuant to the Danish Disclosure Requirements;

(m) Better Collective complies with the Danish Disclosure Requirements in respect of making public disclosure of material information on a timely basis and promptly issues in the provinces and territories of Canada and files on SEDAR+ any news release that discloses a material change in Better Collective's affairs;

(n) Better Collective files on SEDAR+ the notice required by paragraph 4.9(a) of NI 51-102 following the closing of the Arrangement;

(o) any amendments or supplements to disclosure documents of Better Collective filed on SEDAR+ pursuant to this decision shall also be filed on SEDAR+;

(p) Better Collective files on SEDAR+ such other documents relating to Better Collective that Better Collective would be required to file under current and future requirements of the Legislation as if it were a designated foreign issuer (as defined in NI 71-102) and Better Collective complies with current and future requirements of the Legislation applicable to designated foreign issuers as if it were a designated foreign issuer;

(q) if Better Collective sends a document to holders of securities of any class under the Danish Disclosure Requirements and that document is required to be filed on SEDAR+ under this decision, Better Collective sends the document in the same manner and at the same time, or as soon as practicable after, to holders of securities of that class in the Jurisdictions;

(r) Better Collective complies with the Danish Disclosure Requirements relating to communication with beneficial owners of securities, and in this context, the requirements of NI 54-101 with respect to fees payable to intermediaries, for any depositary and any intermediary whose last address as shown on the books of Better Collective is in Canada; and

(s) the grant of the Exemption Sought pursuant to this paragraph 1 of the decision will expire on the date that is five years after the date of this decision.

2. The Exemption Sought from the Insider Reporting Requirements is granted to insiders of Better Collective, including for greater certainty, any PDMR, provided that:

(a) Better Collective qualifies for the grant of the Exemption Sought pursuant to paragraph 1 of the decision above, and Better Collective is in compliance with the requirements and conditions set out thereunder;

(b) the insider, including for greater certainty, any PDMR, complies with the Danish Disclosure Requirements regarding insider reporting; and

(c) the grant of the Exemption Sought from the Insider Reporting Requirements pursuant to this paragraph 2 of the decision will expire on the date that is five years after the date of this decision.

3. The Exemption Sought from the Early Warning Requirements is granted to any person or company acquiring voting or equity securities of Better Collective provided that:

(a) Better Collective qualifies for the grant of the Exemption Sought pursuant to paragraph 1 of the decision above, and Better Collective is in compliance with the requirements and conditions set out thereunder;

(b) the person or company acquiring voting or equity securities of Better Collective complies with the Danish Disclosure Requirements relating to reporting of beneficial ownership of voting or equity securities of Better Collective; and

(c) the grant of the Exemption Sought from the Early Warning Requirements pursuant to this paragraph 3 of the decision will expire on the date that is five years after the date of this decision.

4. The Exemption Sought is granted provided that:

(a) for any document that a condition set out in paragraphs 1 to 3 above requires to be filed on SEDAR+, Better Collective will file an English language version of the document; and

(b) if the English language version of a document referred to in clause (a) above is a translation of the original Danish language (or other non-English language) version of the document, it will be accompanied by a certificate as to the accuracy of the translation of the filed document.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0552

B.3.3 Capital One, National Association

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for a decision to exempt from the dealer registration requirement and the prospectus requirement, in sections 25(1) and 53(1) of the Securities Act, in connection with certain trades in over-the-counter (OTC) derivatives with "permitted counterparties", consisting exclusively of persons or companies who are "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Relief sought in Ontario and certain other jurisdictions as interim response to current regulatory uncertainty associated with OTC derivatives in Canada – Relief subject to sunset condition that is (i) the date that is four years after the date of the decision; and (ii) the coming into force in the jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC derivative transactions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").
OSC Rule 13-502 Fees, Part 6 — Derivatives Participation Fees.

December 14, 2023

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
CAPITAL ONE, NATIONAL ASSOCIATION
(the Filer)

DECISION

Background

The Filer made an application (the **Previous Application**) to the Ontario Securities Commission and obtained from the Ontario Securities Commission, as the principal regulator for the Previous Application, a decision dated December 21, 2018, *Re Capital One, National Association* (2018) 41 OSCB 574 (the **Previous Decision**), providing relief from the dealer registration requirement and the prospectus requirement that may otherwise be applicable to a trade in or a distribution of an OTC Derivative made by either the Filer to a Permitted Counterparty or a Permitted Counterparty to the Filer, subject to certain terms and conditions. The Previous Decision provided that the relief would terminate on the date that is the earlier of: (i) the date that is four years after the date of the Previous Decision (being December 21, 2022); and (ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

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

(a) the Filer to a "Permitted Counterparty" (as defined below), or

(b) by a Permitted Counterparty to the Filer,

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

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

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

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

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

Representations

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

The Filer

1. The Filer is a national banking association company organized under the laws of the United States. The Filer's head office is located in Virginia, United States.

2. The Filer is regulated, supervised, and examined by the U.S. Office of the Comptroller of the Currency. Additionally, the U.S. Federal Deposit Insurance Corporation has supervisory and enforcement authority over the Filer as an insured depository institution. The U.S. Consumer Financial Protection Bureau has regulatory, supervision, examination and enforcement authority over the Filer with respect to applicable U.S. federal consumer financial protection laws. The Filer is also provisionally registered as a swap dealer since August 31, 2020 and supervised by the U.S. Commodity Futures Trading Commission and U.S. National Futures Association with respect to its derivatives activities.

3. The Filer is not currently registered in any capacity under the securities legislation of any jurisdiction of Canada. Nor is the Filer currently relying on any exemption from a registration requirement under the securities legislation of any jurisdiction of Canada.

4. The Filer is a subsidiary of Capital One Financial Corporation, a Delaware corporation which is a diversified financial services holding company with banking and non-banking subsidiaries.

5. The Filer has been authorized under the *Bank Act* (Canada) to establish a branch in Canada to carry on banking business in Canada, under the name Capital One Bank (Canada Branch).

6. The Filer is not a broker-dealer registered with the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority or any state securities regulator.

7. The Filer is not in default of securities, commodity futures or derivatives legislation in any jurisdiction in Canada, except with respect to the fact that the Previous Decision has lapsed and was not renewed on a timely basis. The Filer has at all times since the Previous Decision lapsed acted in full compliance with the terms and conditions set out in such relief, except for the four-years sunset clause.

8. The Filer is in compliance in all material respects with U.S. securities, commodity futures and derivatives laws.

9. The Filer will not maintain an office, sales force or physical place of business in Canada with respect to its derivative activities.

Proposed Conduct of OTC Derivative Transactions

10. The Filer proposes to enter into bilateral OTC Derivative transactions with counterparties located in all provinces and territories of Canada that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between the Filer and a Permitted Counterparty will consist of a commodity; an interest rate; a currency; a foreign exchange rate; a security; an

economic indicator; an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.

11. The Filer will not offer or provide credit or margin to any of its Permitted Counterparties for purposes of executing an OTC Derivative transaction.

12. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada. The Filer acknowledges that registration and prospectus requirements may be triggered for the Filer in connection with the derivative contracts under any such uniform framework to be developed for the regulation of OTC Derivative transactions.

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

13. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as "securities" in the provinces and territories of Canada other than Québec.

14. In each of Prince Edward Island, the Northwest Territories, Nunavut and Yukon, OTC Derivative transactions are regulated as securities on the basis that the definition of the term "security" in the securities legislation of each of these jurisdictions includes an express reference to a "futures contract" or a "derivative".

15. In Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan, the defined term "security" no longer includes an express reference to a "futures contract". Following the introduction of a new framework and terminology for the regulation of derivatives, Alberta, British Columbia and Manitoba securities legislation now each include a definition of "derivative" and impose registration requirements in connection with dealing or trading derivatives.

16. In each of Newfoundland and Labrador, Nova Scotia, and Ontario, it is not certain whether, or in what circumstances, OTC Derivative transactions are "securities" because the definition of the term "security" in the securities legislation of each of these jurisdictions is a non-exhaustive definition that makes no express reference to a "futures contract" or a "derivative".

17. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Notice 91-702**). OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (**OSA**) and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative Transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.

18. In Québec, OTC Derivative transactions are subject to the *Derivatives Act* (Québec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Québec's securities regulatory requirements.

19. In each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan (the **Blanket Order Jurisdictions**) and Québec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as "Qualified Parties" in the Blanket Order Jurisdictions and "accredited counterparties" in Québec.

20. The corresponding OTC Derivative Exemptions are as follows:

Alberta	ASC Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*
British Columbia	BC Instrument 91-501 *Over-the-Counter Derivatives*
Manitoba	Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*
New Brunswick	Local Rule 91-501 *Over-the-counter Trades in Derivatives*
Nova Scotia	Blanket Order 91-501 *Over the Counter Trades in Derivatives*
Québec	Section 7 of the *Derivatives Act* (Québec)
Saskatchewan	General Order 91-908 *Over-the-Counter Derivatives*

The Evolving Regulation of OTC Derivative Transactions as Derivatives

21. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Québec, or indirectly through amendments to the definition of the term "security" in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.

22. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.

23. The Final Report of the Ontario Commodity Futures Act Advisory Committee, published in January, 2007, concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.

24. On April 19, 2018, the Canadian Securities Administrators (**CSA**) published a Notice and Request for Comment on the Proposed National Instrument 93-102 *Derivatives: Registration,* and on September 28, 2023, the CSA announced that the regulatory authorities of each jurisdiction of Canada, except for British Columbia, had adopted Multilateral Instrument 93-101 *Derivatives: Business Conduct,* which, together, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives.

Rationale for Requested Relief

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

Books and Records

26. As a result of the Previous Decision, the Filer is a "market participant" for the purposes of the OSA, and will continue to be so as a consequence of this decision. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

27. For the purposes of its compliance with subsection 19(1) of the OSA, the books and records that the Filer will keep will include books and records that:

    (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation;

    (c) identify all OTC Derivative transactions conducted on behalf of the Filer and each of its clients domiciled in a Passport Jurisdiction, including the name and address of all parties to the transaction and the terms of those transactions; and

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

28. To the extent necessary and in respect of the OTC Derivative transactions, the Filer will comply with the derivatives trade reporting rules and instruments in effect in the provinces and territories of Canada.

Decision

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

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

(a) the counterparty to any OTC Derivative transaction that is entered into by the Filer is a Permitted Counterparty;

(b) in the case of any trade made by the Filer to a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty;

(c) the Filer complies with the filing and fee payment requirements under Part 6 of OSC Rule 13-502 *Fees*; and

(d) the Requested Relief shall terminate on the date that is the earlier of:

(i) the date that is four years after the date of this decision; and

(ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

“Debra Foubert”
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2023/0444

Appendix

Definitions

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

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

(a) an exchange of principal amounts; or

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

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

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

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

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

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

(a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, Contract for Differences or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

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

B.3.4 Theresia Fonny Hofan

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

AND

IN THE MATTER OF
AN OPPORTUNITY TO BE HEARD
REQUESTED BY
THERESIA FONNY HOFAN

DECISION OF THE DIRECTOR

Having reviewed and considered the agreed statement of facts, the admissions by Theresia Fonny Hofan (**Hofan**), and the joint recommendation to the Director by Hofan and Compliance and Registrant Regulation Branch of the Ontario Securities Commission (**CRR Branch**) contained in the settlement agreement signed by Hofan on December 11, 2023, and by Michael Denyszyn, Manager, CRR Branch, on December 11, 2023 (the **Settlement Agreement**), a copy of which is attached as Appendix "A" to this Decision, and on the basis of those agreed facts and admissions, I, Felicia Tedesco, in my capacity as Director under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**), accept the joint recommendation of the parties, and make the following decision:

1. The registration of Hofan is suspended pursuant to s. 28 of the Act effective five business days from date of this decision (the **Effective Date**), and Hofan will not apply for reactivation of registration for a period of at least 10-months from the Effective Date.

2. Before reapplying for reactivation of registration, Hofan shall provide CRR Branch with proof that she has successfully completed the Conduct and Practices Handbook Course offered by Canadian Securities Institute and Ethics and Professional Conduct Course offered by the IFSE Institute.

3. If Hofan complies with paragraphs 1 and 2 above, then upon Hofan reapplying for reactivation of registration in the future with a registered mutual fund dealer, CRR Branch will not recommend to the Director that her application be refused unless CRR Branch becomes aware after the date of this Settlement Agreement of conduct impugning Hofan's suitability for registration, separate and apart from (i) the facts set out in the Settlement Agreement: and/or (ii) facts of which CRR Branch is already aware as of the date of the Settlement Agreement, or rendering her registration otherwise objectionable, provided Hofan meets all other applicable criteria for registration at the time she applies for registration.

4. This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

December 18, 2023

"Felicia Tedesco"

Appendix "A"

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

AND

IN THE MATTER OF
AN OPPORTUNITY TO BE HEARD
REQUESTED BY
THERESIA FONNY HOFAN

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) between Compliance and Registrant Regulation Branch of the Ontario Securities Commission (**CRR Branch**) and Theresia Fonny Hofan relates to an opportunity to be heard (an **OTBH**) under section 31 of the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**) requested by Ms. Hofan concerning a recommendation made by CRR Branch to the Director that Ms. Hofan's registration as a mutual fund dealing representative be suspended pursuant to section 28 of the Act.

2. As more particularly described in this Settlement Agreement, Ms. Hofan failed to comply with Ontario securities law and to conduct herself with the integrity required of a registrant by obtaining confidential client information from her previous sponsoring firm, and by falsely denying her conduct to the CRR Branch when questioned about her conduct.

II. AGREED STATEMENT OF FACTS

3. The parties agree to the facts as stated herein.

A. Ms. Hofan's Registration History

4. Ms. Hofan has been registered under the Act as follows:

   (a) January 14, 2013 to November 24, 2014: mutual fund dealing representative with BMO Investments Inc. (**BMOII**);

   (b) November 25, 2014 to December 9, 2015: mutual fund dealing representative with Scotia Securities Inc.;

   (c) December 11, 2015 to July 26, 2021: mutual fund dealing representative with BMOII; and

   (d) September 16, 2021 to the present: mutual fund dealing representative with Quadrus Investment Services Ltd. (**Quadrus**).

5. CRR Branch is unaware of any regulatory or other professional disciplinary action against Ms. Hofan prior to the events described herein.

B. Obtaining Confidential Information of Former Clients

6. Ms. Hofan resigned from BMOII effective July 26, 2021, and reinstated her registration with Quadrus on September 16, 2021.

7. Between November 2021 and February 2022, Ms. Hofan repeatedly contacted a former colleague (**X**) at BMOII to gather confidential information in respect of certain of her former clients and prompted X to share that information with her. Specifically, Ms. Hofan provided names of her former clients to X asking X to confirm those clients had continuous savings plans in their accounts and requested that X cancel continuous savings plans ("**CSPs**") of those clients at BMOII. Ms. Hofan believed that she was acting pursuant to client instructions at all times. There is no allegation that Ms. Hofan acted without clients' instructions when she requested cancellation of CSPs from X.

8. Ms. Hofan provided X with her former clients' information to obtain further confidential information of those clients. On one occasion, Ms. Hofan obtained the confidential investment statement of her former client from X after asking X to send it to Ms. Hofan's personal email account.

C. Improperly Obtaining Proprietary Information

9. Prior to leaving BMOII, in April 2021, Ms. Hofan sent 217 email addresses of her clients to her personal email account and thus acted contrary to Bank of Montreal's (**BMO**) Code of Conduct by compromising the privacy and security of client information. Ms. Hofan did not seek the consent of her clients prior to moving the information outside the BMOII network.

D. Failing to Deal Fairly and Honestly with Clients

10. In or around February 2022, Ms. Hofan visited her former client after leaving BMOII, to discuss transferring that client's accounts from BMOII. Ms. Hofan had with her a screenshot of the client's profile that she had obtained from BMOII's internal system during her time with BMOII which she improperly retained. During the client meeting, Ms. Hofan presented the client with documents to sign and the client signed those documents, though the client later decided to remain with BMOII.

E. Misleading Statements

11. The CRR Branch conducted a voluntary interview with Ms. Hofan in which she participated with her counsel. Ms. Hofan misled CRR Branch on four occasions:

    a. Ms. Hofan denied that she ever communicated with a former colleague at BMO to ask for her former clients' information;

    b. Ms. Hofan denied moving client information outside the bank network to her personal email before she left BMO;

    c. Ms. Hofan denied that after leaving BMO she requested any kind of information from a colleague at BMO; and

    d. Ms. Hofan denied having any client information with her when she left BMO and moved to Quadrus.

F. CRR Branch Recommends Suspension of Registration

12. Following an investigation into the matters described herein, on August 30, 2023, Elizabeth A. King, Deputy Director of CRR Branch, Registrant Conduct, sent a letter to Ms. Hofan alleging the conduct substantially described in paragraphs 7, 8, 9, 10, and 11 above, and informing her that on the basis of that alleged conduct, the CRR Branch had recommended to the Director that her registration be suspended (the "**CRR Branch Recommendation**").

13. On September 13, 2023, Ms. Hofan requested an OTBH before the Director regarding the CRR Branch Recommendation.

III. ADMISSIONS BY MS. HOFAN

14. Ms. Hofan admits that she engaged in the conduct described in paragraphs 7, 8, 9, 10, and 11 above, and that in so doing, she failed to act fairly, honestly, and in good faith with her clients contrary to s. 2.1(2) of OSC Rule 31-505 *Conditions of Registration* by compromising the privacy and security of their confidential information, and failed to conduct herself with the integrity required of a registered dealing representative under the Act.

IV. JOINT RECOMMENDATION TO THE DIRECTOR

15. To settle the OTBH, CRR Branch and Ms. Hofan make the following joint recommendation to the Director:

    (a) Ms. Hofan's registration shall be suspended pursuant to section 28 of the Act effective five business days after the date the Director approves this Settlement Agreement, and Ms. Hofan will not apply for reactivation of registration for a period of at least 10 months from that date;

    (b) Before applying for reactivation of registration, Ms. Hofan shall provide CRR Branch with proof that she has successfully completed the Conduct and Practices Handbook Course administered by Canadian Securities Institute, and the Ethics and Professional Conduct Course offered by the IFSE Institute;

    (c) If Ms. Hofan complies with paragraphs 15(a) and (b) above, then upon Ms. Hofan applying for reactivation of registration in the future with a registered mutual fund dealer, the CRR Branch will not recommend to the Director that her application be refused unless the CRR Branch becomes aware after the date of this Settlement Agreement of conduct impugning Ms. Hofan's suitability for registration, separate and apart from: (i) the facts set out in this Settlement Agreement; and/or (ii) facts of which CRR Branch is already aware as of the date of this Settlement Agreement, or rendering her registration otherwise objectionable, provided Ms. Hofan meets all other applicable criteria for registration at the time she applies for registration; and

(d) This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

16. The parties submit that their joint recommendation to the Director is reasonable, having regard to the following factors:

(a) Ms. Hofan does not have a prior disciplinary history;

(b) Ms. Hofan has recognized and acknowledged her misconduct;

(c) Further to the joint recommendation, Ms. Hofan has agreed to obtain additional education respecting her professional responsibilities as a registrant and has already registered for both programs;

(d) By agreeing to this Settlement Agreement, Ms. Hofan has saved CRR Branch and the Director the time and resources that would have been required for the OTBH.

17. The parties acknowledge that if the Director does not accept this joint recommendation:

(a) This joint recommendation and all discussions and negotiations between CRR Branch and Ms. Hofan in relation to this matter, including the admissions in this Agreement, shall be without prejudice to the parties; and

(b) Ms. Hofan will be entitled to an OTBH in accordance with section 31 of the Act in respect of the recommendation made by CRR Branch that her registration be suspended.

"Michael Denyszyn" Manager, Registrant Conduct Compliance and Registrant Regulation	"Theresia Fonny Hofan"
December 11, 2023	December 11, 2023

B.3.5 Wealthsimple Investments Inc.

Headnote

Application for time-limited relief from prospectus requirement and trade reporting requirements to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, account appropriateness, disclosure and reporting requirements – relief is time-limited and will expire upon two years from the effective date – relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative businesses in Canada – decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

Statute cited

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

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 and 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

December 18, 2023

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

AND

ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUÉBEC,
SASKATCHEWAN
AND
YUKON

AND

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

AND

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

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**) and Joint Canadian Securities Administrators (**CSA**) / Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited registration that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTPs' operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and to facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently registered in the category of investment dealer in all of the Applicable Jurisdictions (as defined below). The Filer's affiliate, Wealthsimple Digital Assets Inc. (**WDA**), has, in connection with its registration as a restricted dealer, previously applied for and received exemptive relief in decisions dated August 7, 2020, June 18, 2021 and June 23, 2023 on terms substantially similar to this decision (**Decision**).

Under the terms and conditions of the decision *In the Matter of Wealthsimple Digital Assets Inc.* dated June 23, 2023 (the **WDA Decision**) and the terms and conditions imposed on its registration, WDA has operated, and continues to operate, on an interim basis, a platform (the **Platform**) that permits clients resident in Canada to enter into Crypto Contracts to purchase, hold, stake, sell, deposit and withdraw crypto assets.

Effective January 1, 2024, the Filer and WDA intend to combine to form an amalgamated corporation named "Wealthsimple Investments Inc." which shall have all the assets, rights and contracts of each of the Filer and WDA and be liable for their debts, liabilities and obligations. The amalgamated entity shall maintain the Filer's registration as an investment dealer and will remain a member of the Canadian Investment Regulatory Organization (**CIRO**).

The exemptive relief granted to WDA under the WDA Decision will expire on January 1, 2024.

The Filer has submitted an application for exemptive relief in order to continue to operate the Platform upon the amalgamation of the Filer and WDA, and to incorporate the terms and conditions into the Decision related to the Filer's offering of Crypto Contracts based on Value-Referenced Crypto Assets (as defined below).

This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold, sell, deposit, withdraw and stake Crypto Assets (as defined below) (the **Prospectus Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in Appendix A (collectively, the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**, and together with the Prospectus Relief, the **Requested Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for the Application (the **Principal Regulator**),

(b) in respect of the Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), and

(c) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

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

For the purposes of this Decision, the following terms have the following meaning:

(a) "Acceptable Third-party Custodian" means an entity that:

(i) is one of the following:

1. a Canadian custodian or Canadian financial institution, as those terms are defined in NI 31-103;

2. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [*Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada*] of National Instrument 81-102 *Investment Funds*;

3. a custodian that meets the definition of an "acceptable securities location" in accordance with the Investment Dealer and Partially Consolidated Rules and Form 1 of CIRO;

4. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s); or

5. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

(ii) is functionally independent of the Filer within the meaning of NI 31-103;

(iii) has obtained audited financial statements within the last twelve months which

1. are audited by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction;

2. are accompanied by an auditor's report that expresses an unqualified opinion, and

3. unless otherwise agreed to by the Principal Regulator, discloses on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset; and

(iv) has obtained a Systems and Organization Controls (**SOC**) 2 Type 1 or SOC 2 Type 2 report within the last twelve months or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

(b) "Accredited Crypto Investor" means

(i) an individual

1. who, alone or with a spouse, beneficially owns financial assets (as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)) and crypto assets, if not included in financial assets, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000,

2. whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year,

3. whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year, or

4. who, alone or with a spouse, beneficially owns net assets of at least $5,000,000,

(ii) a person or company described in paragraphs (a) to (i) of the definition of "accredited investor" as defined in subsection 73.3(1) of the Act or section 1.1 of NI 45-106, or

(iii) a person or company described in paragraphs (m) to (w) of the definition of "accredited investor" as defined in section 1.1 of NI 45-106.

(c) "Act" means the *Securities Act* (Ontario).

(d) "Apps" means iOS and Android applications that provide access to the Platform.

(e) "Eligible Crypto Investor" means

(i) a person whose

1. net assets, alone or with a spouse, in the case of an individual, exceed $400,000,

2. net income before taxes exceeded $75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

3. net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(ii) an Accredited Crypto Investor.

(f) "IOSCO" means the International Organization of Securities Commissions.

(g) "Promoter" has the meaning ascribed to that term in Canadian securities legislation.

(h) "Proprietary Token" means a Crypto Asset that is not a Value-Referenced Crypto Asset, and for which the Filer or an affiliate of the Filer acted as the issuer (and mints or burns the Crypto Asset) or a promoter.

(i) "Specified Crypto Asset" means the Crypto Assets listed in Appendix B to this Decision.

(j) "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

(k) "Staking" means the act of committing or locking Crypto Assets in smart contracts or in the blockchain protocol to permit the owner or the owner's agent to act as a Validator for a particular proof-of-stake consensus algorithm blockchain.

(l) "Validator" means, in connection with a particular proof of stake consensus algorithm blockchain, an entity that operates one or more nodes that meet protocol requirements for a Crypto Asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain.

(m) "Value-Referenced Crypto Asset" or "VRCA" means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or other value or right, or combination thereof.

(n) "Website" means the website www.wealthsimple.com or such other website as may be used to host the Platform from time to time.

Representations

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

The Filer

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

2. The Filer is registered as a money services business under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

3. The Filer is registered as a dealer in the category of investment dealer with the Applicable Jurisdictions and is a member of CIRO.

4. The Filer is a wholly owned subsidiary of Wealthsimple Financial Corp. (**WFC**), a holding company that owns 100% of the issued and outstanding securities of several operating companies that are registered under applicable securities legislation in each of the provinces and territories of Canada, including Wealthsimple Inc. (**WSI**), a registered adviser in the category of portfolio manager, and WDA, a registered dealer in the category of a restricted dealer.

5. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada. However, a majority of the voting securities of WFC are controlled by subsidiaries and entities affiliated with Power Corporation of Canada. Power Corporation of Canada is a reporting issuer under the legislation of the Applicable Jurisdictions and its securities are listed for trading on the Toronto Stock Exchange.

6. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are in compliance with CIRO requirements.

7. The Filer's personnel consists, and will consist, of software engineers, compliance professionals and finance professionals who each have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's personnel have passed and new personnel will have passed criminal records and credit checks.

8. The Filer is not in default of securities legislation of any jurisdictions of Canada.

The Filer's business

9. The Filer currently operates an order execution only (**OEO**) business line as a CIRO dealer under CIRO rules. The Filer offers self-directed accounts with access to Canadian and U.S. marketplaces for trading of equities, options contracts, exchange-traded funds and money market securities (the **Securities Platform**). The Filer also acts as an investment fund manager for certain funds managed by WSI.

The Transition of the Platform

10. As the Filer and WDA are both corporations organized under the *Canada Business Corporations Act* (**CBCA**) and wholly-owned subsidiaries of WFC, the Filer and WDA intend to amalgamate by way of a short-form horizontal amalgamation and continue as one corporation under the Filer's name, i.e., "Wealthsimple Investments Inc.".

11. The Filer and WDA have been actively and diligently working with CIRO to transition the operation of the Platform. The Filer and WDA plan to complete the transition as of January 1, 2024, subject to all necessary regulatory approvals.

12. In accordance with the CBCA, upon amalgamation, as a matter of corporate law, the property of the Filer and WDA will continue to be the property of the Filer; the Filer will continue to be liable for the obligations of the Filer and WDA; any legal action or proceeding against WDA or the Filer may be continued against the Filer; and any ruling, order or judgment against WDA or the Filer may be enforced against the Filer.

13. As a result, upon completion of the amalgamation, the Filer will effectively assume all of WDA's rights and obligations in respect of the operation of the Platform, including WDA's rights and obligations with respect to clients and service providers that support the operation of the Platform. Accordingly, all references to the rights, responsibilities and actions performed by WDA in this application will be assumed by the Filer upon completion of the amalgamation.

14. WDA intends to apply separately for surrender of its restricted dealer registration, with such surrender being effective upon completion of the amalgamation.

15. The Filer will operate the Platform as an OEO business line and substantially in the same manner as it is currently operated by WDA. These services will be subject to securities legislation, including the terms and conditions of this Decision.

16. WDA currently operates the Platform with a dual account structure, where clients open accounts with both WDA and the Filer. Crypto assets are held and reflected in the account with WDA and cash balances are held in the account with the Filer. Upon completion of the amalgamation, the Filer will operate the Platform with a single account structure where both crypto asset and cash balances are reflected for new and existing accounts.

17. The Filer's ledger has been modified to support the operation of the Platform and to satisfy CIRO's accounting requirements.

18. Investment Representatives (as defined in CIRO's Investment Dealer and Partially Consolidated Rules (the **IDPC Rules**)) employed by the Filer may support the Platform as well as the Securities Platform.

19. The Filer will designate an Executive (as defined in the IDPC Rules) who will be responsible for the Platform as a product offering and significant area of risk.

20. Certain individuals who are currently Supervisors (as defined in the IDPC Rules) of the Filer will also be responsible for supervision of the Platform upon amalgamation, including the opening of new accounts and account activity.

21. The same operational, financial, compliance, legal and other personnel that support the Platform while operated by WDA will continue to support the Platform following the amalgamation.

22. The Filer's compliance manual will apply to all of its product offerings, including the Platform. Existing policies and procedures of WDA that are specific to the Platform will be incorporated into the Filer's compliance manual as a product-specific section.

23. The existing anti-money laundering (**AML**) and anti-terrorist financing (**ATF**) policies and procedures for WDA, where not duplicative of the AML and ATF policies and procedures for the Filer, will be added as a supplement to the Filer's AML and ATF policies and procedures.

24. The following will be modified to reflect the Platform as a product offering of the Filer:

    (a) Relationship disclosure;

    (b) Conflicts of interest disclosure;

    (c) Client Account Agreement (as defined below);

    (d) Risk Statement (as defined below); and

    (e) Crypto Asset Statements (as defined below).

25. Upon amalgamation, the Filer will operate the Platform, which enables clients to buy, sell, hold, deposit, withdraw and stake crypto assets such as Bitcoin, Ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (each a **Crypto Asset**, collectively the **Crypto Assets**) through the Filer.

26. To use the Platform, each client must open a non-registered brokerage account (**Client Account**) using the Website or Apps. Client Accounts are governed by a user agreement (**Client Account Agreement**) that is accepted by clients at the time of account opening. The Client Account Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Platform (**Client Assets**). While clients are entitled to transfer certain Client Assets out of their Client Accounts immediately after purchase, clients may choose to leave their Client Assets in their Client Accounts.

27. The Filer's role under the Crypto Contract will be to facilitate the buying, selling, and staking of Crypto Assets and to provide custodial services for all Crypto Assets held in Client Accounts on the Platform.

28. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

29. The Filer may buy, sell, borrow or hold Crypto Assets in its inventory for operational purposes, such as payment of network/transaction fees required to transfer Crypto Assets and testing. Otherwise, the Filer does not and will not hold any proprietary positions in Crypto Assets for itself, and it does not and will not take a long or short position in a Crypto Asset with any party, including clients.

30. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not offer or provide discretionary investment management services relating to Crypto Assets.

31. The Filer is a member firm of the Canadian Investor Protection Fund (**CIPF**) but the Crypto Assets in the Filer's custody will not qualify for CIPF coverage.

32. The Risk Statement (defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.

Crypto Assets Made Available through the Platform

33. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy, sell, stake or hold the Crypto Assets on its Platform in accordance with the know-your-product (**KYP**) provisions of NI 31-103 (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

    (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

    (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

    (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

(d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.

34. The Filer only offers and only allows clients the ability to enter into Crypto Contracts to buy, sell, stake, and hold Crypto Assets that are not (i) a security and/or a derivative, or (ii) are Value-Referenced Crypto Assets, in accordance with condition (d) of this Decision.

35. The Filer will not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to:

(a) assess the relevant aspects of the Crypto Assets pursuant to the KYP Policy and as described in paragraph 33 to determine whether it is appropriate for its clients;

(b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients, and

(c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

36. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

37. As set out in the KYP Policy, the Filer will determine whether a Crypto Asset available to be bought or sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

(a) consideration of statements made by any regulators or securities regulatory authorities of the Applicable Jurisdictions, other regulators in IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

(b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Applicable Jurisdictions.

38. The Filer monitors ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in paragraphs 33 to 37 to change.

39. The Filer acknowledges that any determination made by the Filer as set out in paragraphs 33 to 37 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative.

40. The Filer has established and will apply policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate in an orderly manner their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening

41. Subject to the Filer determining that it is appropriate for a Client Account to be opened, the Platform will be available to any individual who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account. In the future, the Filer may make the Platform available to clients that are corporations or other legal persons.

42. The Filer collects, and will continue to collect, know-your-client (**KYC**) information, which satisfies the identity verification requirements applicable to reporting entities under AML and ATF laws and CIRO requirements.

43. Clients open a Client Account using the Apps or Website, which are owned by Wealthsimple Technologies Inc., a wholly-owned subsidiary of WFC. Clients use their Client Accounts to trade in Crypto Contracts. Upon amalgamation of the Filer and WDA, the Apps and Website will clearly indicate that the Platform is operated by the Filer.

44. The Filer will not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather will perform account appropriateness assessments and applies Client Limits (as defined below). WDA is currently revising its approach to assessing account appropriateness and setting Client Limits. As part of this effort,

WDA is requiring existing clients to update the information used to determine whether it is appropriate for a client to have a Client Account. This will continue following the amalgamation of the Filer and WDA.

45. As part of the account opening process:

(a) In addition to the account opening assessment required under CIRO guidance for dealer members offering OEO account services, the Filer will assess "account appropriateness". Specifically, the Filer will collect KYC information and, prior to opening a Client Account, use electronic questionnaires to collect information that the Filer will use to determine whether it is appropriate for a prospective client to enter into Crypto Contracts with the Filer to buy, sell and/or stake Crypto Assets. The account appropriateness assessment conducted by the Filer will consider the following factors:

(i) the client's experience and knowledge in investing in Crypto Assets;

(ii) the client's experience in using OEO online brokerages;

(iii) the client's financial assets and income;

(iv) the client's risk tolerance; and

(v) the Crypto Assets approved to be made available to a client on the Platform.

(b) After completion of the account appropriateness assessment, a prospective client will receive appropriate messaging about using the Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open a Client Account.

(c) The Filer has adopted and will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client can incur, what limits will apply to such client based on the information collected in paragraph (a) above (**Client Limit**), and what steps the Filer will take when the client approaches or exceeds their Client Limit. After completion of the assessment, the Filer will implement controls to monitor and apply the Client Limit.

(d) The Filer will provide a prospective client with a separate statement of risk (the **Risk Statement**) that clearly explains the following in plain language:

(i) the Crypto Contracts;

(ii) the risks associated with the Crypto Contracts;

(iii) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or the Crypto Assets made available through the Platform;

(iv) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence performed by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities and derivatives legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

(v) that the Filer has prepared a plain language description of each Crypto Asset and of the risks of the Crypto Asset made available through the Platform, with instructions as to where on the Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);

(vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;

(vii) the location and the manner in which Crypto Assets are held for the client, and the risks and benefits to the client of the Crypto Assets being held in that location and in that manner, including the impact of insolvency of the Filer or the Acceptable Third-party Custodian;

(viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;

(ix) that the Filer is a member of CIPF but the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;

(x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(xi) the date on which the information was last updated.

46. In order for a prospective client to open and operate a Client Account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.

47. A copy of the Risk Statement acknowledged by a client will be made available by the Filer to the client in the same place as the client's other statements on the Platform.

48. The Filer applies policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, crypto assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing clients of the Filer will be promptly notified of the update and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified, with links to the updated Crypto Asset Statement.

49. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps.

50. Each Crypto Asset Statement will include:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or any Crypto Assets made available through the Platform,

(b) a description of the Crypto Asset, including the background of the developer(s) that created the Crypto Asset, if applicable,

(c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,

(d) any risks specific to the Crypto Asset,

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and the Crypto Assets made available through the Platform,

(f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision, and

(g) the date on which the information was last updated.

51. In addition to any monitoring required by CIRO, the Filer will monitor Client Accounts after opening to identify activity inconsistent with the client's account, the account appropriateness assessment, and Crypto Asset assessment. If warranted, the client may receive further messaging about the Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity.

52. The Filer will monitor compliance with the Client Limits established in paragraph 45(c). If warranted, the client will receive warnings when their Client Account is approaching its Client Limit, which will include information on steps the client may take to prevent the client from incurring further losses.

53. The Filer will also prepare and make available to its clients educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets. To do so, the Filer will build upon the existing communication channels and techniques used by affiliates in the WFC group of companies.

Platform Operations

54. All Crypto Contracts entered into by clients to buy and sell Crypto Assets will be placed with the Filer through the Apps, the Website, or an Investment Representative.

55. Clients will be able to submit orders, either in units of the applicable Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients are able to deposit and withdraw certain Crypto Assets and Canadian dollars, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

56. The Filer has established, and will maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the Platform and its related services, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Platform and related services.

57. The Filer will rely upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by clients. Liquidity Providers also buy any Crypto Assets that clients wish to sell.

58. The Filer will evaluate the prices obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients. If the Filer concludes from its review that it is not providing fair and reasonable pricing to its clients, it will take steps to address this.

59. The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.

60. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.

61. A Crypto Contract is a bilateral contract between the client and the Filer. Accordingly, the Filer will be the counterparty to all trades entered by the client on the Platform. For each client transaction, the Filer will be a counterparty to a corresponding Crypto Asset buy or sell transaction with a Liquidity Provider. For each buy or sell transaction initiated by a client, the Filer buys or sells Crypto Assets with Liquidity Providers.

62. After an order has been placed by a client, the Filer will obtain a price for the Crypto Asset from a Liquidity Provider, after which the Filer will incorporate a fee to compensate the Filer, and present this total cost to the client. If the client is agreeable, the client will confirm the trade. The Filer will confirm the transaction with the Liquidity Providers and record in its books and records the particulars of the trade.

63. In a buy transaction under a Crypto Contract, this will result in the client instructing the Filer to request cash from the client's account with the Filer in order to fund the purchase. In a sell transaction under a Crypto Contract, cash proceeds are transferred by the Filer to the client's account with the Filer.

Pre-trade Controls and Settlement

64. The Filer will not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps:

    (a) to review the Crypto Asset, including the information specified in paragraph 33,

    (b) to approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients,

    (c) as set out in paragraph 38, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

65. The Filer's books and records will record all of the trades executed on the Platform. No order will be accepted by the Filer unless there is sufficient cash or Crypto Assets available in the Client Account to complete the trade.

66. The Filer will not (except in accordance with CIRO rules and with prior written consent of CIRO) extend margin, credit or other forms of leverage to clients in connection with trading Crypto Assets on the Platform, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.

67. The Filer will promptly, and no later than two business days after the trade, settle transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets with a Liquidity Provider, the Filer will arrange for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there

are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

68. Clients will receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account. Clients will be able to view their transaction history and account balances in real time by accessing their Client Account using the Apps or Website.

69. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives described in paragraphs 45 to 53, and the account appropriateness assessment described in paragraph 45, the know-your-product assessments described in paragraphs 33 to 38, and the Client Limits described in paragraphs 45(c) and 52, the Filer will also monitor client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

Custody of Crypto Assets

70. The Filer will hold clients' Crypto Assets (i) in blockchain wallets or accounts clearly designated for the benefit of clients or in trust for clients, and (ii) separate and apart from its own assets (including crypto assets held in inventory by the Filer for operational purposes) and from the assets of any custodial service provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

71. The Filer is proficient and experienced in holding Crypto Assets and has established and applies policies and procedures that manage and mitigate custodial risks, including an effective system of controls and supervision to safeguard Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities, and business continuity plans.

72. The Filer has expertise in and has developed anti-fraud and anti-money-laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.

73. The Filer will maintain its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests and to facilitate trade settlement with Liquidity Providers. However, the majority of Crypto Assets will be held with third-party custodians regulated as trust companies (the **Custodians**).

74. The Filer has conducted due diligence on the Custodians, including, among others, the custodian's policies and procedures for holding Crypto Assets and a review of their respective SOC 2 Type 2 examination reports. The Filer has not identified any material concerns. The Filer has also assessed whether each Custodian meets the definition of an Acceptable Third-party Custodian.

75. The Custodians will operate custody accounts for the Filer to use for the purpose of holding the clients' Crypto Assets in trust for clients of the Filer.

76. Those Crypto Assets that the Custodians will hold in trust for clients of the Filer will be held in segregated omnibus accounts in the name of the Filer in trust for or for the benefit of the Filer's clients and will be held separate and distinct from the assets of the Filer, the Filer's affiliates, and the Custodians' other clients.

77. Each Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. Each Custodian has established and applies written disaster recovery and business continuity plans.

78. The Filer considers it prudent to maintain relationships with more than one custodian so that it can provide back-up custodial services in appropriate circumstances for Crypto Assets supported by the Filer.

79. The Custodians do not and will not hold client cash. As set out in paragraphs 16, 26 and 43, each client of the Filer will have a Client Account with the Filer for the purpose of holding cash and Client Assets that the client may use to engage in transactions on the Platform. All cash in Client Accounts will be held in accordance with CIRO requirements.

80. Each of the Custodians maintains an appropriate level of insurance for Crypto Assets held by the Acceptable Third-party Custodian. The Filer has assessed the Custodians' insurance policies and has determined, based on information that is publicly available and on information provided by the Custodians and considering the controls of the Custodians' business, that the amount of insurance is appropriate.

81. The Filer will confirm on a daily basis that clients' Crypto Assets held with the Custodians and held by the Filer reconcile with the Filer's books and records to ensure that all clients' Crypto Assets are accounted for. Clients' Crypto Assets held in trust for or for their benefit in hot wallets and with Custodians are deemed to be the clients' Crypto Assets in case of the insolvency and/or bankruptcy of the Filer or of its Custodians.

82. Clients will be permitted to transfer into their Client Account with the Filer, Crypto Assets they obtained outside the Platform or withdraw from their Client Account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer or previously deposited with the Filer. The Filer may not support transfers for all Crypto Assets. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements and anti-fraud controls.

83. The Filer has licensed software from Fireblocks Ltd. (**Fireblocks**) which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.

84. Fireblocks has obtained a SOC report under the SOC 2 – Type 2 standards from a leading global audit firm. The Filer has reviewed a copy of the SOC 2 – Type 2 audit report prepared by the auditors of Fireblocks and has not identified any material concerns.

85. Fireblocks has insurance coverage which, in the event of theft of crypto assets from hot wallets secured by Fireblocks due to an external cyber breach of Fireblocks' software or any malicious or intentional misbehaviour or fraud committed by employees, will be distributed among applicable Fireblocks customers, which could include the Filer, pursuant to an insurance settlement agreement.

86. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery.

87. In addition to the insurance coverage available through Fireblocks for Crypto Assets held in its hot wallets, the Filer has obtained a guarantee through Coincover. Coincover provides a guarantee to the Filer against the theft or loss of cryptocurrency owned, held in trust or managed by the Filer for its clients in a wallet provided by Fireblocks that results from unauthorised third-party access obtained through cyber attack, hacking, phishing or other causes set out in the guarantee.

88. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets, in accordance with the terms of the Filer's insurance policies. Specifically, the Filer has coverage under a financial institution bond that provides insurance against losses for Crypto Assets held in cold storage by the Custodians and under a digital asset insurance policy for certain losses of crypto assets held by the Filer using Fireblocks software. The Filer has assessed the insurance coverage to be sufficient to cover the loss of Crypto Assets, whether held directly by the Filer or indirectly through the Custodians.

Staking Services

89. The Filer will also offer staking services to its clients resident in each of the provinces and territories of Canada by which the Filer arranges to stake Crypto Assets and earn staking rewards for participating clients (the **Staking Services**).

90. The Filer will offer clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof-of-stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (**Stakeable Crypto Assets**).

91. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

92. The Filer itself does not, and will not, without the prior written consent of CIRO, act as a Validator or contract with a staking services provider under terms requiring the Filer to authorize the delegation of validator keys. The Filer will have written agreements with certain of its Custodians and/or with third party Validators to provide services in respect of staking Stakeable Crypto Assets. These Custodians and Validators are proficient and experienced in staking Stakeable Crypto Assets.

93. Before engaging a Validator, the Filer will conduct due diligence on the Validator, with consideration for the Validator's management, infrastructure and internal control documentation, security measures and procedures, reputation of operating nodes, use by others, measures to operate nodes securely and reliably, amount of crypto assets staked by the Validator on its own nodes, quality of work, including any slashing incidents or penalties, financial status and insurance, and registration, licensing or other compliance under applicable laws, particularly securities laws. Where the Filer

engages a Custodian to provide Staking Services, the Filer conducts due diligence on how the Custodian provides the Staking Services and selects the Validators.

94. The Filer plans to offer the Staking Services in respect of the Ethereum, Solana, Cardano, and Polkadot blockchains. The Filer may offer the Staking Services in respect of other Stakeable Crypto Assets in the future.

95. The Filer, as part of its KYP Policy, will review the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

96. The Filer, as part of its account appropriateness assessment, will evaluate whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

97. If, after completion of an account appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will notify the client that this is the case and the Filer will not make available the Staking Services to the client.

98. The Filer will only stake the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer will cease to stake those Stakeable Crypto Assets.

99. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer will deliver to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in paragraph 100 below and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

100. The Filer will clearly explain in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Stakeable Crypto Asset for which the Filer provides the Staking Services;

(c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

(d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Stakeable Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

(e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

(f) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Crypto Asset protocol, custodian or Validator, where such Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

(g) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

101. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer will require the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

(a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

(b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, combined with the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

(c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

(d) unless the Filer has clearly indicated the reward yield is fixed and unconditional, that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

(e) whether rewards may be changed at the discretion of the Filer;

(f) that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network; and

(g) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

102. The Staking Services will only be available by using the Apps. The Filer may make the Staking Services available through the Web Site in the future.

103. To stake Stakeable Crypto Assets, a client may use the Apps to instruct the Filer to stake a specified amount of Stakeable Crypto Assets held by the client on the Platform.

104. For certain Stakeable Crypto Assets, the Filer will also allow clients to automatically stake those Stakeable Crypto Assets when purchasing more of the asset. If a client turns on this "auto-stake" feature, Stakeable Crypto Assets are automatically staked upon being purchased by the client. The client can disable this feature at any time.

105. Immediately before each time a client buys Stakeable Crypto Assets that are automatically staked, the Filer will provide prominent disclosure to the client that the Stakeable Crypto Asset the client is about to buy will be automatically staked.

106. Subject to any Lock-up Periods that may apply, the client may at any time use the Apps to instruct the Filer to unstake a specified amount of Stakeable Crypto Assets that the client had previously staked.

107. The Filer will stake and unstake Crypto Assets on an omnibus basis by calculating the total amount of a Stakeable Crypto Asset that clients wish to stake or unstake and adjusting the amount actually staked to reconcile with the net amount that clients have, in total, instructed the Filer to stake or unstake.

108. The Filer will hold the staked Stakeable Crypto Assets in trust for or for the benefit of its clients in one or more omnibus Locations (as defined below) in the name of the Filer for the benefit of the Filer's clients with the Custodians separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets. A **Location** is an address or wallet (or group of addresses or wallets) that is (are) subject to a distinct pre-set governance policy within the private key management solution employed by the Filer or the Custodians. For greater certainty, the Filer (or the Custodians) will not stake customer Crypto Assets from the same Location in which it holds unstaked customer Crypto Assets.

109. Notwithstanding paragraph 108, the Filer may maintain a residual proprietary interest in the Locations holding customer staked Crypto Assets:

a) to meet minimum quantity requirements established by a proof of stake network;

b) to maintain preferential validator selection criteria while managing turnover in customer staked positions, where this portion of the residual proprietary interest corresponds with historical turnover;

c) to the extent that such Locations temporarily hold fees payable to the Filer from staking rewards received for clients.

110. To stake clients' Stakeable Crypto Assets, the Filer will instruct a Custodian to transfer Stakeable Crypto Assets to an omnibus Location and to sign a blockchain transaction confirming that assets in that Location are to be staked with a Validator.

111. Similarly, when unstaking Stakeable Crypto Assets, the Filer will instruct a Custodian to sign a blockchain transaction confirming that assets in a Location are no longer staked. After expiry of any Lock-up Periods that may prevent the assets from being transferred, the Filer will instruct the Custodian to transfer the unstaked assets from the Location to cold storage wallets holding unstaked Stakeable Crypto Assets.

112. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times. At all times, the Custodians continue to hold the private keys or other cryptographic key material required to stake or unstake clients' Stakeable Crypto Assets or to access staking rewards. Custody, possession and control of staked Stakeable Crypto Assets are not transferred to Validators or any other third parties in connection with the Staking Services.

113. The Filer has established and will apply policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

114. Staking rewards are issued periodically and automatically by the blockchain protocol of the Stakeable Crypto Asset and received directly into the Locations with the Custodians. Other than any "validator commission" that may be received by a Validator under the rules of the blockchain protocol, Validators will not receive or otherwise have control over staking rewards earned by clients.

115. Staking rewards are typically issued for a specific time period, often referred to as an "epoch". For each "epoch", the Filer will promptly determine the amount of staking rewards earned by each client that had staked Stakeable Crypto Assets under the Staking Services.

116. When staking rewards for a Stakeable Crypto Asset are received at Locations, the Filer will promptly calculate the amount of the staking reward earned by each client using the Staking Services in respect of that asset and credits each client's account accordingly. Staking reward distributions will be shown in the Apps and on clients' account statements.

117. For certain Stakeable Crypto Assets, staking rewards are automatically staked by the blockchain protocol to compound rewards. Clients must unstake some or all of these rewards if they wish to sell or transfer them.

118. Where staking rewards are not compounded by the blockchain protocol, the Filer will instruct the Custodian to transfer staking rewards from the Locations to other omnibus wallets holding client Crypto Assets.

119. Certain Stakeable Crypto Assets are subject to a so-called "warm-up" or "bonding" period after being staked, during which time the Stakeable Crypto Assets do not earn any staking rewards. A client will not receive staking rewards in respect of any of their staked Stakeable Crypto Assets that are still subject to "warm-up" periods.

120. Similarly, a client will not receive staking rewards in respect of Stakeable Crypto Assets that have been unstaked by the client but are still subject to Lock-up Periods.

121. The Filer may show in the Apps or Web Site the current estimated reward rate for Stakeable Crypto Assets. This estimated reward rate is based on data derived from the blockchain for the Stakeable Crypto Asset and adjusted for any applicable validator commission or fees payable to the Filer.

122. The Filer does not offer a fixed and unconditional reward to clients. If the Filer does so in the future, its policies and procedures must include those to accrue for reward obligations and maintain sufficient inventory to offset reward obligations at the time of accrual.

123. The Filer will estimate the rewards it has earned on behalf of its clients and proprietary positions in Crypto Assets, compare the estimate to rewards received, investigate significant discrepancies, and take appropriate corresponding actions.

124. The Filer will charge a fee to clients using Staking Services based on a percentage of the client's staking rewards. The Filer will clearly disclose the fees charged by the Filer for the Staking Services and provide a clear calculation of the rewards earned by each client that agrees to the Staking Services.

125. When staking rewards are received into staking wallets each epoch, the Filer promptly calculates the total amount of the fee payable by clients using the Staking Services for that epoch and transfers an amount of Stakeable Crypto Assets equal to the fee to a separate wallet exclusively holding Crypto Assets belonging to the Filer.

126. For certain Stakeable Crypto Assets, a Validator can, as part of the blockchain consensus protocol, set a percentage of the staking rewards earned by Stakeable Crypto Assets staked with the Validator to be received by the Validator. This is typically referred to as the "validator commission". The validator commission is deducted automatically by the underlying blockchain protocol from staking rewards and transferred by the protocol directly to the Validator. Where a "validator commission" applies, the Filer will clearly disclose the existence and amount of the validator commission to clients using the Staking Services.

127. Under the commercial agreements between the Filer and Validators, Validators may pay some of the validator commission to the Filer for arranging the staking of clients' Stakeable Crypto Assets with the Validators. The Filer will disclose to clients that it receives a share of validator commissions. Further, the Filer has adopted policies and procedures for the selection of Validators and staking of clients' Stakeable Crypto Assets to Validators to ensure that these decisions are based on factors other than the Filer's financial considerations under these commercial agreements.

128. For Stakeable Crypto Assets that do not have "validator commissions", the Filer will pay a fee to the Validator and/or a Custodian for activating and operating nodes for the Filer's clients using the Staking Services. This fee is included in the fee paid by clients to the Filer in connection with the Staking Services.

129. The Filer will engage its auditor to perform procedures, satisfactory to CIRO, designed to verify that the Filer maintains books and records reflecting:

    (a) Rewards earned from all proof of stake networks on which it participates in the Staking Services; and

    (b) The allocation of rewards to clients and the Filer in a manner that is consistent with the Filer's policies and procedures.

130. Certain proof of stake blockchain protocols impose penalties where a validator fails to comply with protocol rules. This penalty is often referred to as "slashing" or "jailing". If a Validator is "slashed" or "jailed", a percentage of the tokens staked with that Validator and/or a percentage of staking rewards earned by clients staking to that Validator is permanently lost and/or the Validator will not be selected to participate in transaction validation and any Stakeable Crypto Assets staked with that Validator will not be eligible to earn staking rewards. Accordingly, if a Validator fails to comply with protocol rules, a percentage of Crypto Assets staked or earned by the Filer's clients may be lost (i.e., the balance of the staking wallet will be reduced automatically by the blockchain protocol) and/or the Filer's clients will not earn staking rewards for a period of time.

131. The Filer will not provide any guarantee against slashing or other penalties imposed due to validator error, action or inactivity. However, to the extent the Filer receives any compensation from a Validator or Custodian for a slashing or other penalty, the Filer will distribute that compensation to those clients affected by the slashing penalty. The Client Account Agreement clearly discloses that the Filer will not provide any reimbursement in respect of a Stakeable Crypto Asset, except in this circumstance. The unavailability of any reimbursement is also described in the Risk Statement and the relevant Crypto Asset Statements.

132. To mitigate the risk of penalties imposed due to Validator error, action or inactivity, the Filer may, where feasible, arrange to stake Stakeable Crypto Assets across multiple Validators, so that any penalty resulting from the actions or inaction of a specific Validator does not affect all staked Crypto Assets and the Filer can, if appropriate, re-stake with alternative Validators.

133. In addition, the Filer will monitor its Validators for, among other things, downtime, jailing and slashing events and will take any appropriate action to protect Stakeable Crypto Assets staked by clients.

134. For certain Stakeable Crypto Assets that are subject to Lock-up Periods, the Filer may permit clients using the Staking Services to remove assets from the Staking Services prior to the expiry of the Lock-up Period. However, the Filer will extend this permission only on a best-efforts basis, and this condition must be expressly disclosed to and acknowledged by the client.

135. Where the Filer provides this service in connection with a Stakeable Crypto Asset, the Filer will provide the liquidity necessary for clients to sell or withdraw Crypto Assets prior to the expiry of Lock-up Periods from the Filer's own inventory of Stakeable Crypto Assets in accordance with its liquidity management policies and procedures. When the Lock-up Period applicable to a clients' unstaked Crypto Assets expires, the Filer will return the now freely transferable assets to its inventory. The Filer will establish and maintain internal controls to:

    (a) Promptly segregate positions from its inventory equal to the amount the Filer has permitted to be unstaked; and

    (b) Prevent the Filer from using client assets to settle delivery obligations related to positions it has permitted to be unstaked.

136. Where the Filer does not provide this liquidity for a Stakeable Crypto Asset, a client that unstakes Stakeable Crypto Assets must wait until the applicable Lock-up Period expires before the client can sell or transfer those assets.

Marketplace and Clearing Agency

137. The Filer does not and will not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, subsection 1(1) of the Act.

138. The Filer does not and will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a CTP. Any activities of the Filer that may be considered the activities of a clearing agency or clearing house are related to the Filer arranging or providing for settlement of obligations resulting from agreements entered into on a bilateral basis and without a central counterparty.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief, as applicable, satisfies the tests set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the WDA Decision is revoked and the Requested Relief is granted effective January 1, 2024, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief, as applicable, is granted effective January 1, 2024, provided that:

    (a) Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

    (b) The Filer is registered as an investment dealer in the Jurisdiction and the jurisdiction in which the client is resident, and is a member of CIRO.

    (c) The Filer will comply with terms and conditions or other requirements imposed by CIRO, and for any change in business, the Filer will submit an application to CIRO and comply with any and all terms and conditions imposed by CIRO as a result of the change in business.

    (d) The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets that (i) are not securities or derivatives, or (ii) are Value-Referenced Crypto Assets, provided that: (a) by December 29, 2023, the Filer will no longer allow clients to buy or deposit, or enter into Crypto Contracts or buy or deposit, Value-Referenced Crypto Assets that do not satisfy the conditions set out in section 1 of Appendix C; (b) by April 30, 2024, the Filer will no longer allow clients to buy or deposit Value-Referenced Crypto Assets, that do not comply with the terms and conditions set out in Appendix C.

(e) The Filer will not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.

(f) The Filer has and will continue to confirm that it is not liable for the debt of an affiliate or affiliates that could have a material negative effect on the Filer, except as required under the IDPC Rules with respect to related companies (as defined in the IDPC Rules).

(g) At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with one or more custodians that meets the definition of an "Acceptable Third-party Custodian", unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with an Acceptable Third-party Custodian or has obtained the prior written approval of the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions to hold at least 80% of the total value of the Crypto Assets with an entity that does not meet certain criteria of an Acceptable Third-party Custodian.

(h) Before the Filer holds Crypto Assets with an Acceptable Third-party Custodian, the Filer will take reasonable steps to verify that the custodian:

(i) will hold the Crypto Assets for the Filer's clients (i) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (ii) separate and apart from the assets of the custodian's other clients, and (iii) separate and apart from the custodian's own assets and from the assets of any custodial service provider;

(ii) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

(iii) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian; and

(iv) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.

(i) The Filer will promptly notify the Principal Regulator if the Alberta Ministry of Treasury Board and Finance, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the South Dakota Division of Banking or the New York State Department of Financial Services makes a determination that a custodian is not permitted by that regulatory authority to hold client Crypto Assets. In such a case, the Filer will identify a suitable alternative custody provider that meets the definition of an Acceptable Third-party Custodian to hold the Crypto Assets.

(j) For the Crypto Assets held by the Filer, the Filer will:

(i) hold the Crypto Assets in trust for the benefit of its clients, and separate and distinct from the assets of the Filer;

(ii) ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and

(iii) have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

(k) The Filer uses or will only use Liquidity Providers that it has verified are registered and/or licensed, to the extent required in their respective home jurisdictions, to execute trades in the Crypto Assets and are not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

(l) When the Filer trades with its clients on a principal basis in its capacity as a dealer, the Filer will abide by policies it has adopted with a view to providing fair and reasonable price to its clients.

(m) The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

(n) The Filer will assess liquidity risk and concentration risk posed by its Liquidity Providers. The liquidity and concentration risks assessment will consider trading volume data (as provided in paragraph 1(e) of Appendix E) and complete a historical analysis of each Liquidity Provider and a relative analysis between the Liquidity Providers. Consideration should be given to whether the Liquidity Provider has issued its own Proprietary Tokens and to consider limiting reliance on those Liquidity Providers.

(o) Before each prospective client opens a Client Account, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

(p) The Risk Statement delivered as set out in condition (o) will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will be separate from other acknowledgements by the client as part of the account opening process.

(q) A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.

(r) Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement including the information set out in paragraph 50.

(s) The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets, and,

(i) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and

(ii) in the event of any update to a Crypto Asset Statement, will promptly notify clients through electronic disclosures on the Platform, with links to the updated Crypto Asset Statement.

(t) Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.

(u) For each client, the Filer will perform an appropriateness assessment as described in paragraph 45 prior to opening a Client Account, on an ongoing basis and at least every twelve months.

(v) For each client with a pre-existing Client Account at the date of this Decision in respect of which WDA has not conducted the account appropriateness assessment and has not established the appropriate Client Limit for the client, the Filer will conduct account appropriateness assessment for each Client Account and establish the appropriate Client Limit for the client as set out in paragraphs 45 (a) and (c). Such clients will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the Client Account is appropriate.

(w) The Filer has established and will apply and monitor the Client Limits as set out in paragraph 45(c).

(x) The Filer will monitor client activity and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.

(y) The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may purchase and sell on the Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months:

(i) in the case of a client that is not an Eligible Crypto Investor, does not exceed a net acquisition cost of $30,000;

(ii) in the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor, does not exceed a net acquisition cost of $100,000; and

(iii) in the case of an Accredited Crypto Investor, is not limited.

(z) In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.

(aa) The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(i) change of or use of a new custodian; and

(ii) material changes to the Filer's ownership, its business operations, including its systems, or its business model.

(bb) The Filer will notify CIRO and the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.

(cc) The Filer will only trade Crypto Assets or Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.

(dd) The Filer will evaluate Crypto Assets as set out in paragraphs 33 to 38.

(ee) The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client, without the prior written consent of the regulator or securities regulatory authority of the Applicable Jurisdictions, where the Crypto Assets was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct.

(ff) Except to allow clients to liquidate their positions in an orderly manner in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset that (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative.

(gg) Before the Filer acts as a carrying broker to a dealer in respect of Crypto Contracts, the Filer will take reasonable steps to verify that the dealer has received the prior written approval of CIRO to offer Crypto Contracts to its clients.

(hh) The Filer will not engage in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

Staking

(ii) The Filer will comply with the terms and conditions in Appendix D in respect of the Staking Services.

Reporting

(jj) The Filer will deliver the reporting as set out in Appendix E.

(kk) Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all Client Accounts for which the Client Limits established pursuant to paragraph 45(c) were exceeded during that month.

(ll) The Filer will provide certain reporting in respect of the preceding calendar quarter to its Principal Regulator and CIRO within 30 days of the end of March, June, September and December in connection with the Staking Services, including, but not limited to:

(i) the total number of clients to which the Filer provides the Staking Services;

(ii) the Crypto Assets for which the Staking Services are offered;

(iii) for each Crypto Asset that may be staked:

A. the amount of Crypto Assets staked,

B. the amount of each such Crypto Assets staked that is subject to a Lock-up Period and the length of the Lock-up Period;

C. the amount of Crypto Assets that clients have requested to unstake; and

D. the amount of rewards earned by the Filer and the clients for the Crypto Assets staked under the Staking Services;

(iv) the names of any third parties used to conduct the Staking Services;

(v) any instance of slashing, jailing or other penalties being imposed for validator error;

(vi) the details of why these penalties were imposed;

(vii) any reporting regarding the Filer's liquidity management as requested by the Principal Regulator; and

(viii) the value, at the end of each period, of the Filer's residual proprietary interest in segregate staked Locations for each Crypto Asset staked.

(mm) The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (i) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator or (ii) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

(nn) In addition to any other reporting required by the Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.

(oo) Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

(pp) The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer, or by the Principal Regulator or CIRO arising from the operation of the Platform.

Time Limited Relief

(qq) This Decision shall expire on January 1, 2026.

(rr) This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

In respect of the Prospectus Relief:

Dated: December 18, 2023

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

In respect of the Trade Reporting Relief

Dated: December 18, 2023

"Kevin Fine"
Director, Derivatives
Ontario Securities Commission

Application File #: 2023/0370

Appendix A

Local Trade Reporting Rules

In this Decision the "Local Trade Reporting Rules" collectively means each of the following:

(a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**);

(b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**);

(c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

Appendix B

List of Specified Crypto Assets

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin
- A Value-Referenced Crypto Asset that complies with condition (d).

Appendix C

Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients

(1) The Filer establishes that all of the following conditions are met:

(a) The Value-Referenced Crypto Asset references, on a one-for-one basis, the value of a single fiat currency (the "reference fiat currency").

(b) The reference fiat currency is the Canadian dollar or United States dollar.

(c) The Value-Referenced Crypto Asset entitles a Value-Referenced Crypto Asset holder who maintains an account with the issuer of the Value-Referenced Crypto Asset to a right of redemption, subject only to reasonable publicly disclosed conditions, on demand directly against the issuer of the Value-Referenced Crypto Asset or against the reserve of assets, for the reference fiat currency on a one-to-one basis, less only any fee that is publicly disclosed by the issuer of the Value-Referenced Crypto Asset, and payment of the redemption proceeds within a reasonable period as disclosed by the issuer of the Value-Referenced Crypto Asset.

(d) The issuer of the Value-Referenced Crypto Asset maintains a reserve of assets that is:

(i) in the reference fiat currency and is comprised of any of the following:

1. cash;

2. investments that are evidence of indebtedness with a remaining term to maturity of 90 days or less and that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of Canada or the government of the United States;

3. securities issued by one or more Money Market Funds licensed, regulated or authorized by a regulatory authority in Canada or the United States of America; or

4. such other assets that the principal regulator of the Filer and the regulator or securities regulatory authority in each Canadian jurisdiction where clients of the Filer reside has consented to in writing;

(e) all of the assets that comprise the reserve of assets are:

(i) measured at fair value in accordance with Canadian GAAP for publicly accountable enterprises or U.S. GAAP at the end of each day,

(ii) held with a Qualified Custodian,

(iii) held in an account clearly designated for the benefit of the Value-Referenced Crypto Asset holders or in trust for the Value-Referenced Crypto Asset holders,

(iv) held separate and apart from the assets of the issuer of the Value-Referenced Crypto Asset and its affiliates and from the reserve of assets of any other Crypto Asset, so that, to the best of the knowledge and belief of the Filer after taking steps that a reasonable person would consider appropriate, including consultation with experts such as legal counsel, no creditors of the issuer other than the Value-Referenced Crypto Asset holders in their capacity as Value-Referenced Crypto Asset holders, will have recourse to the reserve of assets, in particular in the event of insolvency, and

(v) not encumbered or pledged as collateral at any time; and

(f) the fair value of the reserve of assets is at least equal to the aggregate nominal value of all outstanding units of the Value-Referenced Crypto Asset at least once each day.

(2) The issuer of the Value-Referenced Crypto Asset makes all of the following publicly available:

(a) details of each type, class or series of the Value-Referenced Crypto Asset, including the date the Value-Referenced Crypto Asset was launched and key features and risks of the Value-Referenced Crypto Asset;

(b) the quantity of all outstanding units of the Value-Referenced Crypto Asset and their aggregate nominal value at least once each business day;

(c) the names and experience of the persons or companies involved in the issuance and management of the Value-Referenced Crypto Asset, including the issuer of the Value-Referenced Crypto Asset, any manager of the reserve of assets, including any individuals that make investment decisions in respect of the reserve of assets, and any custodian of the reserve of assets;

(d) the quantity of units of the Value-Referenced Crypto Asset held by the issuer of the Value-Referenced Crypto Asset or any of the persons or companies referred to in paragraph (c) and their nominal value at least once each business day;

(e) details of how a Value-Referenced Crypto Asset holder can redeem the Value-Referenced Crypto Asset, including any possible restrictions on redemptions such as the requirement for a Value-Referenced Crypto Asset holder to have an account with the issuer of the Value-Referenced Crypto Asset and any criteria to qualify to have an account;

(f) details of the rights of a Value-Referenced Crypto Asset holder against the issuer of the Value-Referenced Crypto Asset and the reserve of assets, including in the event of insolvency or winding up;

(g) all fees charged by the issuer of the Value-Referenced Crypto Asset for distributing, trading or redeeming the Value-Referenced Crypto Asset;

(h) whether Value-Referenced Crypto Asset holders are entitled to any revenues generated by the reserve of assets;

(i) details of any instances of any of the following:

(i) the issuer of the Value-Referenced Crypto Asset has suspended or halted redemptions for all Value-Referenced Crypto Asset holders;

(ii) the issuer of the Value-Referenced Crypto Asset has not been able to satisfy redemption rights at the price or in the time specified in its public policies

(j) within 45 days of the end of each month, an assurance report from a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America, and that meets the professional standards of that jurisdiction, that complies with all of the following:

(i) provides reasonable assurance in respect of the assertion by management of the issuer of the Value-Referenced Crypto Asset that the issuer of the Value-Referenced Crypto Asset has met the requirements in paragraphs (1)(d)-(f) as at the last business day of the preceding month and at least one randomly selected day during the preceding month;

(ii) the randomly selected day referred to in subparagraph (i) is selected by the public accountant and disclosed in the assurance report;

(iii) for each day referred to in subparagraph (i), management's assertion includes all of the following:

1. details of the composition of the reserve of assets;

2. the fair value of the reserve of assets in subparagraph (1)(e)(i);

3. the quantity of all outstanding units of the Value-Referenced Crypto Asset in paragraph (b);

(iv) the assurance report is prepared in accordance with the Handbook, International Standards on Assurance Engagements or attestation standards established by the American Institute of Certified Public Accountants;

(k) starting with the first financial year ending after December 1, 2023, within 120 days of the issuer of the Value-Referenced Crypto Asset's financial year end, annual financial statements of the issuer of the Value-Referenced Crypto Asset that comply with all of the following:

(i) the annual financial statements include all of the following:

1. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

2. a statement of financial position, signed by at least one director of the issuer of the Value-Referenced Crypto Asset, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

3. notes to the financial statements;

(ii) the statements are prepared in accordance with one of the following accounting principles:

1. Canadian GAAP applicable to publicly accountable enterprises;

2. U.S. GAAP;

(iii) the statements are audited in accordance with one of the following auditing standards:

1. Canadian GAAS;

2. International Standards on Auditing;

3. U.S. PCAOB GAAS;

(iv) the statements are accompanied by an auditor's report that,

1. if (iii)(1) or (2) applies, expresses an unmodified opinion,

2. if (iii)(3) applies, expresses an unqualified opinion,

3. identifies the auditing standards used to conduct the audit, and

4. is prepared and signed by a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America.

(3) The Crypto Asset Statement includes all of the following:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has evaluated or endorsed the Crypto Contracts or any of the Crypto Assets made available through the platform;

(b) a prominent statement that the Value-Referenced Crypto Asset is not the same as and is riskier than a deposit in a bank or holding cash with the Filer;

(c) a prominent statement that although Value-Referenced Crypto Assets may be commonly referred to as "stablecoins", there is no guarantee that the Value-Referenced Crypto Asset will maintain a stable value when traded on secondary markets or that the reserve of assets will be adequate to satisfy all redemptions;

(d) a prominent statement that, due to uncertainties in the application of bankruptcy and insolvency law, in the event of the insolvency of [Value-Referenced Crypto Asset issuer], there is a possibility that creditors of [Value-Referenced Crypto Asset issuer] would have rights to the reserve assets that could outrank a Value-Referenced Crypto Asset holder's rights, or otherwise interfere with a Value-Referenced Crypto Asset holder's ability to access the reserve of assets in the event of insolvency;

(e) a description of the Value-Referenced Crypto Asset and its issuer;

(f) a description of the due diligence performed by the Filer with respect to the Value-Referenced Crypto Asset;

(g) a brief description of the information in section (2) and links to where the information in that section is publicly available;

(h) a link to where on its website the issuer of the Value-Referenced Crypto Asset will disclose any event that has or is likely to have a significant effect on the value of the Value-Referenced Crypto Asset or on the reserve of assets;

(i) a description of the circumstances where the secondary market trading value of the Value-Referenced Crypto Asset may deviate from par with the reference fiat currency and details of any instances where the secondary market trading value of the Value-Referenced Crypto Asset has materially deviated from par with the reference fiat currency during the last 12 months on the Filer's platform;

(j) a brief description of any risks to the client resulting from the trading of a Value-Referenced Crypto Asset or a Crypto Contract in respect of a Value-Referenced Crypto Asset that may not have been distributed in compliance with securities laws;

(k) any other risks specific to the Value-Referenced Crypto Asset, including the risks arising from the fact that the Filer may not, and a client does not, have a direct redemption right with the issuer of the Value-Referenced Crypto Asset;

(l) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the platform;

(m) a statement that the statutory rights in section 130.1 of the Act and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in the Decision;

(n) the date on which the information was last updated.

(4) If the Filer uses the term "stablecoin" or "stablecoins" in any information, communication, advertising or social media related to the Platform and targeted at or accessible by Canadian investors, the Filer will also include the following statement (or a link to the following statement when impractical to include):

> "Although the term "stablecoin" is commonly used, there is no guarantee that the asset will maintain a stable value in relation to the value of the reference asset when traded on secondary markets or that the reserve of assets, if there is one, will be adequate to satisfy all redemptions."

(5) The issuer of the Value-Referenced Crypto Asset has filed an undertaking acceptable to the CSA in substantially the same form as set out in Appendix B of CSA Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* (**CSA SN 21-333**).

(6) The KYP Policy of the Filer requires the Filer to assess whether the Value-Referenced Crypto Asset or the issuer of the Value-Referenced Crypto Asset satisfies the criteria in sections (1), (2) and (5) of this Appendix on an ongoing basis.

(7) The Filer has policies and procedures to facilitate halting or suspending deposits or purchases of the Value-Referenced Crypto Asset, or Crypto Contracts in respect of the Value-Referenced Crypto Asset, as quickly as is commercially reasonable, if the Value-Referenced Crypto Asset no longer satisfies the criteria in sections (1), (2) and (5) of this Appendix.

(8) In this Appendix, terms have the same meanings set out in Appendix D of CSA SN 21-333.

Appendix D

Staking Terms and Conditions

1. The Staking Services are offered in relation to the Stakeable Crypto Assets that are subject to a Crypto Contract between the Filer and a client.

2. Unless the Principal Regulator has provided its prior written consent, the Filer only offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (i.e., Stakeable Crypto Assets).

3. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

4. The Filer itself does not act as a Validator. The Filer has entered into written agreements with third parties to stake Stakeable Crypto Assets and each such third party is proficient and experienced in staking Stakeable Crypto Assets.

5. The Filer's KYP Policy includes a review of the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Stakeable Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

6. The Filer has policies and procedures to assess account appropriateness for a client includes consideration of the Staking Services to be made available to that client.

7. The Filer applies the account appropriateness policies and procedures to evaluate whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

8. If, after completion of an account-level appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

9. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that

permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

10. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in paragraph 11 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

11. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which include, at a minimum:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    (f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    (g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Stakeable Crypto Asset protocol, custodian or Validator, where such Stakeable Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

    (h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

12. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

    (g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

    (h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

13. Immediately before each time a client buys or deposits Stakeable Crypto Assets that are automatically staked pursuant to an existing agreement by the client to the Staking Services, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset it is about to buy or deposit will be automatically staked.

14. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Staking Services and/or Stakeable Crypto Assets.

15. In the event of any update to the Risk Statement, for each existing client that has agreed to the Staking Services, the Filer will promptly notify the client of the update and deliver to them a copy of the updated Risk Statement.

16. In the event of any update to a Crypto Asset Statement, for each existing client that has agreed to the Staking Services in respect of the Stakeable Crypto Asset for which the Crypto Asset Statement was updated, the Filer will promptly notify the client of the update and deliver to the client a copy of the updated Crypto Asset Statement.

17. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times.

18. The Filer holds the staked Stakeable Crypto Assets for its clients in one or more omnibus staking wallets in the name of the Filer for the benefit of the Filer's clients with the Custodians and the staked Stakeable Crypto Assets are held separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

19. The Filer has established policies and procedures that manage and mitigate custodial risks for staked Stakeable Crypto Assets, including but not limited to, an effective system of controls and supervision to safeguard the staked Stakeable Crypto Assets.

20. If the Filer permits clients to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-up Period, the Filer establishes and applies appropriate liquidity management policies and procedures to fulfill withdrawal requests made, which may include using the Stakeable Crypto Assets it holds in inventory, setting aside cash for the purpose of purchasing such inventory, and/or entering into agreements with its Liquidity Providers that permit the Filer to purchase any required Crypto Assets. The Filer holds Stakeable Crypto Assets in trust for its clients and will not use Stakeable Crypto Assets of those clients who have not agreed to the Staking Services for fulfilling such withdrawal requests.

21. If the Filer provides a guarantee to clients from some or all of the risks related to the Staking Services, the Filer has established, and will maintain and apply, policies and procedures to address any risks arising from such guarantee.

22. In the event of bankruptcy or insolvency of the Filer, the Filer will assume and will not pass to clients any losses arising from slashing or other penalties arising from the performance or non-performance of the Validator.

23. The Filer monitors its Validators for downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

24. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

25. The Filer regularly and promptly determines the amount of staking rewards earned by each client that has staked Stakeable Crypto Assets under the Staking Services and distributes each client's staking rewards to the client promptly after they are made available to the Filer.

26. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

Appendix E

Data Reporting

1. Commencing with the quarter ending December 31, 2023, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:

    (a) aggregate reporting of activity conducted pursuant to the Platform's operations that will include the following:

        i. number of Client Accounts opened each month in the quarter;

        ii. number of Client Accounts frozen or closed each month in the quarter;

        iii. number of Client Account applications rejected by the platform each month in the quarter based on the account appropriateness factors described in paragraph 45(a);

        iv. number of trades each month in the quarter;

        v. average value of the trades in each month in the quarter;

        vi. number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

        vii. number of Client Accounts that in the preceding 12 months, excluding Specified Crypto Assets, that: (a) in the case of a client that is not an Eligible Crypto Investor, exceeded a net acquisition cost of $30,000 at the end of each month in the quarter, and (b) in the case of a client that is an Eligible Crypto Investor, but not an Accredited Crypto Investor, exceeded a net acquisition cost of $100,000 at the end of each month in the quarter;

        viii. number of Client Accounts at the end of each month in the quarter;

        ix. number of Client Accounts with no trades during the quarter;

        x. number of Client Accounts that have not been funded at the end of each month in the quarter; and

        xi. number of Client Accounts that hold a positive amount of Crypto Assets at end of each month in the quarter; and

        xii. number of Client Accounts that exceeded their Client Limit at the end of each month in the quarter.

    (b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

    (c) a listing of all blockchain addresses, except for deposit addresses, that hold Crypto Assets on behalf of Clients, including all hot and cold wallets;

    (d) the details of any fraudulent activity or cybersecurity incidents on the Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future; and

    (e) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the Platform's operations for each client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined in **Appendix F**.

Appendix F

Data Element Definitions, Formats and Allowable Values

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 - See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM- DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944

[1] Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X
Data Elements Related to each Digital Token Identifier Held in each Account					
8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Transactions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
17	Value of Digital Token Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD, or if a percentage, in decimal format.	0.50
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

B.3.6 IA Global Asset Management Inc.

Headnote

National Policy 11-203 Passport System and Multilateral Instrument 11-102 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from section 13.5(2)(b) of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit the filer to engage in inter-entity trades between the investment portfolios of affiliates for which it acts as an adviser – inter-entity trades will comply with conditions of section 6.1(2) of National Instrument 81-107 Independent Review Committee for Investment Funds except for the requirements to have an independent review committee and obtain its approval of trades.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b), 15.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.1(2).

2023-SACD-1058057

December 19, 2023

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

AND

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

AND

IN THE MATTER OF
IA GLOBAL ASSET MANAGEMENT INC.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation in the Jurisdictions (the **Legislation**) for an exemption under section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) from the restriction on certain managed account transactions contained in section 13.5(2)(b) of NI 31-103 in order to permit the Filer to knowingly cause the investment portfolio of an Affiliate (as defined below), for which the Filer acts as an adviser, to purchase securities from or sell securities to the investment portfolio of another Affiliate for which the Filer also acts as an adviser (the **Exemption Sought**). The Exemption Sought only applies to Affiliates (as defined below) and notably does not apply to any clients of the Filer that are investment funds, or any entities that are not affiliated to the Filer.

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

(a) the Autorité des marchés financiers is the principal regulator for this application,

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

(c) the decision with respect to the Exemption Sought is the decision of the principal regulator and evidences the decision of the regulator in Ontario.

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.

Current Market Price of the Security means,

(a) if the security is an exchange-traded security or a foreign exchange-traded security,

(i) the closing sale price on the day prior to the transaction as reported on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted, or

(ii) if there are no reported transactions for the day prior to the transaction, the average of the highest current bid and lowest current ask for the security as displayed on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted, or

(iii) if the closing sale price on the day prior to the transaction is outside of the closing bid and closing ask, the average of the highest current bid and lowest current ask for the security as displayed on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted; or

(b) for all other securities, the average of the current values determined on the basis of reasonable inquiry; and

Market Integrity Requirements means,

(a) if the security is an exchange-traded security, the purchase or sale,

(i) is printed on a marketplace that executes trades of the security; and

(ii) complies with the market conduct and display requirements of the marketplace, its regulation services provider and securities regulatory authorities; or

(b) if the security is a foreign exchange-traded security, the purchase or sale complies with the requirements that govern transparency and trading of foreign exchange-traded securities on the foreign exchange or foreign quotation and trade reporting system; or

(c) for all other securities, the purchase or sale is through a dealer, if the purchase or sale is required to be reported by a registered dealer under applicable securities legislation.

Representations

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

1. The Filer is a corporation incorporated under the laws of Canada with its head office located in Québec City, Québec.

2. The Filer is a wholly-owned subsidiary of Industrial Alliance Investment Management Inc., which is itself a wholly-owned subsidiary of Industrial Alliance Insurance and Financial Services Inc. (**iAIFS**), which is itself a wholly-owned subsidiary of iA Financial Corporation Inc. (**iA Financial Corporation**), both of which are publicly listed companies in Canada and part of the Industrial Alliance group of companies. iAIFS is a life and health insurance company and financial services provider, and iA Financial Corporation is a holding company which controls a large network of subsidiaries inside and outside of Canada operating in the business of individual insurance, individual wealth management, group insurance and group savings and retirement businesses, among others.

3. The Filer is registered as: (a) a portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan; (b) a commodity trading counsel and a commodity trading manager in Ontario; and (c) a derivatives portfolio manager in Québec.

4. The Filer is not in default of securities legislation of any of the provinces and territories of Canada.

5. The Filer provides portfolio management services to certain affiliated entities within the Industrial Alliance group of companies, and may act as portfolio manager for the investment portfolios of additional affiliated entities in the future (collectively, the current and future affiliates that have their head offices or principal places of business in Canada are referred to as the **Affiliates**). Investment portfolios of Affiliates managed by the Filer include portfolios of related insurance companies that are invested to satisfy their liabilities under insurance contracts. The current affiliates for which the Filer provides portfolio management services include iAISF, Industrial Alliance, Auto and Home Insurance Inc., Industrial Alliance Pacific General Insurance Corporation, Investia Financial Services Inc., iA Clarington Investments Inc., Industrial Alliance Trust Inc., SAL Marketing Inc., PPI Management Inc., Michel Rhéaume et associés ltée, Lubrico Warranty Inc., National Warranties MRWV Limited and Prysm General Insurance Inc.

6. The Filer enters into a written portfolio management agreement with each Affiliate and has, or will have, full discretionary authority to trade in securities for each Affiliate's investment portfolio without obtaining the specific consent or instructions of the Affiliate with respect to the trade.

7. Other than iAIFS and iA Financial Corporation, which are reporting issuers in Canada, each of the affiliates of the Filer is not and does not intend to become a reporting issuer in Canada.

8. The Filer wishes to cause the investment portfolio of an Affiliate to purchase securities from or sell securities to the investment portfolio of another Affiliate (the **Inter-Entity Trades**). The Filer has determined that there are significant benefits that could be achieved for Affiliates through such Inter-Entity Trades, including cost and timing efficiencies.

9. Because of the operation and structure of the Industrial Alliance group of companies and the Filer's investment process, an Affiliate may be a "responsible person" of the Filer as defined in section 13.5(1) of NI 31-103. In the absence of the Exemption Sought, to the extent the Affiliates are responsible persons of the Filer, the Filer would be prohibited from engaging in the Inter-Entity Trades under section 13.5(2)(b) of NI 31-103.

10. Each Inter-Entity Trade will be consistent with the investment objectives and strategies of the investment portfolios of each of the applicable Affiliates.

11. The portfolio management agreements between the Filer and each of the Affiliates contain, or will contain, the authorization of the Affiliate for the Filer to engage in Inter-Entity Trades. In addition, all Inter-Entity Trades will be made in compliance with the provisions of any applicable insurance legislation.

12. The Filer has written policies and procedures in place to govern the Inter-Entity Trades.

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) Each of the Affiliates, other than iAIFS and iA Financial Corporation, is not a reporting issuer in Canada;

(b) The Inter-Entity Trades are consistent with the investment objectives and strategies of the investment portfolios of each of the applicable Affiliates;

(c) The portfolio management agreement or other documentation in respect of the investment portfolios of the Affiliates permits Inter-Entity Trades;

(d) At the time of the Inter-Entity Trade,

(i) the bid and ask price of the security is readily available;

(ii) the Inter-Entity Trade is executed at the Current Market Price of the Security;

(iii) the Inter-Entity Trade is subject to Market Integrity Requirements; and

(iv) the Filer keeps written records of each Inter-Entity Trade in accordance with the record-keeping requirements applicable to registered firms set out in sections 11.5 and 11.6 of NI 31-103;

(e) Each Inter-Entity Trade represents the business judgement of the Filer uninfluenced by considerations other than the best interests of the investment portfolios of each of the Affiliates that is party to the Inter-Entity Trade;

(f) Each Inter-Entity Trade is in compliance with the Filer's written policies and procedures relating to Inter-Entity Trades;

(g) Each Inter-Entity Trade achieves a fair and reasonable result for the investment portfolios of each of the Affiliates; and

(h) No fees or costs will be paid by or to any party for an Inter-Entity Trade other than the nominal cost incurred by a party to print or otherwise display the trade.

French version signed by:

"Éric Jacob"
Superintendent, Client Services and Distribution Oversight
Autorité des marchés financiers

OSC File #: 2022/0165

B.3.7 TD Securities Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 19, 2023

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
TD SECURITIES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

The Autorité des marchés financiers has also received an application from the Filer for a decision under the derivatives legislation of Québec, that the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103, as applicable by section 11.1 of the *Derivatives Regulation* (Québec), CQLR, c. I-14.01, r. 1, pursuant to section 86 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of Ontario and is headquartered in Toronto, Ontario.

2. The Filer is registered in the Jurisdictions in the categories of an investment dealer; a futures commission merchant in Ontario and Manitoba; and a derivatives dealer in Québec.

3. The Filer is a Dealer Member of the Canadian Investment Regulatory Organization (**CIRO**).

4. The Filer provides corporate, investment banking and capital markets services. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank (**TD Bank**), which is a Schedule I bank formed and existing under the *Bank Act* (Canada). TD Bank and its subsidiaries, including the Filer, comprise a worldwide group of banks and financial services companies (collectively, **TD Bank Group**) that spans asset classes, industries and geographies.

5. Other than with respect to the subject matter of this decision, the Filer is not in default of securities legislation, commodity futures legislation, or derivatives legislation in any of the Jurisdictions. The Filer and 133 of its registered individuals were in default of the requirements in paragraph 13.18(2)(b) of NI 31-103 (the **Non-Compliance**) from December 31, 2021 to the date of this decision. The Filer understands that the Exemption Sought is only in effect from the date of this decision.

6. The Filer will consider and comply with any other disclosure obligations with respect to the Non-Compliance, such as to other regulators and external stakeholders.

7. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately 151 Registered Individuals.

8. The current titles used by the Registered Individuals include the words "Vice President", "Director" and "Managing Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

9. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

10. The Registered Individuals interact only with institutional clients that are, each, a non-individual "institutional client", as defined in CIRO Corporation Investment Dealer and Partially Consolidated Rule 1201 (**CIRO Rule 1201**) (the **Clients**).

11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

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

(a) when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "institutional clients" as defined in CIRO Rule 1201, and

(b) the Filer's Chief Compliance Officer (**CCO**) will report and disclose the Non-Compliance: (i) to the Ultimate Designated Person and Board of Directors (**BoD**) and (ii) in the CCO annual report to the BoD.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2023 / 0193

B.4
Cease Trading Orders

B.4.1 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
Powertap Hydrogen Capital Corp.	December 12, 2023	
Real Luck Group Ltd.	December 5, 2023	December 14, 2023

Company Name	Date of Order	Date of Revocation
Real Luck Group Ltd.	December 5, 2023	
Wolverine Energy and Infrastructure Inc.	December 5, 2023	
Environmental Waste International Inc.	December 5, 2023	December 6, 2023
Critical Infrastructure Technologies Ltd.	November 03, 2023	December 11, 2023

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

B.4.3 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
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	

Company Name	Date of Order	Date of Lapse
HAVN Life Sciences Inc.	August 30, 2023	
Falcon Gold Corp.	November 1, 2023	

B.5
Rules and Policies

B.5.1 Multilateral Instrument 93-101 Derivatives: Business Conduct

MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"CIRO" means the Canadian Investment Regulatory Organization;

"collateral" means cash, securities or other property that is

(a) received or held by a derivatives firm from, for or on behalf of a derivatives party, and

(b) intended to or does margin, guarantee, secure, settle or adjust one or more derivatives between the derivatives firm and the derivatives party;

"commercial hedger" means a person or company that carries on a business and that transacts a derivative to hedge a risk in respect of the business, related to any of the following:

(a) an asset that the person or company owns, produces, manufactures, processes, or merchandises or, at the time of the execution of the transaction, reasonably anticipates owning, producing, manufacturing, processing, or merchandising;

(b) a liability that the person or company incurs or, at the time the transaction occurs, reasonably anticipates incurring;

(c) a service that the person or company provides, purchases, or, at the time the transaction occurs, reasonably anticipates providing or purchasing;

"commodity derivative" means a derivative for which the only underlying interest is a commodity other than a currency;

"derivatives adviser" means any of the following:

(a) except in Québec, a person or company engaging in or holding themself out as engaging in the business of advising others in respect of derivatives;

(b) in Québec, an adviser as that term is defined in the *Derivatives Act* (Québec);

(c) any other person or company required to be registered as a derivatives adviser under securities legislation;

"derivatives dealer" means any of the following:

(a) except in Québec, a person or company engaging in or holding themself out as engaging in the business of trading in derivatives as principal or agent;

(b) in Québec, a dealer as that term is defined in the *Derivatives Act* (Québec);

(c) any other person or company required to be registered as a derivatives dealer under securities legislation;

"derivatives firm" means a derivatives dealer or a derivatives adviser, as applicable;

"derivatives party" means,

(a) in relation to a derivatives dealer, any of the following:

(i) a person or company for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction;

(ii) a person or company that is, or is proposed to be, a party to a derivative for which the derivatives dealer is the counterparty, and

(b) in relation to a derivatives adviser, a person or company to which the adviser provides or proposes to provide advice in relation to a derivative;

"derivatives party assets" means any asset, including, for greater certainty, collateral, received or held by a derivatives firm from, for or on behalf of a derivatives party;

"derivatives position" means the economic interest of a counterparty in an outstanding derivative;

"derivatives sub-adviser" means an adviser to any of the following:

(a) a derivatives adviser;

(b) a person or company that is registered as an adviser under securities legislation of a jurisdiction of Canada, or a person or company registered under commodity futures legislation in Manitoba or Ontario;

(c) a registered dealer member or a derivatives dealer that is, in each case, a dealer member of CIRO acting as an adviser in accordance with the applicable rules of CIRO;

"eligible commercial hedger" means a person or company that,

(a) is described in paragraph (n) of the definition of "eligible derivatives party", and

(b) is not described in any other paragraph of that definition;

"eligible derivatives party" means, for a derivatives party of a derivatives firm, any of the following:

(a) a Canadian financial institution;

(b) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of a person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as any of the following:

(i) a derivatives dealer;

(ii) a derivatives adviser;

(iii) an adviser;

(iv) an investment dealer;

(e) a pension fund that is regulated by the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of the pension fund;

(f) an entity organized under the laws of a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or the government of a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or the government of a jurisdiction of Canada;

(h) a government of a foreign jurisdiction or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person or company that is acting on behalf of a managed account if the person or company is registered or authorized to carry on business as either of the following:

(i) an adviser or a derivatives adviser in a jurisdiction of Canada;

(ii) the equivalent of an adviser or a derivatives adviser under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(l) an investment fund if either of the following apply:

(i) the investment fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;

(ii) the investment fund is advised by an adviser registered or exempted from registration under securities legislation or under commodity futures legislation of a jurisdiction of Canada;

(m) a person or company, other than an individual, that has net assets of at least $25 000 000 as shown on its most recently prepared financial statements;

(n) a person or company that has represented to the derivatives firm, in writing, that it is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;

(o) an individual that beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, that have an aggregate realizable value before tax but net of any related liabilities of at least $5 000 000;

(p) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that its obligations under derivatives that it transacts with the derivatives firm are fully guaranteed or otherwise fully supported, under a written agreement, by one or more derivatives parties referred to in this definition, other than a derivatives party referred to in paragraph (n) or (o);

(q) a qualifying clearing agency;

“institutional foreign exchange market” means the global foreign exchange market comprised of persons or companies that are active in foreign exchange markets as part of their business and transact in foreign exchange contracts or instruments, including, for greater certainty, short-term foreign exchange contracts or instruments;

“investment dealer” means a person or company registered as an investment dealer under the securities legislation of a jurisdiction of Canada;

“managed account” means an account of a derivatives party for which another person or company makes the trading decisions if the other person or company has discretion to transact derivatives for the account without requiring the derivatives party’s express consent to the transaction;

“non-eligible derivatives party” means a derivatives party that is not an eligible derivatives party;

“permitted depository” means a person or company that is any of the following:

(a) a Canadian financial institution;

(b) a qualifying clearing agency;

(c) the Bank of Canada or the central bank of a permitted jurisdiction;

(d) a person recognized or exempted 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 $100 000 000;

(f) with respect to derivatives party assets that it receives from a derivatives party, a derivatives dealer;

"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 an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) is located, and a political subdivision of that country;

(b) if a derivatives party has provided express written consent to the derivatives dealer entering into a derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the derivative entered into by, for or on behalf of the derivatives party, and a political subdivision of that country;

"qualifying clearing agency" means a person or company if any of the following apply:

(a) it is recognized or exempted from recognition as a clearing agency or a clearing house, as applicable, in a jurisdiction of Canada;

(b) it is subject to regulation in a foreign jurisdiction that is consistent with the *Principles for financial market infrastructures* applicable to central counterparties, as amended from time to time, and published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

"referral arrangement" means any arrangement in which a derivatives firm agrees to pay or receive a referral fee;

"referral fee" means any compensation, whether made directly or indirectly, provided for the referral of a derivatives party to or from a derivatives firm;

"registered derivatives firm" means a derivatives dealer or a derivatives adviser that is registered under the securities legislation of a jurisdiction of Canada as a derivatives dealer or a derivatives adviser;

"registered firm" means a registered derivatives firm or a registered securities firm;

"registered securities firm" means a person or company that is registered as a dealer, an adviser or an investment fund manager in a category of registration specified in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"segregate" means to separately hold or separately account for a derivatives party's positions related to derivatives or derivatives party assets;

"short-term foreign exchange contract or instrument" means a contract or instrument referred to in the following:

(a) in Manitoba, paragraph 2(1)(c) of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination;*

(b) in Ontario, paragraph 2(1)(c) of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*;

(c) in Québec, paragraph 2(c) of *Regulation 91-506 respecting Derivatives Determination*;

(d) in all other jurisdictions of Canada, paragraph 2(1)(c) of Multilateral Instrument 91-101 *Derivatives: Product Determination*;

"transaction" means either of the following:

(a) entering into a derivative or making a material amendment to, terminating, assigning, selling, or otherwise acquiring or disposing of, a derivative;

(b) the novation of a derivative, other than a novation with a qualifying clearing agency;

"valuation" means the value of a derivative as at a certain date determined in accordance with applicable accounting standards for fair value measurement using a methodology that is consistent with derivatives industry standards;

(2) In this Instrument, "adviser" includes

(a) in Manitoba, an "adviser" as defined in *The Commodity Futures Act* (Manitoba),

(b) in Ontario, an "adviser" as defined in the *Commodity Futures Act* (Ontario), and

(c) in Québec, an "adviser" as defined in the *Securities Act* (Québec).

(3) 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.

(4) 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) all of the following apply:

(i) the second party is a limited partnership;

(ii) the first party is a general partner of the limited partnership referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a general partner of the second party;

(d) all of the following apply:

(i) the second party is a trust;

(ii) the first party is a trustee of the trust referred to in subparagraph (i);

(iii) the first party has the power to direct the management and policies of the second party by virtue of being a trustee of the second party.

(5) In this Instrument, a person or company is a subsidiary of another person or company if at least one of the following applies:

(a) the person or company is controlled by

(i) the other person or company,

(ii) the other person or company and one or more persons or companies each of which is controlled by that person or company, or

(iii) 2 or more persons or companies each of which is controlled by the other person or company;

(b) the person or company is a subsidiary of a person or company that is that other person or company's subsidiary.

(6) For the purpose of this Instrument, a person or company referred to in paragraph (k) of the definition of "eligible derivatives party" is deemed to be transacting as principal when it is acting as an agent or trustee for a managed account.

(7) In this Instrument, in Alberta, 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*.

PART 2
APPLICATION AND EXEMPTION

Application to derivatives firms and individuals acting on their behalf

2. For greater certainty, this Instrument applies to a derivatives firm and an individual acting on behalf of the derivatives firm whether or not they are registered.

Application to certain derivatives

3. 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,

(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, and

(d) in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application – short-term foreign exchange contract or instrument

4. (1) Despite section 3, this Instrument applies to a derivative that is a short-term foreign exchange contract or instrument in the institutional foreign exchange market transacted by a derivatives dealer with a derivatives party if all of the following apply:

(a) the derivatives dealer is a Canadian financial institution;

(b) the derivatives dealer has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives that exceed $500 000 000 000.

(2) In respect of a short-term foreign exchange contract or instrument to which subsection (1) applies, this Instrument does not apply other than the following provisions:

(a) section 9 [*Fair dealing*];

(b) section 10 [*Conflicts of interest*];

(c) section 12 [*Handling complaints*];

(d) Division 1 [*Compliance*] of Part 5 [*Compliance and recordkeeping*].

Non-application – affiliated entities

5. This Instrument does not apply to a person or company in respect of dealing with or advising an affiliated entity of the person or company unless the affiliated entity is an investment fund.

Non-application – qualifying clearing agencies

6. This Instrument does not apply to a qualifying clearing agency.

Non-application – governments, central banks and international organizations

7. This Instrument does not apply to any of the following:

(a) the Government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) the Bank of Canada or a central bank of a foreign jurisdiction;

(c) the Bank for International Settlements;

(d) the International Monetary Fund.

Exemptions from certain requirements in this Instrument when dealing with or advising an eligible derivatives party

8. (1) Subject to subsection (3), a derivatives firm is exempt from this Instrument, in relation to a transaction with a derivatives party if the derivatives party

(a) is an eligible derivatives party, and

(b) is not an individual or an eligible commercial hedger.

(2) Subject to subsection (3), a derivatives firm is exempt from this Instrument, in relation to a transaction with a derivatives party,

(a) if the derivatives party,

(i) is an eligible derivatives party,

(ii) is an individual or an eligible commercial hedger, and

(iii) has provided the derivatives firm with a written statement that it "waives protections provided in Multilateral Instrument 93-101" and specifies which protections that statement applies to, and

(b) if, in the case of a derivatives party that is an individual and is an eligible commercial hedger, the derivatives firm has identified and documented the nature of the derivatives party's business and the related commercial risks that the derivatives party is hedging.

(3) The exemptions in subsections (1) and (2) do not apply in respect of the following:

(a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];

(b) sections 24 [*Interaction with other Instruments*] and 25 [*Segregating derivatives party assets*];

(c) subsection 28(1) [*Content and delivery of transaction information*];

(d) Part 5 [*Compliance and recordkeeping*].

Part 6 [Exemptions] of this Instrument provides exemptions from the requirements of this Instrument to persons or companies, subject to certain terms and conditions:

- *Foreign liquidity providers – transactions with derivatives dealers (s. 37)*
- *Certain derivatives end-users (s. 38)*
- *Foreign derivatives dealers (s. 39)*
- *Investment dealers (s. 41)*
- *Canadian financial institutions (s. 42)*
- *Derivatives transacted on a derivatives trading facility where the identity of the derivatives party is unknown (s. 43)*
- *Certain notional amounts of certain commodity derivatives and other derivatives activity (s.44)*
- *Advising generally (s. 45)*
- *Foreign derivatives advisers (s. 46)*
- *Foreign derivatives sub-advisers (s. 47)*
- *Registered advisers under securities or commodity futures legislation (s. 48)*

The text boxes in this Instrument do not form part of this Instrument and have no official status.

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Fair dealing

9. (1) A derivatives firm must act fairly, honestly and in good faith with a derivatives party.

(2) An individual acting on behalf of a derivatives firm must act fairly, honestly and in good faith with a derivatives party.

Conflicts of interest

10. (1) A derivatives firm must establish, maintain and apply reasonable policies and procedures to identify all material conflicts of interest, and material conflicts of interest that the derivatives firm in its reasonable opinion would expect to arise, between the derivatives firm, including each individual acting on behalf of the derivatives firm, and a derivatives party.

(2) A derivatives firm must respond to a conflict of interest identified under subsection (1).

(3) If a reasonable derivatives party would expect to be informed of a conflict of interest identified under subsection (1), the derivatives firm must disclose, in a timely manner, the nature and extent of the conflict of interest to the derivatives party whose interest conflicts with the interest identified.

Know your derivatives party

11. (1) For the purpose of paragraph (2)(c) in Ontario, "insider" has the same meaning as in the *Securities Act* except that "reporting issuer", as it appears in the definition of "insider", is to be read as "reporting issuer or any other issuer whose securities are publicly traded".

(2) A derivatives firm must establish, maintain and apply reasonable policies and procedures to ensure that the derivatives firm

(a) obtains the facts necessary to comply with applicable legislation relating to the verification of a derivatives party's identity,

(b) establishes the identity of a derivatives party and, if the derivatives firm has cause for concern, makes reasonable inquiries as to the reputation of the derivatives party,

(c) if transacting with, for or on behalf of, or advising a derivatives party in respect of a derivative that has one or more securities as an underlying interest, establishes whether either of the following applies:

(i) the derivatives party is an insider of a reporting issuer or any other issuer whose securities are publicly traded;

(ii) the derivatives party would reasonably be expected to have access to material non-public information relating to any interest underlying the derivative;

(d) establishes the creditworthiness of a derivatives party if the derivatives firm, as a result of its relationship with the derivatives party, will have any credit risk in relation to that derivatives party.

(3) For the purpose of establishing the identity of a derivatives party that is a corporation, partnership or trust, a derivatives firm must establish the following:

(a) the nature of the derivatives party's business;

(b) the identity of any individual if either of the following applies:

(i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;

(ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.

(4) A derivatives firm must take reasonable steps to keep current the information required under this section.

(5) This section does not apply if the derivatives party is a registered firm or a Canadian financial institution.

Handling complaints

12. (1) In Québec, a derivatives firm is deemed to comply with this section if it complies with section 74 to 76 of the *Derivatives Act* (Québec).

(2) A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, promptly respond to each complaint made to the derivatives firm about any product or service offered by the derivatives firm or an individual acting on behalf of the derivatives firm.

Tied selling

13. A derivatives firm, or an individual acting on behalf of the derivatives firm, must not impose undue pressure on or coerce a person or company to obtain a derivatives-related product or service from a particular person or company, including, for greater certainty, the derivatives firm and any of its affiliated entities, as a condition of obtaining another product or service from the derivatives firm.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in this Division 2 apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 8.

Derivatives-party-specific needs and objectives

14. (1) A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, it has sufficient information regarding all of the following to enable it to comply with section 15 [*Suitability*]:

(a) the derivatives party's needs and objectives with respect to its transacting in derivatives;

(b) the derivatives party's financial circumstances;

(c) the derivatives party's risk tolerance;

(d) if applicable, the nature of the derivatives party's business and the operational risks it wants to manage.

(2) A derivatives firm must take reasonable steps to keep current the information required under this section.

Suitability

15. (1) A derivatives firm, or an individual acting on behalf of a derivatives firm, must take reasonable steps to ensure, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transacts in a derivative for a derivatives party's managed account, that the derivative and the transaction are suitable for the derivatives party.

(2) If a derivatives party instructs a derivatives firm, or an individual acting on behalf of a derivatives firm, to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would result in a transaction or derivative that is not suitable for the derivatives party, the derivatives firm must inform the derivatives party in writing of the derivatives firm's opinion and must not transact in the derivative unless the derivatives party, after being informed, instructs the derivatives firm to proceed with the transaction.

Permitted referral arrangements

16. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not participate in a referral arrangement in respect of a derivative with another person or company unless all of the following apply:

(a) before a derivatives party is referred by or to the derivatives firm, the terms of the referral arrangement are set out in a written agreement between the derivatives firm and the person or company;

(b) the derivatives firm records all referral fees;

(c) the derivatives firm, or the individual acting on behalf of the derivatives firm, ensures that the information prescribed by subsection 18(1) [*Disclosing referral arrangements to a derivatives party*] is provided to the derivatives party in writing before the derivatives firm or the individual receiving the referral either opens an account for the derivatives party or provides services to the derivatives party.

Verifying the qualifications of the person or company receiving the referral

17. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not refer a derivatives party to another person or company unless the derivatives firm first takes reasonable steps to verify and conclude that the person or company has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.

Disclosing referral arrangements to a derivatives party

18. (1) The written disclosure of the referral arrangement required by paragraph 16(c) [*Permitted referral arrangements*] must include all of the following:

(a) the name of each party to the referral arrangement referred to in paragraph 16(a) [*Permitted referral arrangements*];

(b) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration of, or exemption from registration relied upon by, each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the referral arrangement with a description of the activities that the derivatives firm and individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;

(f) any other information that a reasonable derivatives party would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the derivatives firm must ensure that written disclosure of that change is provided to each derivatives party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division 1 of Part 4 apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 8.

Relationship disclosure information

19. (1) Before transacting with, for or on behalf of, or advising, a derivatives party for the first time, a derivatives firm must deliver to the derivatives party all information that a reasonable person would consider important about the derivatives party's relationship with the derivatives firm, and each individual acting on behalf of the derivatives firm, that is providing derivatives-related services to the derivatives party.

(2) Without limiting subsection (1), the information delivered to a derivatives party under that subsection must include all of the following:

(a) a description of the nature or type of the derivatives party's account;

(b) a description of the conflicts of interest that the derivatives firm is required to disclose to a derivatives party under securities legislation;

(c) disclosure of the fees or other charges the derivatives party might be required to pay related to the derivatives party's account;

(d) a general description of the types of transaction fees or other charges the derivatives party might be required to pay in relation to derivatives;

(e) a general description of any compensation paid to the derivatives firm by any other party in relation to the different types of derivatives that a derivatives party may transact in through the derivatives firm;

(f) a description of the content and frequency of reporting for each account or portfolio of a derivatives party;

(g) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 12 [*Handling complaints*];

(h) a statement that the derivatives firm has an obligation to assess whether a derivative is suitable for a derivatives party prior to executing a transaction or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(i) the information a derivatives firm must collect about the derivatives party under sections 11 [*Know your derivatives party*] and 14 [*Derivatives-party-specific needs and objectives*];

(j) a general explanation of how performance benchmarks might be used to assess the performance of a derivatives party's derivatives and any options for benchmark information that might be available to the derivatives party from the derivatives firm;

(k) in the case of a derivatives firm that holds or has access to derivatives party assets, a general description of the manner in which the assets are held, used or are invested by the derivatives firm and a description of the risks and benefits to the counterparty arising from the derivatives firm holding or having access to use or invest the derivatives party assets in that manner.

(3) A derivatives firm must deliver the information required under subsection (1) to the derivatives party in writing before the derivatives firm does either of the following:

(a) first transacts in a derivative with, for or on behalf of the derivatives party;

(b) first advises the derivatives party in respect of a derivative.

(4) If there is a significant change in respect of the information delivered to a derivatives party under subsection (1) or (2), the derivatives firm must take reasonable steps to notify the derivatives party of the change in a timely manner and, if possible, before the derivatives firm next does either of the following:

(a) transacts in a derivative with, for or on behalf of the derivatives party;

(b) advises the derivatives party in respect of a derivative.

(5) A derivatives firm must not impose any new fee or other charge in respect of an account of a derivatives party, or increase the amount of any fee or other charge in respect of an account of a derivatives party, unless written notice of the new or increased fee or charge is provided to the derivatives party at least 60 days before the date on which the imposition or increase becomes effective.

(6) Subsections (1) to (4) do not apply to a derivatives dealer in respect of a derivatives party for whom the derivatives dealer transacts in a derivative only as directed by a derivatives adviser acting for the derivatives party.

(7) A derivatives dealer referred to in subsection (6) must deliver the information referred to in paragraphs (2)(a) to (g) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

20. (1) Before transacting in a type of derivative with, for or on behalf of a derivatives party for the first time, a derivatives dealer must deliver each of the following to the derivatives party:

(a) a general description of the type of derivatives and services related to derivatives that the derivatives firm offers;

(b) a document designed to reasonably enable the derivatives party to assess each of the following:

(i) the types of risks that a derivatives party should consider when making a decision relating to types of derivatives that the derivatives dealer offers, including, for greater certainty, the material risks relating to the type of derivatives transacted and the derivatives party's potential exposure under the type of derivatives;

(ii) the material characteristics of the type of derivative, including, for greater certainty, the material economic terms and the rights and obligations of the counterparties to the type of derivative;

(c) the following statement, or a statement in writing that is substantially similar:

"A characteristic of many derivatives is that you are only required to deposit funds that correspond to a portion of your total potential obligations when entering into the derivative. However, your profits or losses from the derivative are based on changes in the total value of the derivative. This means the leverage characteristic magnifies the profit or loss under a derivative, and losses can greatly exceed the amount of funds deposited. We may require you to deposit additional funds to cover your obligations under a derivative as the value of the derivative changes. If you fail to deposit these funds, we may close out your position without warning. You should understand all of your obligations under a derivative, including your obligations if the value of the derivative declines.

Using borrowed money to finance a derivatives transaction involves greater risk than using cash resources only. If you borrow money, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the derivative declines."

(2) Before transacting in a derivative with, for or on behalf of a derivatives party, a derivatives dealer must advise the derivatives party of all of the following:

(a) any material risks or material characteristics that are materially different from the risks or characteristics described in the disclosure required under subsection (1);

(b) if applicable, the price of the derivative to be transacted and the most recent valuation;

(c) any compensation or other incentive payable by the derivatives party relating to the derivative or the transaction.

Valuation reporting

21. (1) On each business day, a derivatives dealer must make available to a derivatives party a valuation for each derivative that it has transacted with, for or on behalf of the derivatives party and with respect to which obligations remain outstanding on that day.

(2) At least once every 3 months, a derivatives adviser must make available to a derivatives party a valuation statement for each derivative that it has transacted for or on behalf of the derivatives party, unless the derivatives party requests the valuation statement be made available monthly, in which case the adviser must make available a statement to the derivatives party for each one-month period.

Notice to derivatives parties by non-resident derivatives dealers

22. A derivatives dealer whose head office or principal place of business is not in Canada must not transact in a derivative with a derivatives party in the local jurisdiction unless it has delivered to the derivatives party a statement in writing disclosing all of the following:

(a) the foreign jurisdiction in which the head office or the principal place of business of the derivatives dealer is located;

(b) that all or substantially all of the assets of the derivatives dealer may be situated outside the local jurisdiction;

(c) that there may be difficulty enforcing legal rights against the derivatives dealer because of the above;

(d) the name and address of the agent for service of process of the derivatives dealer in the local jurisdiction.

DIVISION 2 – DERIVATIVES PARTY ASSETS

Sections 24 and 25 apply when a derivatives firm is dealing with any derivatives party; the remaining sections in this Division only apply if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 8.

Definition – initial margin

23. In this Division, "initial margin" means any derivatives party assets delivered by a derivatives party to a derivatives firm as collateral to cover potential changes in the value of a derivative over an appropriate close-out period in the event of a default.

Application and interaction with other instruments

24. A derivatives firm is exempt from the provisions in this Division if any of the following apply:

(a) the derivatives firm is subject to and complies with or is exempt from sections 3 to 8 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* in respect of derivatives party assets;

(b) the derivatives firm is subject to and complies with Guideline E-22 *Margin Requirements for Non-Centrally Cleared Derivatives* issued by the federal Office of the Superintendent of Financial Institutions;

(c) the derivatives firm is subject to and complies with the *Guideline on margins for over-the-counter derivatives not cleared by a central counterparty* issued by the Autorité des marchés financiers in respect of derivatives party assets;

(d) the derivatives firm is subject to and complies with National Instrument 81-102 *Investment Funds* in respect of derivatives party assets.

Segregating derivatives party assets

25. A derivatives firm must segregate derivatives party assets and derivatives positions from the property and derivatives positions of the derivatives firm and other persons or companies.

Holding initial margin

26. A derivatives firm must hold initial margin in an account at a permitted depository.

Investment or use of initial margin

27. (1) A derivatives firm must not use or invest initial margin without receiving written consent from the derivatives party.

(2) A derivatives firm must not use or invest the initial margin of a derivatives party unless the derivatives firm has entered into a written agreement with the derivatives party under which the derivatives firm assumes all losses resulting from the investment or use of initial margin by the derivatives firm.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

This Division, other than subsection 28(1), applies if a derivatives firm is dealing with (i) a non-eligible derivatives party or (ii) an eligible derivatives party who is either an individual or eligible commercial hedger that has not waived these protections – see section 8.

Content and delivery of transaction information

28. (1) A derivatives dealer that transacts with, for or on behalf of a derivatives party must promptly deliver a written confirmation of the transaction to the following, as applicable:

(a) the derivatives party;

(b) if the derivatives party has consented in writing, a derivatives adviser acting for the derivatives party.

(2) If a derivatives dealer has transacted with, for or on behalf of a non-eligible derivatives party, the written confirmation required under subsection (1) must include all of the following, as applicable:

(a) a description of the derivative;

(b) a description of the agreement that governs the transaction;

(c) the notional amount, quantity or volume of the underlying asset of the derivative;

(d) the number of units of the derivative;

(e) the total price paid for the derivative and the per unit price of the derivative;

(f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;

(g) whether the derivatives dealer acted as principal or agent in relation to the derivative;

(h) the date and the name of the trading facility on which the transaction took place;

(i) the name of each individual acting on behalf of the derivatives firm that provided advice relating to the derivative or the transaction;

(j) the date of the transaction;

(k) the name of the qualifying clearing agency where the derivative was cleared.

Derivatives party statements

29. (1) A derivatives firm must deliver a statement referred to in subsection (2) to a derivatives party, at the end of each quarterly period, if either of the following applies:

(a) within the quarterly period the derivatives firm transacted a derivative with, for or on behalf of the derivatives party;

(b) the derivatives party has an outstanding derivatives position resulting from a transaction where the derivatives firm acted as a derivatives dealer.

(2) A derivatives firm that delivers a statement referred to in subsection (1) must include in the statement all of the following information for each transaction made with, for or on behalf of the derivatives party by the derivatives firm during the period covered by the statement, if applicable:

(a) the date of the transaction;

(b) a description of the transaction, including, for greater certainty, the notional amount, the number of units, the price per unit and the total price of the derivative transacted;

(c) information sufficient to identify the agreement that governs the transaction.

(3) A derivatives firm that delivers a statement referred to in subsection (1) must include in the statement all of the following information, as applicable, as at the date of the statement:

(a) a description of each outstanding derivative to which the derivatives party is a party;

(b) the valuation, as at the statement date, of each outstanding derivative referred to in paragraph (a);

(c) the final valuation, as at the expiry or termination date, of each derivative that expired or terminated during the period covered by the statement;

(d) a description of all derivatives party assets held or received by the derivatives firm as collateral;

(e) the amount of any cash balance in the derivatives party's account;

(f) a description of assets of a derivatives party, other than assets referred to in paragraph (d), held or received by the derivatives firm;

(g) the total market value of any outstanding derivatives and derivatives party assets referred to in paragraph (f) in the derivatives party's account.

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

Definitions

30. In this Division,

"chief compliance officer" means the officer or partner of a derivatives firm who is responsible for establishing, maintaining and applying written policies and procedures to monitor and assess compliance, of the derivatives firm and individuals acting on its behalf, with securities legislation relating to derivatives;

"derivatives business unit" means, in respect of a derivatives firm, a division or other organizational unit the employees of which transact in, or provide advice in relation to, a type of derivative, or a class of derivatives, on behalf of the derivatives firm;

"senior derivatives manager" means an individual designated by the derivatives dealer under subsection 32(1).

Policies and procedures

31. A derivatives firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:

(a) the derivatives firm and each individual acting on its behalf in relation to transacting in, or providing advice in relation to, a derivative, comply with securities legislation relating to trading and advising in derivatives;

(b) the risks relating to its derivatives activities within the derivatives business unit are managed in accordance with the derivatives firm's risk management policies and procedures;

(c) each individual who performs an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative, before commencing the activity and on an ongoing basis,

(i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,

(ii) without limiting subparagraph (i), understands the structure, features and risks of each derivative that the individual transacts in or advises in relation to, and

(iii) acts with integrity.

Designation and responsibilities of a senior derivatives manager

32. (1) A derivatives dealer must do the following:

(a) designate an individual as a senior derivatives manager for each derivatives business unit;

(b) identify to the regulator or, in Québec, the securities regulatory authority, upon request, each individual designated as the senior derivatives manager in respect of each derivatives business unit.

(2) A senior derivatives manager must do the following:

(a) supervise the derivatives-related activities conducted in the derivatives business unit directed towards ensuring compliance by the derivatives business unit, and each individual employed in the derivatives business unit, with this Instrument, applicable securities legislation, including for greater certainty, ensuring the policies and procedures required under section 31[*Policies and procedures*] are applied;

(b) respond by addressing, in a timely manner, any material non-compliance by an individual employed in the derivatives business unit with this Instrument, applicable securities legislation, or the policies and procedures required under section 31 [*Policies and procedures*], including reporting to the chief compliance officer.

(3) At least once every calendar year, the senior derivatives manager in respect of each derivatives business unit must,

(a) prepare a report containing the following, as applicable:

(i) a description of

(A) each incident of material non-compliance with this Instrument, securities legislation relating to trading in derivatives or the policies and procedures required under section 31 [*Policies and procedures*] by the derivatives business unit or an individual in the derivatives business unit, and

(B) the steps taken to respond to each incidence of material non-compliance;

(ii) a statement to the effect that the derivatives business unit is in material compliance with this Instrument, securities legislation relating to trading and advising in derivatives and the policies and procedures required under section 31 [*Policies and procedures*]; and

(b) submit the report referred to in paragraph (a) to the board of directors of the derivatives firm.

(4) The obligation of the senior derivatives manager under paragraph (3)(b) may be fulfilled by the derivatives firm's chief compliance officer.

Responsibility of a derivatives dealer to report to the regulator or the securities regulatory authority

33. A derivatives dealer must report to the regulator or, in Québec, the securities regulatory authority, in a timely manner any circumstance in which a derivatives dealer is not or was not in compliance with the requirements of this Instrument or other securities legislation relating to trading in derivatives if any of the following applies:

(a) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to a derivatives party;

(b) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to capital markets;

(c) the non-compliance is part of a pattern of material non-compliance.

DIVISION 2 – RECORDKEEPING

Derivatives party agreement

34. (1) A derivatives firm must, before transacting in a derivative with, for or on behalf of a derivatives party, enter into an agreement referred to in subsection (2) with the derivatives party.

(2) For the purposes of (1), the agreement must establish all of the material terms governing the relationship between the derivatives firm and the derivatives party including the rights and obligations of the derivatives firm and the derivatives party.

Records

35. A derivatives firm must keep records of its derivatives transactions and advising activities, including all of the following, as applicable:

(a) records containing a general description of its derivatives business and activities conducted with, for or on behalf of, derivatives parties, and compliance with applicable provisions of securities legislation, including,

(i) records of derivatives party assets, and

(ii) records documenting the derivatives firm's compliance with internal policies and procedures;

(b) for each derivative, records demonstrating the existence and nature of the derivative, including,

(i) records of communications with the derivatives party relating to transacting in the derivative,

(ii) documents provided to the derivatives party to confirm the derivative, the terms of the derivative and each transaction relating to the derivative,

(iii) correspondence relating to the derivative and each transaction relating to the derivative,

(iv) records made by staff relating to the derivative and each transaction relating to the derivative, including notes, memos and journals,

(v) records relating to pre-execution activity for each transaction including all communications relating to quotes, solicitations, instructions, transactions and prices, however they may be communicated,

(vi) reliable timing data for the execution of each transaction relating to the derivative,

(vii) records relating to the execution of the transaction, including

(A) information obtained to determine whether the counterparty qualifies as an eligible derivatives party,

(B) fees or commissions charged,

(C) information used in calculating the derivative's valuation; and

(D) any other information relevant to the transaction;

(viii) an itemized record of post-transaction processing and events, including a record in relation to the calculation of margin and exchange of collateral; and

(ix) the price and valuation of the derivative.

Form, accessibility and retention of records

36. (1) The records required to be maintained in this Instrument must be kept in a safe location, readily accessible and in a durable form for a period of,

(a) except in Manitoba, 7 years from the date the record is created, and

(b) in Manitoba, 8 years from the date the record is created.

(2) A record required to be provided to the regulator or, in Québec, the securities regulatory authority, must be provided in a format that is capable of being read by the regulator or, in Québec, the securities regulatory authority.

PART 6
EXEMPTIONS

DIVISION 1 – EXEMPTION FROM THIS INSTRUMENT

Exemption for foreign liquidity providers – transactions with derivatives dealers

37. A person or company is exempt from the provisions of this Instrument in respect of a transaction if all of the following apply:

(a) the transaction is made with either an investment dealer registered in accordance with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or a derivatives dealer, that, in each case, is transacting as principal for its own account;

(b) the person or company is registered, licensed or authorized, or otherwise operates under an exemption or exclusion from a requirement to be registered, licensed or authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located to carry on the activities in that jurisdiction that registration as a derivatives dealer would permit it to carry on in the local jurisdiction;

(c) the person or company is not any of the following:

(i) a derivatives dealer whose head office or principal place of business is in Canada;

(ii) a derivatives dealer that is a Canadian financial institution.

Exemption for certain derivatives end-users

38. (1) A person or company is exempt from this Instrument if all of the following apply:

(a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the person or company does not, in respect of any derivative or transaction, advise a non-eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 45 [*Advising generally*];

(c) the person or company does not regularly make or offer to make a market in a derivative with a derivatives party;

(d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company;

(e) the person or company does not facilitate the clearing of a derivative through the facilities of a qualifying clearing agency for another person or company.

(2) The exemption in subsection (1) is not available to a person or company if either of the following applies:

(a) the person or company is a registered derivatives firm or a registered securities firm in any jurisdiction of Canada or is registered under the commodity futures legislation of Manitoba or Ontario;

(b) the person or company is registered under the securities, commodity futures or derivatives legislation of a foreign jurisdiction in which its head office or principal place of business is located in a category of registration

to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction.

Exemption for foreign derivatives dealers

39. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction specified in Appendix A is exempt from the provisions in this Instrument if all of the following apply:

(a) the derivatives dealer transacts only with, for or on behalf of, a person or company in the local jurisdiction that is an eligible derivatives party;

(b) the derivatives dealer is registered, licensed or authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix A to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;

(c) the derivatives dealer is subject to and complies with the securities, commodity futures or derivatives legislation of the foreign jurisdictions specified in Appendix A relating to the activities being conducted by the derivatives dealer with a derivatives party whose head office or principal place of business is in Canada;

(d) the derivatives dealer provides the regulator or, in Québec, the securities regulatory authority, with prompt access to its books and records upon request with respect to any matter relating to the activities being conducted with a derivatives party whose head office or principal place of business is located in Canada.

(2) The exemption in subsection (1) is not available unless all of the following apply:

(a) the derivatives dealer engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(b) the derivatives dealer has delivered to the derivatives party a statement in writing disclosing all of the following:

(i) the foreign jurisdiction in which the derivatives dealer's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the derivatives dealer may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the derivatives dealer because of the above;

(iv) the name and address of the agent for service of process of the derivatives dealer in the local jurisdiction;

(c) the derivatives dealer has submitted to the regulator or, in Québec, the securities regulatory authority, a completed Form 93-101F1 *Submission to Jurisdiction and Appointment of Agent for Service of Process.*

(3) Paragraphs (1) (a) to (d) do not apply if the derivatives party is an affiliated entity of the derivatives dealer unless the affiliated entity is an investment fund.

(4) Paragraph (2)(b) does not apply if the derivatives party is an affiliated entity of the derivatives dealer unless the affiliated entity is an investment fund.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC PROVISIONS IN THIS INSTRUMENT

Definition – local counterparty

40. In this Division, "local counterparty" means a counterparty to a derivative in any jurisdiction of Canada if either of the following applies:

(a) the counterparty is a person or company, other than an individual, to which one or more 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;

(b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is liable for all or substantially all of the liabilities of the counterparty.

Investment dealers

41. A derivatives dealer that is an investment dealer member of CIRO is exempt from the provisions of this Instrument set out in Appendix B if both of the following apply:

(a) the derivatives dealer is subject to and complies with the corresponding conduct and other applicable rules of CIRO in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator or, in Québec, the securities regulatory authority, of each instance of material non-compliance with a provision of this Instrument that is set out in Appendix B.

Canadian financial institutions

42. A derivatives dealer that is a Canadian financial institution is exempt from the provisions of this Instrument set out in Appendix C if both of the following apply:

(a) the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory provisions of its prudential regulator in connection with a transaction or other related activity;

(b) the derivatives dealer promptly notifies the regulator or, in Québec, the securities regulatory authority, of each instance of material non-compliance with a provision of this Instrument that is set out in Appendix C.

Derivatives transacted on a derivatives trading facility where the identity of the derivatives party is unknown

43. A derivatives dealer is exempt from the provisions in this Instrument, except for section 9 [*Fair dealing*], section 12 [*Handling complaints*], and Part 5 [*Compliance and recordkeeping*], in respect of a transaction to which both of the following apply:

(a) the execution of the transaction is on and subject to the rules of a derivatives trading facility;

(b) the derivatives dealer does not know the identity of the derivatives party prior to and at the time of execution of the transaction.

Exemptions from certain requirements in this Instrument for certain notional amounts of certain commodity derivatives and other derivatives activity

44. (1) A derivatives dealer is exempt from this Instrument, other than section 9 [*Fair dealing*], section 10 [*Conflicts of Interest*] and section 28 [*Content and delivery of transaction information*], if all of the following apply:

(a) the derivatives dealer does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the derivatives dealer does not, in respect of derivatives or transactions, advise a non-eligible derivatives party, other than in accordance with section 45 [*Advising generally*];

(c) either of the following applies:

(i) the derivatives dealer has its head office or principal place of business in a jurisdiction of Canada and the derivatives dealer, together with each affiliated entity of the derivatives dealer that is a local counterparty, excluding investment funds, and excluding derivatives between all affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives, exceeding $250 000 000;

(ii) the derivatives dealer has its head office and principal place of business in a foreign jurisdiction and the derivatives dealer, together with each affiliated entity of the derivatives dealer that is a local counterparty, excluding investment funds, and excluding derivatives between all affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding derivatives with one or more counterparties that have a head office or principal place of business in Canada, exceeding $250 000 000.

(2) Subject to subsection (3), a derivatives dealer is exempt from the provisions of this Instrument, other than section 9 [*Fair dealing*], section 10 [*Conflicts of Interest*] and section 28 [*Content and delivery of transaction information*], if all of the following apply:

(a) the derivatives dealer does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible derivatives party;

(b) the derivatives dealer does not, in respect of derivatives or transactions, advise a non-eligible derivatives party, other than in accordance with section 45 [*Advising generally*];

(c) the derivatives dealer, and each affiliated entity of the derivatives dealer that is also a derivatives dealer, is a derivative dealer solely as a result of transactions in respect of commodity derivatives;

(d) either of the following applies:

(i) the derivatives dealer has its head office or principal place of business in a jurisdiction of Canada and the derivatives dealer, together with each affiliated entity of the derivatives dealer that is a local counterparty, excluding investment funds, and excluding derivatives between all affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives, exceeding $10 000 000 000;

(ii) the derivatives dealer has its head office and principal place of business in a foreign jurisdiction and the derivatives dealer, together with each affiliated entity of the derivatives dealer that is a local counterparty, excluding investment funds, and excluding derivatives between all affiliated entities, has not had, in any of the previous 24 calendar months, an aggregate month-end gross notional amount under outstanding commodity derivatives with one or more counterparties that have a head office or principal place of business in Canada, exceeding $10 000 000 000.

(3) Subsection (2) does not apply in respect of a commodity derivative for which the underlying interest is a cryptoasset.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

45. (1) For the purpose of subsection (3), "financial or other interest" in relation to a derivative or a transaction includes the following:

(a) ownership of, beneficial or otherwise, an underlying interest or underlying interests of the derivative;

(b) ownership of, beneficial or otherwise, or another interest in, a derivative that has the same underlying interest as the derivative;

(c) a commission or other compensation received or expected to be received from any person or company in relation to a transaction, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(d) a financial arrangement in relation to the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(e) any other interest that relates to the transaction.

(2) A person or company that acts as a derivatives adviser is exempt from the provisions of this Instrument applicable to a derivatives adviser if the advice that the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

(3) If the person or company referred to in subsection (2) recommends a transaction involving a derivative, a class of derivatives or the underlying interest of a derivative or class of derivatives in which any of the following has a financial or other interest, the person or company must disclose the interest, including a description of the nature of the interest, concurrently with providing the advice:

(a) the person or company;

(b) any partner, director or officer of the person or company;

(c) if the person is an individual, the spouse or child of the individual;

(d) any other person or company that would be an insider of the first mentioned person or company if the first mentioned person or company were a reporting issuer.

Foreign derivatives advisers

46. (1) A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix D is exempt from the provisions of this Instrument in respect of advice provided to a derivatives party if all of the following apply:

(a) the derivatives party to whom the advice is being provided is an eligible derivatives party;

(b) the derivatives adviser is registered, licensed or authorized, or otherwise operates under an exemption from registration, under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party;

(c) the derivatives adviser is subject to and complies with the securities, commodity futures or derivatives legislation of the foreign jurisdictions specified in Appendix D relating to the activities being conducted by the derivatives adviser with a derivatives party whose head office or principal place of business is in Canada;

(d) the derivatives adviser provides the regulator or, in Québec, the securities regulatory authority, with prompt access to its books and records upon request with respect to any matter relating to the activities being conducted with a derivatives party whose head office or principal place of business is in Canada.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the derivatives adviser engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(b) the derivatives adviser has delivered to the derivatives party a statement in writing disclosing the following:

(i) the foreign jurisdiction in which the derivatives adviser's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the derivatives adviser may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the derivatives adviser because of the above;

(iv) the name and address of the agent for service of process of the derivatives adviser in the local jurisdiction.

(c) the derivatives adviser has submitted to the regulator or, in Québec, the securities regulatory authority, a completed Form 93-101F1 *Submission to Jurisdiction and Appointment of Agent for Service of Process*;

(3) A derivatives adviser that relied on the exemption under subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority, of that fact by December 1 of that year.

(4) In Ontario, subsection (3) does not apply to a derivatives adviser that complies with the filing and fee payment provisions applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(5) A person or company is exempt from subsections (2) and (3) if the person or company is registered as a derivatives adviser in the local jurisdiction.

(6) Paragraphs (1) (a) to (d) do not apply if the derivatives party is an affiliated entity of the derivatives adviser unless the affiliated entity is an investment fund.

(7) Paragraph (2)(b) does not apply if the derivatives party is an affiliated entity of the derivatives adviser unless the affiliated entity is an investment fund.

Foreign derivatives sub-advisers

47. (1) A derivatives sub-adviser whose head office or principal place of business is in a foreign jurisdiction specified in Appendix E is exempt from the provisions of this Instrument if all of the following apply:

(a) the obligations and duties of the sub-adviser are set out in a written agreement with the derivatives adviser or derivatives dealer;

(b) the derivatives adviser or derivatives dealer has entered into a written agreement with its derivatives parties on whose behalf derivatives advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the failure of the derivatives sub-adviser to do any of the following:

(i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the derivatives firm and each derivatives party of the derivatives firm for whose benefit the derivatives advice is, or portfolio management services are, to be provided;

(ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the derivatives sub-adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the derivatives sub-adviser is registered, licensed or authorized in a category of registration, or operates under an exemption from registration, under the securities, commodity futures or derivatives legislation of the foreign jurisdiction in which its head office or principal place of business is located;

(c) the legislation of the foreign jurisdiction referred to in paragraph (b) permits the derivatives sub-adviser to carry on the activities in that jurisdiction that registration as a derivatives adviser would permit it to carry on in the local jurisdiction;

(d) the derivatives sub-adviser engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located.

Registered advisers under securities or commodity futures legislation

48. A derivatives adviser that is registered as an adviser under securities legislation or, in Ontario and Manitoba, commodity futures legislation, is exempt from the provisions set out in Appendix F if the derivatives adviser complies with the corresponding business conduct provisions of securities or commodity futures legislation in connection with a transaction or other related derivatives activity with a derivatives party.

PART 7
GRANTING AN EXEMPTION

Granting an exemption

49. (1) The regulator or, in Québec, 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 8
TRANSITION AND EFFECTIVE DATE

Transition representations for existing derivatives parties

50. (1) In this section "transition period" means the period commencing on September 28, 2024 and expiring on September 28, 2029.

(2) During the transition period, for the purposes of this Instrument, an "eligible derivatives party", as defined in section 1(1) [*Definitions and interpretation*], includes a person or company, that is any of the following:

(a) a permitted client, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(b) in Ontario, an accredited investor, other than an individual, as that term is defined in National Instrument 45-106 *Prospectus Exemptions*;

(c) an accredited counterparty, as that term is defined in the *Derivatives Act* (Québec);

(d) a qualified party, as that term is defined in any of the following:

(i) in Alberta, Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*;

(ii) in British Columbia, Blanket Order 91-501 *Over-the-Counter Derivatives*;

(iii) in Manitoba, Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(iv) in New Brunswick, Local Rule 91-501 *Over-the-Counter Trades in Derivatives*;

(v) in Nova Scotia, Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(vi) in Saskatchewan, General Order 91-908 *Over-the-Counter Derivatives*;

(e) an eligible contract participant as that term is defined under Section 1(a)(18) of the United States *Commodity Exchange Act*;

(f) a financial counterparty as that term is defined under Article 2(8) of the *European Market Infrastructure Regulation*;

(g) a non-financial counterparty as that term is defined under Article 2(9) of, and which exceeds clearing thresholds pursuant to Article 10(4)(b) of, the *European Market Infrastructure Regulation*.

(3) Despite subsection (2), if either of the following circumstances apply, the definition of "eligible derivatives party", as set out in subsection 1(1), applies to that circumstance:

(a) the derivatives firm has obtained a representation from the derivatives party in writing, that the derivatives party is considered to be an eligible derivatives party on the basis of any of paragraphs (2)(a) to (g);

(b) the representation referred to in paragraph (a) was made prior to the effective date of this Instrument.

Transition for existing transactions that remain in place in accordance with their original terms

51. Other than section 9 [*Fair dealing*], the provisions of this Instrument do not apply in respect of the transaction if both of the following apply:

(a) the transaction was entered into before the effective date of this Instrument;

(b) the derivatives firm has taken reasonable steps to determine that the derivatives party is one or more of the following, as applicable:

(i) a permitted client, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(ii) in Ontario, an accredited investor, other than an individual, as that term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions*;

(iii) an accredited counterparty, as that term is defined in the *Derivatives Act* (Québec);

(iv) a qualified party, as that term is defined in any of the following:

(A) in Alberta Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*;

(B) in British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*;

(C) in Manitoba Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(D) in New Brunswick Local Rule 91-501 *Over-the-Counter Trades in Derivatives*;

(E) in Nova Scotia Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*;

(F) in Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*;

(v) an eligible contract participant as that term is defined in Section 1(a)(18) of the United States *Commodity Exchange Act*;

(vi) a financial counterparty as that term is defined under Article 2(8) of the *European Market Infrastructure Regulation*;

(vii) a non-financial counterparty as that term is defined under Article 2(9) of, and which exceeds clearing thresholds pursuant to Article 10(4)(b) of, the *European Market Infrastructure Regulation*.

Transition for obtaining waivers for certain individuals and eligible commercial hedgers

52. Despite paragraph 8(2)(a)(iii), a derivatives firm has a period of one year following the effective date of this Instrument to obtain the waiver referred to in paragraph 8(2)(a)(iii) of this Instrument.

Effective date

53. (1) This Instrument comes into force on September 28, 2024.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 28, 2024, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

APPENDIX A
TO MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

FOREIGN DERIVATIVES DEALERS
(Section 39)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Iceland

Japan

Republic of Korea

New Zealand

Norway

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

APPENDIX B
TO MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

INVESTMENT DEALERS
(Section 41)

Section 11, Know your derivatives party

Section 12, Handling complaints

Section 14, Derivatives-party-specific needs and objectives

Section 15, Suitability

Section 19(2)(a)-(k) to (4), Relationship disclosure information

Section 20, Pre-transaction disclosure

Section 21, Valuation reporting

Section 25, Segregating derivatives party assets

Section 26, Holding initial margin

Section 27, Investment or use of initial margin

Section 28, Content and delivery of transaction information

Section 29, Derivatives party statements

Section 32, Designation and responsibilities of senior derivatives managers

Section 33, Responsibility of derivatives dealer to report to the regulator or the securities regulatory authority

APPENDIX C
TO MULTILATERAL INSTRUMENT
93-101 *DERIVATIVES: BUSINESS CONDUCT*

CANADIAN FINANCIAL INSTITUTIONS
(Section 42)

Section 11, Know your derivatives party

Section 13, Tied selling

Section 25, Segregating derivatives party assets

Section 26, Holding initial margin

Section 27, Investment or use of initial margin

Section 34, Derivatives party agreement

APPENDIX D
TO MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

FOREIGN DERIVATIVES ADVISERS
(Section 46)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Iceland

Japan

Republic of Korea

New Zealand

Norway

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

APPENDIX E
TO MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

FOREIGN DERIVATIVES SUB-ADVISERS
(Section 47)

LIST OF SPECIFIED FOREIGN JURISDICTIONS

Australia

Brazil

Hong Kong

Iceland

Japan

Republic of Korea

New Zealand

Norway

Singapore

Switzerland

United States of America

United Kingdom of Great Britain and Northern Ireland

Any member country of the European Union

APPENDIX F
TO MULTILATERAL INSTRUMENT 93-101
DERIVATIVES: BUSINESS CONDUCT

REGISTERED ADVISERS UNDER SECURITIES AND COMMODITY FUTURES LEGISLATION
(Section 48)

Section 12, Handling complaints

Section 13, Tied-selling

Division 2, Additional obligations when dealing with or advising certain derivatives parties of Part 3, Dealing with or advising derivatives parties

Part 4, Derivatives party accounts

Part 5, Compliance and recordkeeping, except section 31, Policies and Procedures

FORM 93-101F1
SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

(Sections 39 [*foreign derivatives dealer*] and 46 [*foreign derivatives adviser*])

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

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

3. Jurisdiction of incorporation of the Foreign Firm:

4. Head office address of the Foreign Firm:

5. The name, email address, phone number and fax number of the Foreign Firm's chief compliance officer, or equivalent.

   Name:

   Email address:

   Phone:

   Fax:

6. Section of Multilateral Instrument 93-101 *Derivatives: Business Conduct* the Foreign Firm is relying on:

   ☐ Section 39 [*foreign derivatives dealer*]

   ☐ Section 46 [*foreign derivatives adviser*]

   ☐ Other [specify] [e.g *exemptive relief decision – please explain]*

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

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

9. The Foreign Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "**Proceeding**") arising out of or relating to or concerning the Foreign Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

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

11. Until 7 years after the Foreign Firm ceases to rely on section 39 [*foreign derivatives dealer*] or section 46 [*foreign derivatives adviser*], the Foreign Firm must submit to the securities regulatory authority

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

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

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 20th day after the change.

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

Dated:

_____

(Signature of the Foreign Firm or authorized signatory)

(Name of signatory)

(Title of signatory)

Acceptance

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

Dated: _____

(Signature of the Agent for Service or authorized signatory)

(Name of signatory)

(Title of signatory)

B.5.2 Companion Policy 93-101 Derivatives: Business Conduct

COMPANION POLICY 93-101
DERIVATIVES: BUSINESS CONDUCT

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PART 1
GENERAL COMMENTS

Introduction

This companion policy (the **Policy**) sets out the views of the Canadian Securities Administrators (the **CSA** or **we**) on various matters relating to Multilateral Instrument 93-101 *Derivatives: Business Conduct* (the **Instrument** or **MI 93-101**) and related securities legislation.

Numbering system

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy 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 Policy is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions* (**NI 14-101**). "Securities legislation" is defined in NI 14-101 and includes statutes and other instruments related to both securities and derivatives.

In this Policy,

"Product Determination Rule" means,

- in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,
- in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,
- in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and
- in Québec, *Regulation 91-506 respecting Derivatives Determination*;

"regulator" means the regulator or securities regulatory authority in a jurisdiction as defined in NI 14-101.

Interpretation of terms defined in the Instrument

Section 1 – Definition of Canadian financial institution

The term "Canadian financial institution" is defined in NI 14-101. With respect to the Canadian financial institutions that are Schedule I or Schedule II banks, the definition of "Canadian financial institution" encompasses both domestic and foreign branches (if the bank in fact operates a foreign branch) – a branch does not have a legal identity apart from its principal entity. However, the definition of "Canadian financial institution" does not include an affiliate of a bank that is established, incorporated or organized as a separate legal entity in a foreign jurisdiction.

The definition of "Canadian financial institution" does not include a Schedule III bank. Schedule III banks are distinct legal entities that are organized in foreign jurisdictions and maintain a branch in Canada. To the extent a Schedule III bank enters into a derivatives transaction with a derivatives party in the local jurisdiction, we would consider that entity to be a foreign derivatives dealer for the purposes of the Instrument.

Section 1 – Definition of derivatives adviser and derivatives dealer

A person or company that meets the definition of "derivatives adviser" or "derivatives dealer" in a local jurisdiction is subject to the Instrument in that jurisdiction, whether or not it is registered or exempted from the requirement to be registered in that jurisdiction.

A person or company will be subject to the requirements of the Instrument if it is either of the following:

- in the business of trading derivatives or in the business of advising others in respect of derivatives;
- otherwise required to register as a derivatives dealer or a derivatives adviser under securities legislation.

Factors in determining a business purpose – derivatives dealer

In determining whether a person or company is in the business of trading or in the business of advising in derivatives, a number of factors should be considered. Several factors that we consider relevant are described below. This is not a complete list and other factors may also be considered.

- *Acting as a market maker* – Market making is generally understood as the practice of routinely standing ready to transact derivatives by

    - responding to requests for quotes on derivatives, or

    - making quotes available to other persons or companies that seek to transact derivatives, whether to hedge a risk or to speculate on changes in the market value of the derivative.

    Market makers are typically compensated for providing liquidity through spreads, fees or other compensation, including fees or compensation paid by an exchange or a trading facility that do not relate to the change in the market value of the derivative transacted. A person or company that contacts another person or company about a transaction to accommodate its own risk management needs or to speculate on the market value of a derivative will not, typically, be considered to be acting as a market maker.

    A person or company will be considered to be "routinely standing ready" to transact derivatives if it is responding to requests for quotes or it is making quotes available with some frequency, even if it is not on a continuous basis. Persons or companies that respond to requests or make quotes available occasionally are not "routinely standing ready".

    A person or company would also typically be considered to be a market maker when it holds itself out as undertaking the activities of a market maker.

    Engaging in bilateral discussions relating to the terms of a transaction will not, on its own, constitute market making activity.

- *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person or company may be engaged in trading or advising for a business purpose. The activity does not have to be its sole or even primary endeavour for it to be in the business. We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose.

- *Facilitating or intermediating transactions* – The person or company provides services relating to the facilitation of trading or intermediation of transactions between third-party counterparties to derivatives contracts.

- *Transacting with the intention of being compensated* – The person or company receives, or expects to receive, any form of compensation for carrying on transaction activity. This would include any compensation that is transaction or value-based including compensation from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

- *Directly or indirectly soliciting in relation to transactions* – The person or company directly solicits transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This would include providing quotes to derivatives parties or potential derivatives parties that are not provided in response to a request. This also includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty, or a potential counterparty contacts them to enquire about a transaction, unless it is the person or company's intention or expectation to be compensated as a result of the contact. For example, a person or company that wishes to hedge a specific risk is not necessarily soliciting for the purpose of the Instrument if it contacts multiple potential counterparties to enquire about potential transactions to hedge the risk.

- *Engaging in activities similar to a derivatives adviser or derivatives dealer* – The person or company carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing agency.

- *Providing derivatives clearing services* – The person or company provides services to allow third parties, including counterparties to transactions involving the person or company, to clear derivatives through a clearing agency. These services are actions in furtherance of a trade conducted by a person or company that would typically play the role of an intermediary in the derivatives market.

In determining whether or not it is, for the purposes of the Instrument, a derivatives dealer, a person or company should consider its activities holistically. Assessment of the factors discussed above may depend on a person or company's particular facts and circumstances. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Factors in determining a business purpose – derivatives adviser

Under securities legislation, a person or company engaging in or holding itself out as engaging in the business of advising others in relation to derivatives is generally required to register as a derivatives adviser unless an exemption is available.

As with the definition of "derivatives dealer", the definition of "derivatives adviser" (and the definition of "adviser" in securities legislation generally) requires an assessment of whether the person or company is "in the business" of conducting an activity. In the case of derivatives advisers, it is necessary to determine whether a person or company is "advising others" in relation to derivatives.

As with derivatives dealers, a person or company that is determining whether or not it is a derivatives adviser should consider its activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

The definition of "derivatives adviser" also contains an additional element that the derivatives adviser should be in the business of "advising others" in relation to derivatives. Examples of persons and companies that may be considered to be in the business of advising others in relation to derivatives include the following:

- a registered adviser under securities or commodity futures legislation that provides advice to an investment fund or another person or company in relation to derivatives or derivatives trading strategies;
- a registered adviser under securities or commodity futures legislation that manages an account for a client and makes trading decisions for the client in relation to derivatives or derivatives trading strategies;
- an investment dealer that provides advice to clients in relation to derivatives or derivatives trading strategies;
- a person or company that recommends a derivative or derivatives trading strategy to investors as part of a general solicitation by an online derivatives trading platform.

A person or company that discusses the merits of a particular derivative or derivatives trading strategy in a newsletter or on a website may be considered to be advising others in relation to derivatives but would be exempt if it meets the conditions in section 45 [*Advising generally*].

Similarly, a derivatives dealer that recommends a particular derivative or derivatives trading strategy to a customer in connection with a proposed transaction may be considered to be advising the customer in relation to derivatives. However, so long as the derivatives dealer is appropriately registered and has the necessary proficiency to provide the advice (or is otherwise exempt from registration), the derivatives dealer will not also be treated as a derivatives adviser with respect to the same activity.

If the derivatives firm's trading or advising activity is incidental to the firm's primary business, we may not consider it to be for a business purpose. For example, appropriately licensed professionals, such as lawyers, accountants, engineers, geologists and teachers, may provide advice in relation to derivatives in the normal course of their professional activities. We would generally not consider them to be advising on derivatives for a business purpose if such activities are incidental to their *bona fide* professional activities.

Factors in determining a business purpose – general

Generally, we would consider a person or company that engages in the activities discussed above in an organized and repetitive manner to be a derivatives dealer or, depending on the context, a derivatives adviser. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person or company being a derivatives dealer or, depending on the context, a derivatives adviser. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being considered to be a derivatives dealer for the purposes of the Instrument.

A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer or derivatives adviser in that jurisdiction. A derivatives dealer or a derivatives adviser in a local jurisdiction is a person or company that conducts the described activities in that jurisdiction. For example, this would include a person or company that is

located in a local jurisdiction and that conducts dealing or advising activities in that local jurisdiction or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing or advising activities with a derivatives party located in the local jurisdiction.

Where dealing or advising activities are provided to derivatives parties in a local jurisdiction or where dealing or advising activities are otherwise conducted within a local jurisdiction, regardless of the location of the derivatives party, we would generally consider a person or company to be a derivatives dealer or derivatives adviser (unless an exemption is otherwise available). However, where the person or company that is a derivatives dealer or adviser is not located in the local jurisdiction (e.g., is a foreign derivatives dealer or a foreign derivatives adviser), the obligations in the Instrument only apply to its dealing or advising activities with a derivatives party that is located in the local jurisdiction.

Note that a person or company that may be in the business of transacting derivatives may nevertheless be exempt from requirements of the Instrument; see the following Part 6 [*Exemptions*]:

- *Foreign liquidity providers – transactions with derivatives dealers (s. 37)*
- *Certain derivatives end-users (s. 38)*
- *Foreign derivatives dealers (s. 39)*
- *Investment dealers (s. 41)*
- *Canadian financial institutions (s. 42)*
- *Derivatives transacted on a derivatives trading facility where the identity of the derivatives party is unknown (s. 43)*
- *Certain notional amounts of certain commodity derivatives and other derivatives activity (s. 44)*
- *Advising generally (s. 45)*
- *Foreign derivatives advisers (s. 46)*
- *Foreign derivatives sub-advisers (s. 47)*
- *Registered advisers under securities or commodity futures legislation (s. 48)*

Section 1 – Definition of derivatives party assets

“Derivatives party assets” includes all assets of a derivatives party that are received or held by a derivatives firm for or on behalf of the derivatives party for any purpose relating to derivatives transactions.

Section 1 – Definition of derivatives party

The term “derivatives party” is similar to the concept of a “client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**). We have used the term “derivatives party” instead of “client” to reflect the circumstance where the derivatives firm may not regard its counterparty as its “client.”

Section 1 – Definition of commercial hedger

The definition of “commercial hedger” is used in paragraph (n) of the definition of “eligible derivatives party”.

The concept of “commercial hedger” is meant to apply to a business entering into a transaction for the purpose of managing risks inherent in its business. For example, this could include a commodity producer managing risks associated with fluctuations in the price of the commodity it produces or a company entering into an interest rate swap to hedge its interest rate risks associated with a loan obligation. It could also include derivatives that are intended to eliminate or reduce currency risk associated with international commercial transactions (for example, when a company’s functional currency or currency of index prices referenced in its transactions and the currency of settlement are not the same currency). It is not, however, intended to include a circumstance where the commercial enterprise enters into a transaction for speculative purposes; there has to be a significant link between the transaction and the business risks that are being hedged.

Section 1 – Definition of eligible derivatives party

The term “eligible derivatives party” is intended to refer to those derivatives parties that have the requisite knowledge and experience to evaluate the information about derivatives that has been provided to the derivatives party by the derivatives firm. These persons or companies generally may not require the full set of protections that are provided to other derivatives parties that are not eligible derivatives parties. As a result, only the following provisions in the Instrument apply to transactions with an eligible

derivatives party (subject to the limitation discussed below for transactions with an eligible derivatives party that is an individual or eligible commercial hedger):

- Division 1 of Part 3 (fair dealing, conflicts of interest, know your derivatives party, handling complaints, tied selling);
- Sections 24 and 25 relating to derivatives party assets;
- Subsection 28(1) requirement to deliver a transaction confirmation; and
- Part 5 relating to compliance and recordkeeping requirements.

When a derivatives firm is dealing with or advising a derivatives party that is either an individual or a commercial hedger, all applicable additional protections in the Instrument are presumed to apply unless that derivatives party has provided the derivatives firm with the necessary representations and waived, in writing, some or all of the additional protections in the Instrument. Section 8 of this Policy provides additional guidance relating to this waiver and the conditions that must be fulfilled by the derivatives firm in order for the derivatives firm to rely on the exemption set out in section 8 of the Instrument.

A derivatives firm should take reasonable steps to determine if a derivatives party is an eligible derivatives party. In determining whether the person or company that it transacts with, solicits or advises is an eligible derivatives party, the derivatives firm may rely on factual representations made in writing by the derivatives party, unless a reasonable person would have grounds to believe that such statements are false, or it is otherwise unreasonable to rely on the representations. Examples of such grounds may include the following:

- a situation where a derivatives dealer has information in its possession (e.g. financial statements) that raise material questions with respect to a derivatives party's status as an eligible derivatives party; or
- a situation where a company represents that it is an eligible derivatives party on the basis of the commercial hedger category, however, the derivatives dealer is aware that the derivative in question is not being used to hedge risks of that company or is aware that the derivative is not linked to the business of the company.

Section 1 – Definition of eligible derivatives party – paragraphs (m) to (p)

Under paragraphs (n) and (p) of the definition of "eligible derivatives party", a person or company will only be considered to be an eligible derivatives party if it has made certain representations to the derivatives firm in writing.

If the derivatives firm has not received a written statement from a derivatives party, the derivatives firm should not consider the derivatives party to be an eligible derivatives party.

We expect that a derivatives firm would maintain a copy of each derivatives party's written representations that are relevant to its status as an eligible derivatives party and would have policies and procedures reasonably designed to ensure that the information relating to each derivatives party is up to date.

Whether it is reasonable for a derivatives firm to rely on a derivatives party's written representation will depend on the particular facts and circumstances of the derivatives party and its relationship with the derivatives firm.

Commercial hedgers in paragraph (n)

A person or company is an eligible derivative party under paragraph (n) only if the person or company has, at the time the transaction occurs, represented that it is a commercial hedger. The derivatives firm may rely on a written representation from the derivatives party that it is a commercial hedger for the derivatives it transacts with the derivatives firm unless a reasonable person would have grounds to believe that the statement is false, or it is otherwise unreasonable to believe that the representation is accurate. A derivatives firm may not rely on a representation if a reasonable person would have grounds to believe there may not be a reasonable link between the commercial risks the derivatives party is hedging and the transaction entered into. This representation may be tailored by the eligible derivatives party and the derivatives firm to provide that the derivatives party is only treated as an eligible derivatives party for specific derivatives or types of derivatives.

The concept of "commercial hedger" under paragraph (n) is meant to apply to a business (including a sole proprietorship) entering into a transaction for the purpose of managing risks inherent in its business. For example, this could include, a commodity producer managing risks associated with fluctuations in the price of the commodity it produces, or a company entering into an interest rate swap to hedge its interest rate risks associated with a loan obligation. It could also include derivatives that are intended to eliminate or reduce currency risk associated with international commercial transactions (for example, in circumstances where a company's functional currency or currency of index prices referenced in its transactions and the currency of settlement, are not the same currency). It could also include an agribusiness (e.g., farmer, grain operator) that operates as a sole proprietorship hedging risks associated with the production and operation of their commercial business. It is not, however, intended to include a circumstance

where the commercial enterprise enters into a transaction for speculative purposes; there has to be a reasonable link between the transaction and the business risks that are being hedged.

For greater certainty, the “commercial hedger” concept under paragraph (n) is available for use by individuals operating sole proprietorships. We understand that there are specific scenarios where sole proprietorships (which are legally treated as individuals) also enter into derivatives to hedge risks associated with their commercial activities. A “sole proprietorship” is an unincorporated business that is owned by one individual. The owner of a sole proprietorship has sole responsibility for making decisions, receives all the profits, claims all the losses, and does not have a separate legal status from the business. Accordingly, individual sole proprietors operating a commercial business are able to qualify as commercial hedgers if they satisfy the conditions for qualifying as a commercial hedger and are entering into a transaction solely for the purposes of managing risks inherent to the commercial enterprise. For greater certainty, the ”commercial hedger” concept is not intended to include a circumstance where an individual is entering into over-the-counter derivatives to hedge risks associated with their personal investment activities. To ensure this prong of the eligible derivatives party definition is used for its intended purpose, CSA Staff intend to carefully monitor and review the use of this prong of the definition by clients of derivatives firms to qualify as an eligible derivatives party.

The Instrument does not provide a definition of hedge. While, generally, we would expect that the hedge relating to a derivative would qualify for hedge accounting under applicable accounting standards, we understand that certain persons or companies may choose to account for the fair value of the contract in their financial statements. The key is that the hedging transaction be objectively connected to, and measurably reduce, a risk related to the commercial activity carried on by the person or company.

The additional obligations in the Instrument presumptively apply to transactions with a derivatives party that is an eligible commercial hedger; however, pursuant to subsection 8(2) of MI 93-101, an eligible commercial hedger may “waive” the application of the additional protections under MI 93-101.

In addition, as an eligible derivatives party, the eligible commercial hedger comes within the class of derivatives parties that a foreign derivatives dealer or adviser may deal with under an available exemption.

Obligations guaranteed by another eligible derivatives party under paragraph (p)

Paragraph (p) of the definition of “eligible derivatives party” provides that a derivatives firm may treat a derivatives party as an eligible derivatives party if the derivatives party represents to the derivatives firm that all of its obligations under a derivative are fully guaranteed or otherwise supported (under a letter of credit or credit support agreement) by one or more eligible derivatives parties, other than an eligible derivatives party qualifying as such under paragraphs (n) (an eligible commercial hedger) or (o) (an individual).

Determining assets – paragraphs (m) and (o)

For the purposes of paragraph (m), net assets must have an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, that are more than $25 000 000 in Canadian dollars or an equivalent amount in another currency as shown on its last financial statements. “Net assets” under this paragraph is calculated as total assets minus total liabilities. Unlike in paragraph (o), assets considered for the purposes of paragraphs (m) are not limited to “financial assets”.

In the case of paragraph (o), the individual must beneficially own “financial assets”, as that term is defined in section 1.1 of NI 45-106, that have an aggregate realizable value before tax but net of any related liabilities of at least $ 5 000 000 in Canadian dollars (or an equivalent amount in another currency). “Financial assets” is defined to include cash, securities or a deposit, or an evidence of a deposit that is not a security for the purposes of securities legislation. Realizable value is typically the amount that would be received by selling an asset.

In general, determining whether financial assets are beneficially owned by an individual should be straightforward. However, this determination may be more difficult if financial assets are held in a trust or in other types of investment vehicles for the benefit of an individual.

Factors indicating beneficial ownership of financial assets include:

- possession of evidence of ownership of the financial asset;
- entitlement to receive any income generated by the financial asset;
- risk of loss of the value of the financial asset;
- the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

Section 1 – Definition of permitted depository

In recognition of the international nature of the derivatives market, paragraph (e) of the definition of "permitted depository" permits a foreign bank or trust company with a minimum amount of reported shareholders' equity to act as a permitted depository and hold derivatives party assets, 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.

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.[1] As of the time of the publication of the Instrument, the following countries and their political subdivisions are permitted jurisdictions: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom, 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 and countries using the euro under a monetary agreement with the European Union. [2]

Section 1 – Definition of segregate

While the term "segregate" means to separately hold or separately account for derivatives party assets or positions, consistent with the PFMI Report and National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**), accounting segregation is acceptable (i.e., customer collateral is segregated by maintaining records that allow the positions and the value of collateral delivered by each customer to be identified).

The PFMI Report is 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.

Section 1 – Definition of valuation

The term "valuation" is defined to mean the value of a derivative determined in accordance with accounting principles for fair value measurement that are consistent with accepted methodologies within the derivatives firm's industry. Where market quotes or market-based valuations are unavailable, we expect the value to represent the current mid-market level derived from market-based metrics incorporating a fair value hierarchy. The mid-market level does not have to include adjustments incorporated into the value of a derivative to account for the characteristics of an individual counterparty.

PART 2
APPLICATION AND EXEMPTION

Section 2 – Application to derivatives firms and individuals acting on their behalf

The Instrument applies to "derivatives advisers" and "derivatives dealers" as defined in subsection 1(1) of the Instrument. These definitions include a person or company that, under securities legislation is

- registered as a "derivatives dealer" or "derivatives adviser",
- exempt from the requirement to register as a "derivatives dealer" or "derivatives adviser", and
- excluded from registration as a "derivatives dealer" or "derivatives adviser".

Accordingly, derivatives firms that may be exempt from the requirement to register in a jurisdiction, such as Canadian financial institutions and individuals acting on their behalf in relation to transacting in, or providing advice in relation to, a derivative, will nevertheless be subject to the same standard of conduct towards their derivatives parties that apply to registered derivatives firms and their registered representatives.

[1] For a list of authorized foreign banks regulated under the *Bank Act* and subject to OSFI supervision, see: Office of the Superintendent 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).

[2] European Union, Economic and Financial Affairs, *What is the euro area?*, February 12, 2020, online: European Union (http://ec.europa.eu/economy_finance/euro/adoption/euro_area/index_en.htm).

Section 3 – Application to certain derivatives

Section 3 ensures that the Instrument applies to the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from regulation under the Instrument.

Section 4 – Application – short-term foreign exchange contract or instrument

General principle

Subsection 4(1) provides that the Instrument applies to short-term foreign exchange contracts or instruments in the wholesale foreign exchange market, which are typically settled within two business days or less (**short-term FX**) and, which include, for greater certainty, transactions in this market that are commonly referred to as spot FX.

Inclusion of certain short-term FX transactions in the institutional foreign exchange market

The wholesale foreign exchange market is a global over-the-counter market made up of a broad subset of market participants, including, the types of derivatives parties referred to in paragraphs (a) to (m) and (q) of the definition of eligible derivatives party. Specifically, this includes banks, central banks, supranational and quasi-government organizations, investment funds, pension funds, insurance companies, investment dealers, payment remittance and money services businesses, proprietary trading firms, benchmark and trading execution providers, as well as large multinational corporates with global treasury operations (**wholesale FX market participants**). These wholesale FX market participants transact short-term FX with other wholesale FX market participants. As wholesale FX market participants, Canadian financial institutions typically transact short-term FX as market maker, as well as for hedging, speculation and operational purposes.

The obligations in the Instrument relating to fair dealing, conflicts of interest, complaints handling, as well as compliance and recordkeeping obligations (including the obligations related to senior managers) will apply to a derivatives dealer that is also a Canadian financial institution with respect to short-term FX transactions it enters into with its counterparties that are also wholesale FX market participants. These obligations, however, will only apply to a derivatives dealer that is a Canadian financial institution if its notional exposure under all outstanding derivatives – calculated on the basis of outstanding derivatives that are reportable derivatives under the trade reporting rules[3] – exceeds $500 billion (i.e., short-term FX transactions are excluded from this calculation).

Applying these obligations to cover the short-term FX transactions of this population of derivatives dealers in the wholesale foreign exchange market is generally consistent with expectations already laid out in a voluntary code of conduct that certain wholesale FX market participants, including derivatives dealers that are Canadian financial institutions, already adhere to. In addition to currency-linked derivatives that are covered by the Instrument, our intention is that this provision covers the same short-term FX activity that is covered by these voluntary codes of conduct. Therefore, we expect these derivatives dealers will already have in place an existing compliance framework (i.e., policies, procedures, and controls) to address this activity and would generally expect that existing framework will meet section 31 compliance obligations and the other limited subset of obligations of the Instrument that apply to short-term FX transactions.

For greater certainty, a Canadian financial institution that is subject to this provision is not required or expected to obtain any status certifications or representations from its counterparties. The limited subset of three provisions in the Instrument (fair dealing, conflicts of interest, complaints handling) that apply to short-term FX contracts in the wholesale FX market is intended to overlay the existing policies and procedures that have already been adopted by the population of derivatives dealers subject to these provisions, including the existing policies and procedures that have been incorporated into their internal compliance frameworks through their adherence to a voluntary code of conduct that covers short-term FX activity and other FX derivatives (e.g., the FX Global Code, as it is amended and restated from time to time). [4]

If a derivatives party would not be considered a wholesale FX market participant that transacts in the wholesale FX market with a Canadian financial institution under the FX Global Code, we would not interpret any FX transaction by such derivatives party as a short-term FX transaction that needs to be included for the purposes of section 4.

The wholesale foreign exchange market does not include retail foreign currency exchange transactions, including retail foreign currency exchange transactions conducted at the branch level.

[3] In the Instrument reference to "**trade reporting rules**" refers to the following instruments, as applicable: Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting;* Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting in Québec ; and, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon

[4] See https://www.globalfxc.org/fx_global_code.htm, which was facilitated by the Foreign Exchange Working Group operating under the auspices of the Bank of International Settlements Markets Committee.

Section 7 – Non-application – governments, central banks and international organizations

Section 7 provides that the Instrument does not apply to certain governments, central banks and international organizations specified in the section. Section 7 does not, however, exclude derivatives firms that deal with or advise these entities from the application of the Instrument.

Section 8 – Exemptions from certain requirements in this Instrument when dealing with or advising an eligible derivatives party

We are of the view that, because of their nature, regulatory oversight, financial resources or experience, eligible derivatives parties do not require the full set of protections afforded to other derivatives parties. Other derivatives parties are referred to in this Policy as **non-eligible derivatives parties**.

The obligations of a derivatives firm and the individuals acting on its behalf towards a derivatives party differ depending on whether the derivatives party is an eligible derivatives party and on the nature of the eligible derivatives party.

Dealing with or advising a derivatives party that is a non-eligible derivatives party

If a derivatives firm is dealing with or advising a non-eligible derivatives party, no exemption is available from the requirements in Parts 3, 4 and 5.

Dealing with or advising an eligible derivatives party that is not an individual or an eligible commercial hedger

A derivatives firm is exempt from the requirements of the Instrument if it is dealing with or advising a derivatives party that is an eligible derivatives party that is not an individual or an eligible commercial hedger, other than the following requirements (the **core requirements**):

- in Part 3 [*Dealing with or advising derivatives parties*], all of the requirements in Division 1 [*General obligations towards all derivatives parties*]:
    - section 9 [*Fair dealing*];
    - section 10 [*Conflicts of interest*];
    - section 11 [*Know your derivatives party*];
    - section 12 [*Handling complaints*]; and
    - section 13 [*Tied selling*];
- in Part 4, Division 2 [*Derivatives party assets*]:
    - section 24 [*Interaction with other instruments*]; and
    - section 25 [*Segregating derivatives party assets*];
- in Part 4, Division 3 [*Reporting to derivatives parties*]:
    - subsection 28(1) [Content and delivery of transaction information];
- in Part 5 [*Compliance and recordkeeping*]:
    - all of Division 1 [*Compliance*]; and
    - all of Division 2 [*Recordkeeping*].

Dealing with or advising an eligible derivatives party that is an individual or an eligible commercial hedger

Under subsection 8(2), when a derivatives firm is dealing with or advising a derivative party that is an individual or eligible commercial hedger, all applicable additional protections in the Instrument are presumed to apply unless that derivatives party has provided the derivatives firm with the requisite representations indicating that they qualify as an eligible derivatives party and the eligible derivatives party waives, in writing, some or all of the additional protections in Instrument. As specified in subsection 8(3), the core requirements cannot be waived by the eligible derivatives party.

An eligible derivatives party that is an individual or eligible commercial hedger can waive specific requirements for a specific derivative, a class of derivatives, or for all derivatives. For example, a producer of a certain commodity may choose to waive

certain requirements in relation to derivatives where the underlying asset is a commodity that they produce but may not want to waive protections in relation to other types of derivatives.

We do not consider there to be an obligation under the Instrument to update the waiver after it is made. However, it is always open to an eligible derivatives party that is an individual or an eligible commercial hedger to withdraw, in whole or in part, any waiver it has made to a derivatives firm.

There is no prescribed form for the waiver provided by subparagraph 8(2)(a)(iii). For example, it may be appropriate for the waiver to be given by an eligible derivatives party that is an individual or an eligible commercial hedger as part of account-opening documentation, in master trading agreements or in protocols amending master trading agreements. A derivatives firm may also wish to use a form of waiver that is similar to the typical forms of waivers used by securities market participants when certain permitted clients provide a waiver from certain suitability/disclosure obligations under NI 31-103.

However, consistent with the derivatives firm's obligation to deal fairly, honestly and in good faith with derivatives parties, we expect the waiver to be presented to the derivatives party in a clear and meaningful manner in order to ensure the derivatives party understands the information presented and the significance of the protections being waived. We would consider it to be a breach of section 9 [*Fair dealing*] to put unreasonable pressure on a derivatives party to waive any requirements. We also expect the derivatives firm to remind the derivatives party that it has the option to obtain independent advice before signing the waiver.

In the limited circumstances where a sole proprietorship (which is legally treated as an individual) uses derivatives to hedge against commercial risk and thus qualify as an eligible derivatives party, the derivatives firm transacting with such party must identify and document the nature of the sole proprietorship's business and the commercial risks it needs to manage for purposes of the transaction (paragraph 8(2)(b)). This is in addition to the expectation that a derivatives firm will take reasonable steps to determine if a derivatives party is an eligible derivatives party (described more fully in Section 1 of this Policy).

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Section 9 – Fair dealing

General Principle

The obligation in section 9 (the **fair dealing obligation**) is a principles-based obligation and is intended to be similar to the duty to act fairly, honestly and in good faith applicable to registered firms and registered individuals under securities legislation (the **registrant fair dealing obligation**).[5]

The fair dealing obligation should be interpreted flexibly and in a manner sensitive to context

We recognize that there are important differences between derivatives markets and securities markets. The fair dealing obligation under the Instrument may not always apply to derivatives market participants in the same manner as the registrant fair dealing obligation would apply to securities market participants. Accordingly, we believe that the fair dealing obligation in section 9, as a principles-based obligation, should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For this reason, prior CSA guidance and case law on the registrant fair dealing obligation may not necessarily be relevant in interpreting the fair dealing obligation under the Instrument. Similarly, the guidance in this Policy is not necessarily applicable to registrants in their conduct with securities market participants.

We take the view that the concept of fairness when applied to derivatives market participants is context-specific. Conduct that may be considered unfair when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, the fair dealing obligation may be interpreted differently if the derivatives party is an individual or small business than from how it would be interpreted if the derivatives party is a sophisticated market participant, such as a global financial institution. Similarly, conduct that may be considered to be unfair when acting as an agent to facilitate a derivatives transaction with a third-party may be considered fair when entering into a derivative as principal, where it would be expected that each party negotiating the derivative is seeking to ensure favourable financial terms.

[5] See section 14 of the Securities Rules, B.C. Reg. 194/97 **[B.C. Regulations]** under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 **[B.C. Act]**; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 **[Alberta Act]**; section 33.1 of *The Securities Act, 1988* (Saskatchewan), S.S. 1988-89, c. S-42.2 **[Saskatchewan Act]**; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 **[Manitoba Act]**; section 2.1 of OSC Rule 31-505 *Conditions of Registration* ; section 65 of the *Derivatives Act* (Québec), R.S.Q., c. 14.01 **[Québec Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 **[N.S. Act]**; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 **[N.B. Act]**; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 **[P.E.I. Act]**; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 **[Newfoundland Act]**; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 **[Nunavut Act]**; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 **[N.W.T. Act]**; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 **[Yukon Act]**.

When a derivatives firm is dealing with or advising an eligible derivatives party, we generally interpret the fair dealing obligation in section 9 in a similar manner to the "fair and balanced communications" obligation as it is conceived in the context of similar rules in the United States.

Abusive practices, including fraud, price fixing, spoofing and layering, manipulation of benchmark rates, and front-running of trades would be considered a severe breach of the fair dealing obligation.

Derivatives firms have an obligation to transact with a derivatives party under terms that are fair. What constitutes "fair" will vary depending on the particular circumstances. Misrepresenting the nature of the product and related risks, or deliberately selling a derivative that is not appropriate for a derivatives party, would not be considered to be "fair" and, in our view, would be a breach of the fair dealing obligation.

We expect a derivatives firm to ensure a derivatives party is reasonably made aware of the implications of terminating a transaction prior to maturity, including potential exit costs. However, depending on the level of sophistication of the derivatives party, as well as the nature of the derivatives party, we recognize that this may not be necessary and therefore, the obligation to be "fair" in this context is minimal. For example, it would be appropriate for this information to be provided to an eligible commercial hedger; whereas, we would generally not expect this information to be disclosed between two banks. We recognize that implications of termination, including costs, are wholly dependent on market conditions at the time of termination and therefore, the more specific details relating to such costs would only be disclosed when actual termination of the transaction is being discussed or negotiated.

As part of the policies and procedures required under section 31, a derivatives firm is expected to be able to demonstrate that it has established and follows policies and procedures that are reasonably designed to achieve fair terms, in the context, for the derivatives firm's derivatives parties and that these policies and procedures are reviewed regularly and amended as required.

We interpret the fair dealing obligation to include determining prices for derivatives transacted with derivatives parties in a fair and equitable manner. We expect there to be a rational basis for a discrepancy in price where essentially the same derivative is transacted with different derivatives parties. Factors that indicate a rational basis could include the level of counterparty risk and capital risk of a particular derivatives party, the derivatives party's trading activity, or relationship pricing. Lack of sophistication, knowledge or understanding of a derivatives product should never be a factor in providing less advantageous pricing. Both the compensation component and the market value or price component of the derivative are relevant in determining whether the price for a derivatives party is fair. A derivatives firm's policies and procedures under section 31 must address pricing practices, as well as how the reasonableness of compensation is determined. A derivatives party should be given an opportunity, at their option, to obtain independent advice before transacting in a derivative.

Derivatives firms are expected to obtain information from each derivatives party to allow them to meet their fair dealing obligation.

Section 10 – Conflicts of interest

We consider a conflict of interest to be any circumstance where the interests of a derivatives party and those of a derivatives firm or its representatives are inconsistent or divergent.

The conflict of interest provisions in section 10 should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For example, a derivatives firm and the derivatives party with which it transacts bilaterally hold opposing positions under the same derivative and this may represent an inherent conflict of interest in the narrow context of that specific derivative. We further recognize that transacting in certain commodity derivatives markets, such as energy derivatives markets, may also necessarily involve counterparties that have competing interests. We recognize, therefore, that it may not necessarily be appropriate to apply the conflict of interest provisions under the Instrument to derivatives market participants in the same manner as the relevant conflict of interest provisions would apply to securities market participants.

We take the view that a conflict of interest, when applied to derivatives market participants, is context-specific. Circumstances that may be considered to give rise to a conflict of interest when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, conflicts of interests may be viewed differently when dealing with a non-eligible derivative party that is an individual or a small business than they would be viewed if the derivatives party were an eligible derivatives party, which may be different again from how conflicts of interest would be viewed if the derivatives party were a sophisticated market participant such as a global financial institution.

In addition, the circumstances that may give rise to a conflict of interest when acting as an intermediary on behalf of an eligible derivatives party, may not represent a conflict of interest when entering into a derivative as principal, provided the eligible derivatives party is reasonably aware that the derivatives firm is seeking terms favourable to its own interests. One way to generally address this conflict would be to provide a representation to that effect in a master trading agreement; however, such standard representation may not necessarily address all of the circumstances that would give rise to a conflict of interest that ought to be disclosed to a derivatives party.

Subsection 10(2) – Responding to conflicts of interest

We expect that a derivatives firm's policies and procedures for managing conflicts should allow the firm and its staff to

- identify conflicts of interest,
- determine the level of risk, to both the derivatives firm and a derivatives party, that a conflict of interest raises, and
- respond appropriately to conflicts of interest.

When responding to any conflict of interest, we expect the derivatives firm to consider the fair dealing obligation in section 9 as well as any other standard of care that may apply when dealing with or advising a derivatives party.

There are three methods that are generally reasonable to respond to a conflict of interest, depending on the circumstances: avoidance, control and disclosure.

We expect that if there is a risk of material harm to a derivatives party or the integrity of the markets, the derivatives firm will take all reasonable steps to avoid the conflict of interest. If there is not a risk of material harm and the derivatives firm does not avoid the conflict of interest, we expect that it will take steps to either control or disclose the conflict, or both. We also expect the derivatives firm to consider what internal structures or policies and procedures it should implement to reasonably respond to such a conflict of interest.

Avoiding conflicts of interest

A derivatives firm must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, we expect the derivatives firm to avoid the conflict if it is sufficiently contrary to the interests of a derivatives party that there can be no other reasonable response. We are generally of the view that conflicts that have a lesser impact on the interests of a derivatives party can be managed through controls or disclosure.

Where conflicts of interest between a derivatives party and a derivatives firm cannot be managed using controls or disclosure, we expect the derivatives firm to avoid the conflict. This may require the derivatives firm to stop providing the service or stop transacting derivatives with, or providing advice in relation to derivatives to, the derivatives party.

Controlling conflicts of interest

We expect that a derivatives firm would design its organizational structures, lines of reporting and physical locations to, where appropriate, control conflicts of interest effectively. For example, the following situations would likely raise a potential conflict of interest that could be controlled in this manner:

- advisory staff reporting to marketing staff,
- compliance or internal audit staff reporting to a business unit, and
- individuals acting on behalf of a derivatives firm and investment banking staff in the same physical location.

Depending on the conflict of interest, a derivatives firm may be able to reasonably respond to the conflict of interest by controlling the conflict in an appropriate way. This may include

- assigning a different individual to provide a service to the derivatives party,
- creating a group or committee to review, develop or approve responses to a type of conflict of interest,
- monitoring trading activity, or
- using information barriers for certain internal communication.

Where a conflict of interest is such that no control is effective, we expect the conflict to be avoided or disclosed.

Subsection 10(3) – Disclosing conflicts of interest

When disclosure is appropriate

We expect a derivatives firm to inform each derivatives party it transacts derivatives with, or provides advice in relation to derivatives to, about any conflicts of interest that could affect the services the firm provides to the derivatives party.

Timing of disclosure

Under subsection 10(3), a derivatives firm and individuals acting on its behalf must disclose a conflict of interest in a timely manner. We expect a derivatives firm and its representatives to disclose the conflict to a derivatives party before or at the time they recommend the transaction or provide the service that gives rise to the conflict to enable the derivatives party to decide beforehand whether or not they wish to proceed with the transaction or service.

Where this disclosure is provided to a derivatives party before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the derivatives party's account-opening documentation months or years previously, we expect that an individual acting on behalf of a derivatives firm to also disclose this conflict to the derivatives party shortly before the transaction or at the time the transaction is recommended.

When disclosure is not appropriate

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially-sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation. In these situations, a derivatives firm will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest. We also expect a derivatives firm to have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

How to disclose a conflict of interest

Subsection 10(3) provides that a derivatives firm must provide disclosure about a material conflict of interest to a derivatives party. When a derivatives firm provides this disclosure, we expect that the disclosure would

- be prominent, specific, clear and meaningful to the derivatives party, and
- explain the conflict of interest and how it could affect the service the derivatives party is being offered.

We expect that a derivatives firm would not

- provide only generic disclosure,
- provide only partial disclosure that could mislead the derivatives party, or
- obscure conflicts of interest in overly detailed disclosure.

More specifically, we generally expect that disclosures are separated into two categories:

(i) general conflicts of interest disclosures applicable to all counterparties (those which affect all counterparties and transaction types, addressed in a written general disclosure) that could be disclosed to counterparties on an annual basis, and

(ii) disclosures specific to a counterparty or a specific contemplated transaction (i.e., disclosure regarding specific conflicts of interest that are material and specific to a counterparty or a particular transaction prior to entering into a transaction) by providing written notice of or disclosing the conflict to a trader of their derivatives party over a taped line prior to trading.

We recognize that it may be appropriate in some circumstances for a derivatives firm to disclose a conflict where it arises after the original transaction has taken place. This might arise, for example, in the case of an equity total return swap where subsequent to entering into a transaction with a derivatives party, the derivatives dealer becomes a mergers and acquisitions adviser in respect of the equity underlier (where the proposed merger and acquisition activity has been announced).

Examples of conflicts of interest

Specific situations where a derivatives firm could be in a conflict of interest and how to manage the conflict are described below.

Acting as both dealer and counterparty

When a derivatives firm enters into a transaction with or recommends a transaction to a derivatives party, and the derivatives firm or an affiliated entity of the derivatives firm is the counterparty to the derivatives party in the transaction, we expect that the derivatives firm would respond to the resulting conflict of interest by disclosing it to the derivatives party.

Competing interests of derivatives parties

If a derivatives firm deals with or provides advice to multiple derivatives parties, we expect the derivatives firm to make reasonable efforts to be fair to all such derivatives parties. We expect that a derivatives firm will have internal policies and procedures to evaluate the balance of these interests.

Acting on behalf of derivatives parties

When a derivatives firm, or the individuals acting on its behalf, exercise discretionary authority over the accounts of its derivatives parties to enter into transactions on their behalf, we expect the derivatives firm to have policies and procedures to address the potential conflicts of interest ensuing from the contractual relationship governing the exercise of discretionary authority.

Compensation practices

We expect that a derivatives firm would consider whether any benefits, compensation or remuneration practices are inconsistent with their obligations to derivatives parties, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission but may not be appropriate for the derivatives firm's derivatives parties, the derivatives firm may decide that it is not appropriate to offer that product.

Section 11 – Know your derivatives party

Derivatives firms act as gatekeepers of the integrity of the derivatives markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, derivatives firms are required to establish the identity of, and conduct due diligence on, their clients or counterparties under the know-your-derivatives party obligation in section 11 (the "**KYDP obligation**"). Complying with this obligation can help ensure that derivatives transactions are completed in accordance with securities laws.

The KYDP obligation requires derivatives firms to take reasonable steps to obtain and periodically update information about their derivatives parties. In the ordinary course, an annual request to a derivatives party from a derivatives dealer to confirm that nothing has changed in relation to the gatekeeper KYDP information in section 11 would satisfy this obligation.

Section 43 provides an exemption for derivatives firms from the obligations under this section for transactions that are executed on a derivatives trading facility where the identity of the counterparty is unknown prior to and at the time the transaction is executed.

Section 12 – Handling Complaints

General duty to document and respond to complaints

Section 12 requires a derivatives firm to document complaints in respect of its derivatives business and to effectively, fairly and promptly respond to them. We expect that a derivatives firm would document and respond to all complaints received from a derivatives party who has dealt with the derivatives firm in respect of the derivatives activity at issue (in this section, a "**complainant**").

Complaint handling

We are of the view that an effective complaint system would deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, we expect the derivatives firm's compliance system to include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We expect a derivatives firm to take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant,
- the individual or individuals acting on behalf of the derivatives firm, and
- the derivatives firm.

We also expect a derivatives firm to limit its consideration and handling of complaints for the purposes of the Instrument to those relating to possible violations of securities legislation.

Complaint monitoring

We expect a derivatives firm's complaint system to provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. We also expect the derivatives firm to take appropriate measures to promptly address the cause of a problem that is the subject of a complaint, particularly a serious problem.

Responding to complaints

Types of complaints

We expect a derivatives firm to provide an appropriate response to all complaints, including complaints relating to one of the following matters, by providing an initial and substantive response, promptly in writing:

- a trading or advising activity;
- a breach of the derivatives party's confidentiality;
- theft, fraud, misappropriation or forgery;
- misrepresentation;
- the fair dealing obligation;
- an undisclosed or prohibited conflict of interest; or
- personal financial dealings with a derivatives party.

A derivatives firm may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if a derivatives party, acting reasonably, would expect a written response to its complaint.

Timeline for responding to complaints

We expect that a derivatives firm would

- promptly send an initial written response to a complainant within 5 business days of receipt of the complaint, and
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the derivatives firm's decision on the complaint.

A derivatives firm may also wish to use its initial response to seek clarification or additional information from the derivatives party.

We encourage derivatives firms to respond to and resolve complaints relating to the matters listed above within a reasonable timeframe depending on the nature of the dispute (in the ordinary course, within 90 days would be considered reasonable).

Section 13 – Tied selling

Section 13 prohibits a derivatives firm from imposing undue pressure on or coercing a person or company to obtain a product or service from a particular person or company, including the derivatives firm or any of its affiliates, as a condition of obtaining another product or service from the derivatives firm. These types of practices are known as "tied selling". In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a derivatives party on the condition that the derivatives party hedged their loan through the same financial institution. In this example, we would take the view that a derivatives firm would not contravene section 13 if it required the derivatives party to enter into an interest rate derivative in connection with a loan agreement, as long as the derivatives party were permitted to transact in this derivative with the counterparty of their choice.

Section 13 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain derivatives parties.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with or advising:

- an eligible derivatives party that is not an individual or an eligible commercial hedger; or
- an eligible derivatives party that is an individual or eligible commercial hedger that has waived these obligations.

Section 14 – Derivatives-party-specific needs and objectives

Information on a derivatives party's specific needs and objectives (referred to below as "**derivatives-party-specific KYC information**") forms the basis for determining whether transactions are suitable for a derivatives party. The obligations in section 14 require a derivatives firm to take reasonable steps to obtain and periodically update information about their derivatives parties.

The derivatives-party-specific KYC information may also be relevant in complying with policies and procedures that are aimed at ensuring fair terms of a derivative for a derivatives party under subsection 9(1).

Derivatives parties may have a variety of execution priorities. For example, a derivatives party may have as their primary objective executing the transaction as quickly as possible rather than trying to obtain the best available price. Factors to consider when evaluating execution include price, certainty, timeliness, and minimizing the impact of making a trading interest public.

Before transacting with a derivatives party, we expect a derivatives firm to have the appropriate information to assess the derivatives party's knowledge, experience and level of understanding of the relevant type of derivative, the derivative's party's objective in entering into the derivative and the financial and business risks involved, in order to assess whether the derivative is suitable for the derivatives party. The derivatives-party-specific KYC information is obtained with this goal in mind.

If the derivatives party chooses not to provide the necessary information that would enable the derivatives firm to assess suitability, or if the derivatives party provides insufficient information, we expect the derivatives party to be notified. The derivatives firm would be expected to advise the derivatives party that

- this information is required to determine whether the derivative is suitable for the derivatives party, and
- without this information there is a strong risk that it will not be able to determine whether the derivatives party has the ability to understand the derivative and the risks involved with transacting the derivative.

Derivatives-party-specific KYC information for suitability depends on circumstances

The extent of derivatives-party-specific KYC information that a derivatives firm needs in order to determine the suitability of a transaction or a derivatives party's priorities when transacting in the derivative will depend on factors that include

- the derivatives party's circumstances and objectives,
- the type of derivative,
- the derivatives party's relationship to the derivatives firm, and
- the derivatives firm's business model.

In some cases, a derivatives firm will need extensive derivatives-party-specific KYC information, for example, where the derivatives party would like to enter into a derivatives strategy using a range of asset classes to hedge a commercial activity and related risks. In these cases, we expect the derivatives firm to have a comprehensive understanding of the derivatives party's

- needs and objectives when entering into a derivative, including the derivatives party's time horizon for their hedging or speculative strategy,
- overall financial circumstances, and
- risk tolerance for various types of derivatives, taking into account the derivative party's knowledge of derivatives.

In other cases, a derivatives firm may need to obtain less derivatives-party-specific KYC information, for example, if the derivatives firm enters into a single derivative with a derivatives party who needs to hedge a loan that the derivatives firm extended to the derivatives party.

Subsection 14(2) corresponds to subsection 11(4) of MI 93-101 and subsection 13.2(4) of NI 31-103. In the context of NI 31-103, CSA Staff have generally interpreted this to mean the firm has to refresh the client specific KYC information at least once a year. Pursuant to subsection 14(1) of MI 93-101, any time that a derivatives firm makes a recommendation or accepts an order, it is required to make a suitability determination unless (i) the derivatives party is an eligible derivatives party, provided that it is not an eligible derivatives party that is an individual or eligible commercial hedger; or (ii) the derivatives party is an eligible derivatives party that is an individual or an eligible commercial hedger that has waived this requirement. Consequently, any time a firm makes a recommendation or accepts an order, the firm needs to know whether the client is an eligible derivatives party or a retail counterparty in order to know whether it has to satisfy the suitability obligation. As long as the firm complies with its obligation in subsection 11(4) to keep its derivatives-party-specific KYDP information current, and as long as the firm does not know otherwise, the firm can rely on existing representations.

Section 15 – Suitability

Subsection 15(1) requires a derivatives firm to take reasonable steps to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.

Suitability obligation

To meet the suitability obligation, a derivatives firm should have in-depth knowledge of all derivatives that it transacts with or for, or recommends to, its derivatives party. This is often referred to as the "know your product" or KYP obligation.

We expect a derivatives firm to know each derivative well enough to understand and explain to the derivatives party the derivative's risks, key features, and initial and ongoing obligations. The decision by a derivatives firm to include a type of derivative on its product shelf or approved list of products does not necessarily mean that the derivative will be suitable for each derivatives party. Individuals acting on behalf of a derivatives firm must still determine the suitability of each transaction for every derivatives party.

When assessing suitability, we expect a derivatives firm to take all reasonable steps to determine whether the derivatives party has the capability to understand the particular type of derivative and the risks involved.

In all cases, we expect a derivatives firm to be able to demonstrate a process for making suitability determinations that is appropriate under the circumstances.

Any direction from a derivatives party to override a suitability determination made by a derivatives firm should be made in writing or otherwise documented by the firm/individual acting on its behalf.

Suitability obligation cannot be delegated

A derivatives firm should not

- delegate its suitability obligation to anyone other than an officer or employee of the derivatives firm, or
- satisfy the suitability obligation by simply disclosing the risks involved with a transaction.

Sections 14 and 15 - Use of online services to determine derivatives party specific needs and objectives and suitability

The conduct obligations set out in the Instrument, including the derivatives-party-specific KYC and suitability obligations in sections 14 and 15, are intended to be "technology neutral". This means that these obligations are the same for derivatives firms that interact with derivatives parties on a face-to-face basis or through an online platform.

Where the information necessary to fulfill a derivatives firm's obligations pursuant to sections 14 and 15 is solicited through an online service or questionnaire, we expect that this process would amount to a meaningful discussion with the derivatives party.

An online service or questionnaire is expected to achieve this objective if it

- uses a series of behavioural questions to establish risk tolerance and elicit other derivatives-party-specific KYC information,
- prevents a derivatives party from progressing further until all questions have been answered,
- tests for inconsistencies or conflicts in the answers and will not let the derivatives party complete the questionnaire until the inconsistencies or conflicts are resolved,
- offers information about the terms and concepts involved, and
- reminds the derivatives party that an individual from the derivatives firm is available to help them throughout the process.

Section 16 – Permitted referral arrangements

Subsection 1(1) defines a "referral arrangement" in broad terms. Referral arrangement means an arrangement in which a derivatives firm agrees to pay or receive a referral fee. The definition is not limited to referrals for providing derivatives, financial services or services requiring registration. It also includes receiving a referral fee for providing a derivatives party's name and contact information to an individual or a firm. "Referral fee" is also broadly defined. It includes any benefits received from referring a derivatives party, including sharing or splitting any commission resulting from a transaction.

Under section 16, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party's roles and responsibilities are made clear. This includes obligations for a derivatives

firm involved in referral arrangements to keep records of referral fees (this includes records of all fees relating to referrals that were either paid by the derivatives firm to another person or company or received by the derivatives firm from another person or company). Payments do not necessarily have to go through a derivatives firm, but a record of all payments related to a referral arrangement must be kept.

We expect referral agreements to include

- the roles and responsibilities of each party,
- limitations on any party that is not a derivatives firm,
- the specific contents of the disclosure to be provided to referred derivatives parties, and
- who provides the disclosure to referred derivatives parties.

If the person or company receiving the referral is a derivatives firm or an individual acting on behalf of that derivatives firm, they would be responsible for carrying out all obligations of a derivatives firm towards the referred derivatives party in respect of the derivatives-related activities for which the derivatives party is referred and communicating with the referred derivatives party. However, if the referring person or company is a derivatives firm, the referring derivatives firm is still required to comply with sections 16 [*Permitted referral arrangements*], 17 [*Verifying the qualifications of the person or company receiving the referral*] and 18 [*Disclosing referral arrangements to a derivatives party*].

If a derivatives party is referred by or to an individual acting on behalf of a derivatives firm, we expect the derivatives firm to be a party to the referral agreement. This ensures that the derivatives firm is aware of these arrangements so it can adequately supervise the individuals acting on its behalf and monitor compliance with the agreements. It does not preclude the individual acting on behalf of the derivatives firm from also being a party to the agreement.

A party to a referral arrangement may need to be registered depending on the activities that the party carries out. A derivatives firm cannot use a referral arrangement to assign, contract out of or otherwise avoid its regulatory obligations.

In making referrals, a derivatives firm should ensure that the referral itself does not constitute an activity that the derivatives firm is not authorized to engage in.

We generally are of the view that the compliance practices of investment dealers with respect to referral arrangements under NI 31-103 could similarly be employed to meet the requirements under the Instrument with respect to referral arrangements.

Section 17 – Verifying the qualifications of the person or company receiving the referral

Section 17 requires the derivatives firm, or individual acting on its behalf, making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and, if applicable, is appropriately registered. The derivatives firm, or individual acting on its behalf, is responsible for determining the steps that are reasonable in the circumstances. For example, this may include an assessment of the types of derivatives parties that the referred services would be appropriate for.

Section 18 – Disclosing referral arrangements to a derivatives party

The disclosure of information to a derivatives party required under section 18 is intended to help the derivatives party make an informed decision about the referral arrangement and to assess any conflicts of interest. We expect the disclosure to be provided to a derivatives party before or at the time the referred services are provided. We also expect a derivatives firm, and any individuals acting on behalf of the derivatives firm who is directly participating in the referral arrangement, to take reasonable steps so that a derivatives party understands

- which entity it is dealing with,
- what it can expect that entity to provide to it,
- the derivatives firm’s key responsibilities to it,
- if applicable, the limitations of the derivatives firm’s registration category or exemptive relief,
- if applicable, any relevant terms and conditions imposed on the derivatives firm’s registration or exemptive relief,
- the extent of the referrer’s financial interest in the referral arrangement, and
- the nature of any potential or actual conflict of interest that may arise from the referral arrangement.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible commercial hedger or an eligible derivatives party that is an individual or an eligible commercial hedger that has waived these obligations.

Section 19 – Relationship disclosure information

Content of relationship disclosure information

The Instrument does not prescribe a form for the relationship disclosure information required under section 19. A derivatives firm may provide this information in a single document, or in separate documents, which together give the derivatives party the prescribed information.

We expect that relationship disclosure information would contain accurate, complete, and up-to-date information. We suggest that derivatives firms review their disclosures annually or more frequently, as necessary. A derivatives firm must take reasonable steps to notify a derivatives party, in a timely manner, of significant changes in respect of the relationship disclosure information that has been provided.

To satisfy their obligations under subsection 19(1), an individual acting on behalf of a derivatives firm must spend sufficient time with a derivatives party in a manner consistent with their operations to adequately explain the relationship disclosure information that is delivered to the derivatives party. We expect a derivatives firm to have policies and procedures that reflect the derivatives firm's practices when preparing, reviewing, delivering and revising relationship disclosure documents.

Disclosure should occur before entering into an initial transaction, prior to advising a derivatives party in respect of a derivative and when there is a significant change in respect of the information delivered to a derivatives party. We expect that the derivatives firm will maintain evidence of compliance with their disclosure requirements.

Paragraphs 19(2)(a) to (k) – Required relationship disclosure information

Description of the nature or type of the derivative party's account

Under paragraph 19(2)(a), a derivatives firm must provide derivatives parties with a description of the nature or type of account that the derivatives party holds with the derivatives firm. In particular, we expect that a derivatives firm would provide sufficient information to enable the derivatives party to understand the manner in which transactions will be executed and any applicable contractual obligations. We also expect a derivatives firm to provide information regarding margin and collateral requirements, if applicable. Under paragraph 19(2)(k) the derivatives firm must disclose how the derivatives party assets will be held, used and invested.

We expect that the relationship disclosure information would also describe any related services that may be provided by the derivatives firm. If the firm is advising in derivatives, and the adviser has discretion over the derivatives party's account, we also expect this to be disclosed.

Describe the conflicts of interest

Under paragraph 19(2)(b) a derivatives firm must provide a description of the conflicts of interest that the derivatives firm is required to disclose under securities legislation. One such requirement is in section 10, which provides that a firm must take reasonable steps to identify and then respond to existing and potential material conflicts of interest between the derivatives firm and the derivatives party. This includes disclosing the conflict, where appropriate.

Disclosure of charges, fees and other compensation

Paragraphs 19(2)(c), (d) and (e) require a derivatives firm to provide a derivatives party information on fees and costs they might be charged when entering into a transaction. These requirements ensure that a derivatives party receives all relevant information to evaluate the costs associated with the products and services they receive from the derivatives firm. We expect this disclosure to include information related to compensation or other incentives that the derivatives party may pay relating to a transaction.

We also expect a derivatives firm to provide the derivatives party with general information on any transaction and other charges that a derivatives party may be required to pay, including general information about potential break costs if a derivative is terminated prior to maturity, as well as other compensation the derivatives firms may receive from a third party as a result of their business relationship.

We recognize that a derivatives firm may not be able to provide all information about the costs associated with a particular derivative or transaction until the terms of the derivative have been agreed upon. However, before entering into an initial transaction, a derivatives firm must meet the applicable pre-transaction disclosure requirements in section 20.

Description of content and frequency of reporting

Under paragraph 19(2)(f) a derivatives firm is required to provide a description of the content and frequency of reporting to the derivatives party. Reporting to derivatives parties includes, as applicable

- valuation reporting under section 21,
- transaction confirmations under section 28, and
- derivatives party statements under section 29.

Further guidance about a derivatives firm's reporting obligations to a derivatives party is provided in Division 3 of this Part.

Know your derivatives party information

Paragraph 19(2)(i) requires a derivatives firm to disclose the type of information that it must collect from the derivatives party. We expect this disclosure will also indicate how this information will be used in assessing and determining the suitability of a derivatives party transaction.

Section 20 – Pre-transaction disclosure

The Instrument does not prescribe a form for the pre-transaction disclosure that must be provided to a derivatives party under section 20. The derivatives firm may provide this information in a single document, or in separate documents, which together give the derivatives party the prescribed information.

The disclosure document required under subsection 20(1) must be delivered to the derivatives party at a reasonably sufficient time prior to entering into the first transaction with the derivatives firm to allow the derivatives party to assess the material risks and material characteristics of the type of derivative transacted. This disclosure document may be communicated by email or other electronic means.

Identify the derivatives-related products or services the derivatives firm offers

Under paragraph 20(1)(a), a derivatives firm must provide a general description of the derivatives products and services related to derivatives that the derivatives firm offers to a derivatives party. We expect the relationship disclosure information to explain which asset classes the derivatives firm deals in and explain the different types of derivative products that the derivatives firm can transact with the derivatives party. The information required to be delivered under paragraph 20(1)(a) may be provided orally or in writing.

Describe the types of risks that a derivatives party should consider

Subparagraph 20(1)(b)(i) requires a derivatives firm to provide an explanation of the risks associated with the derivatives products being transacted, including any specific risks relevant to the derivatives offered and strategies recommended to the derivatives party. The risks disclosed may include market, credit, liquidity, operational, legal and currency risks, as applicable.

The information required to be delivered under paragraph 20(1)(b) may be provided orally or in writing.

Describe the risks of using leverage to finance a derivative to a derivatives party

Paragraph 20(1)(c) contemplates that a derivatives firm will disclose the risk of leverage to all derivatives parties, regardless of whether or not the derivatives party uses leverage or the derivatives firm recommends the use of borrowed money to finance any part of a transaction. Using leverage means that derivatives parties are only required to deposit a percentage of the total value of the derivative when entering into a transaction. This effectively amounts to a loan by the derivatives firm to the derivatives party. However, the derivatives party's profits or losses are based on changes in the total value of the derivative. Leverage magnifies a derivatives party's profit or loss on a transaction, and losses can exceed the amount of funds deposited.

Posting of the disclosure on a derivatives firm's website in a readily accessible location will be sufficient for purposes of ensuring the relevant disclosure has been provided (and refreshed as appropriate) as long as the derivatives firm directs the relevant derivatives party to the website before executing a transaction with or on behalf of a derivatives party.

Subsection 20(2) – Disclosure before transacting in a derivative

We understand that the use of the term "price" is not always appropriate in relation to a derivative or transaction in a derivative. Therefore, under paragraph 20(2)(b), disclosure with respect to spreads, premiums, costs, etc., could be more appropriate than the price.

Section 21 – Valuation reporting

A derivatives dealer under subsection 21(1) does not have to make the daily mid-market mark (or valuation) available to a derivatives party for a derivative that is cleared through a qualifying clearing agency because we expect that derivatives parties will already be able to access valuation information from the clearing agency. However, the derivatives dealer should notify the derivatives party of its right to request and receive the clearing agency's daily mid-market mark.

This information should be available to a derivatives party in an electronic form (such as through an online platform that allows the derivatives party to see the value of its derivatives position). The derivatives firm should provide its derivatives parties with guidance on how to access this information before executing a transaction with or on behalf of a derivatives party and whenever the derivatives firm makes a change to the way the information is provided to a derivatives party.

In respect of a transaction involving a managed account, we expect the derivatives dealer to make the information required under subsection 21(1) available to the derivatives adviser that is acting on behalf of the managed account. Whereas in respect of the same transaction, the derivatives adviser that is acting for a managed account for its client is only required to make the information required under subsection 21(2) available to the derivatives party (i.e., its client) at least once every three months, unless their client requests to receive that information monthly, in which case the derivatives advisor must make that information available for each one-month period. We expect that a derivatives adviser would typically make this information available to its client in a statement that also includes information with respect to its client's overall portfolio and may include the type of information contemplated in section 14.14 [*Account Statements*] of NI 31-103.

Section 22 – Notice to derivatives parties by non-resident derivatives dealers

The notice required under section 22 may be provided by a derivatives firm to a derivatives party in standard form industry documentation; a separate statement is not required to be provided to satisfy the obligations of this section.

DIVISION 2 – DERIVATIVES PARTY ASSETS

The provisions in this Division, other than sections 24 [*Application and interaction with other Instruments*] and 25 [*Segregating derivatives party assets*], do not apply if a derivatives firm is dealing with or advising (i) an eligible derivatives party that is not an individual or an eligible commercial hedger, or (ii) an eligible derivatives party that is an individual or an eligible commercial hedger that has waived these obligations.

Section 24 – Application and interaction with other instruments

A derivatives firm is exempt from the requirements of this Division in respect of derivatives party assets if the derivatives firm

- is subject to and complies with or is exempt from sections 3 to 8 of NI 94-102 in respect of the derivatives party assets. The exemption from the requirements of this Division set out in paragraph (a) also extends to derivatives firms that rely on substituted compliance under NI 94-102,
- is subject to and complies with Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives issued by the federal Office of the Superintendent of Financial Institutions (OSFI), including derivatives firms that rely on an exemption from such rules because they are complying with the equivalent rules of a foreign jurisdiction;
- is subject to and complies with securities legislation relating to margin and collateral requirements or National Instrument 81-102 *Investment Funds*;
- is subject to and complies with the Autorité des marchés financiers' Guideline on margins for over-the-counter derivatives not cleared by a central counterparty.

The exemption from the requirements of this Division on this basis extends to derivatives firms that rely on exemptions from the requirements under securities legislation relating to margin and collateral requirements.

Section 25 – Segregating derivatives party assets

A derivatives firm is required to segregate derivatives party assets from its own property and from the property of the firm's other derivatives parties either by separately holding or separately accounting for derivatives party assets.

Section 26 – Holding initial margin

We expect a derivatives firm to take reasonable efforts to confirm that the permitted depository holding initial margin

- 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 derivatives party assets and minimize and manage the risks associated with the safekeeping and transfer of the derivatives party assets,
- maintains securities in an immobilized or dematerialized form for their transfer by book entry,
- protects derivatives party assets 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 derivative party on the participant's books and facilitates the transfer of derivatives party assets,
- identifies, measures, monitors, and manages its risks from other activities that it may perform, and
- facilitates prompt access to initial margin, when required.

If a derivatives firm is a permitted depository, as defined in the Instrument, it may hold derivatives party assets itself and is not required to hold derivatives party assets at a third-party depository. For example, a Canadian financial institution that acts as a derivatives firm would be permitted to hold derivatives party assets provided it did so in accordance with the requirements of the Instrument. Where a derivatives firm deposits derivatives party assets with a permitted depository, the derivatives firm is responsible for ensuring the permitted depository maintains appropriate books and records to ensure the derivatives party assets can be attributed to the derivatives party.

Section 27 – Investment or use of initial margin

Section 27 requires that a derivatives firm receive written consent from a derivatives party before investing or otherwise using collateral provided as initial margin. In order to provide consent a derivatives party needs to be made aware of and agree to any potential investment or use. If applicable, we expect such disclosure to take the form of the disclosures provided by paragraph 19(2)(k) [*Relationship disclosure information*], which requires the derivatives firm to disclose the manner in which the assets are used or invested and to provide a description of the risks and benefits to the derivatives party that arises from the derivatives firm having access to use or invest derivatives party assets.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

The obligations in this Division, other than subsection 28(1) [*Content and delivery of transaction information*], do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible commercial hedger, or an eligible derivatives party that is an individual or an eligible commercial hedger that has waived these obligations.

Section 28 – Content and delivery of transaction information

Requirement to deliver a confirmation to all derivatives parties

The requirement to provide a written confirmation under subsection 28(1) can be satisfied by electronic confirmations (including SWIFT confirmations) as well as confirmations (or certain provisions within a confirmation) that are otherwise capable of being represented in computer code in accordance with standards developed by relevant industry associations from time to time.

Paragraph 28(1)(b) allows for a confirmation to be delivered to a derivatives adviser on behalf of a derivatives party, provided the derivative party has consented to this in writing. A client typically authorizes or gives consent to its derivatives adviser to receive the transaction confirmation on its behalf in an investment management agreement. In our view, this practice is consistent with the requirement in paragraph 28(1)(b). We do not intend to alter the market practice for a derivatives dealer to deliver the confirmation to the derivatives adviser as agent for the derivatives party and we do not expect a derivatives adviser to obtain an entirely new and separate written direction from a derivatives party.

Where a transaction is executed on a derivatives trading facility (or analogous regulated trading venue), we understand the trade confirmation will be provided by the derivatives trading facility (i.e., a U.S. Commodity Futures Trading Commission (**CFTC**) regulated swap execution facility that is regulated as an exempt exchange in Canada) pursuant to the terms in its rulebook to each

of the counterparties to the transaction and therefore, we would not expect a derivatives firm in this scenario to provide a separate and additional trade confirmation to a derivatives party.

Additional requirements, where applicable, for confirmations delivered to non-eligible derivatives parties

Subsection 28(2) applies only to transactions with a non-eligible derivatives party. This subsection is intentionally flexible – it requires information to be disclosed only to the extent that information applies to the transaction in question. We are of the view that the written description of the derivative transacted required by paragraph 28(2)(a) for transactions would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest rate swap with CDOR as the reference rate).

Section 29 – Derivatives party statements

We interpret "delivery" of a statement referred to in subsection 29(1) to include a statement that is made available to a derivatives party through the derivatives firm website or that is posted to a derivative's party's online account with the derivatives firm.

We are of the view that the description of the derivative transacted required by paragraphs 29(2)(b) and (3)(a) would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest rate swap with CDOR as reference rate).

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

The objective of this Division is to further a culture of compliance and personal accountability within a derivatives firm. Section 32 imposes certain obligations on a senior derivatives manager of a derivatives dealer, further discussed below, with respect to ensuring compliance by individuals performing activities relating to transacting in, or advising in relation to, derivatives within the area of the business the senior derivatives manager is responsible for, which is referred to in the Instrument and below as a "derivatives business unit".

Sections 31 and 33 set out certain obligations on the derivatives dealer regarding policies and procedures relating to compliance and responding to material non-compliance. We are of the view that a derivatives dealer should be afforded flexibility with respect to who fulfills these obligations of the derivatives dealer. The obligations on the derivatives dealer under these sections may be carried out by, for example, one or more senior derivatives managers designated by the derivatives dealer.

Section 31 also sets out certain obligations on the derivatives adviser regarding policies and procedures relating to compliance; however, the "senior derivatives manager" requirements in this Division (sections 32 and 33) are not applicable to derivatives advisers.

Section 30 – Definitions

Derivatives business unit

The definition of "derivatives business unit" is not intended to dictate that a derivatives dealer must organize its derivatives activity in any particular organizational structure. Depending on the size of the derivatives dealer, a derivatives business unit could relate to, for example, a class of derivatives, an asset class or sub-asset class, a business line or a division of the derivatives department of the derivatives dealer.

Senior derivatives manager

The definition of "senior derivatives manager" refers to the individual designated as primarily responsible for a particular derivatives business unit and who manages or has significant influence over its activity on a day-to-day basis. This definition is intended to lead to the designation of the individual responsible for

- the management or conduct of a derivatives business unit, including implementing, within the derivatives business unit, management of business priorities, risk management and operational efficiency and streamlining processes with respect to a class of derivatives, an asset class or sub-asset class, a business line or a division of the derivatives department, and
- operationalizing, within the derivatives business unit, policies and procedures relating to compliance established by the department that is responsible for compliance of the derivatives dealer.

In a large financial institution, a "senior derivatives manager" may refer to a business manager.

Section 31 – Policies and procedures

General principle

A strong culture of compliance, which focuses not only on compliance with applicable rules and regulations but also emphasizes the importance of personal integrity and the need to deal with a derivatives party fairly, honestly and in good faith, is the responsibility of each individual acting on behalf of a derivatives firm in its derivatives operations with respect to derivatives activity.

Establishing a compliance system

Toward that end, section 31 requires a derivatives firm to establish, maintain and apply policies and procedures and a system (i.e., a "**compliance system**") of controls and supervision sufficient to provide reasonable assurance that

- the derivatives firm and those acting for it, as applicable, comply with applicable securities legislation,
- the derivatives firm and each individual acting on its behalf manage derivatives-related risks prudently,
- individuals performing a derivatives-related activity on behalf of the firm, prior to commencing the activity and on an ongoing basis,
  - possess the experience, education and training that a reasonable person would consider necessary to perform these activities in a competent manner, and
  - conduct themselves with integrity.

We expect that the policies, procedures and controls referred to in section 31 include internal controls and monitoring that are reasonably likely to identify non-compliance at an early stage and would allow the derivatives firm to correct non-compliance in a timely manner.

We do not expect that the policies, procedures and controls referred to in section 31 be applicable to derivatives firm's activities other than its activities relating to transacting in, or advising in relation to, derivatives. For example, a derivatives dealer may also be a reporting issuer. The policies, procedures and controls established to monitor compliance with the Instrument would not necessarily reference matters related only to the derivatives firm's status as a reporting issuer. Nevertheless, a derivatives firm would not be precluded from establishing a single set of policies, procedures and controls (i.e., a firm-wide policy) related to the derivatives firm's compliance with all applicable securities legislation.

We expect a derivatives firm, from time to time, to review, assess and update its policies, procedures and controls to adapt to or reflect changes in applicable securities legislation, as well as industry practices/norms (including, the adoption of voluntary codes of conduct).

We interpret "risks relating to its derivatives activities" in paragraph 31(1)(b) to include the risks inherent in derivatives trading (including credit risk, counterparty risk, and market risk) that relate to a derivatives firm's overall financial viability.

Paragraph 31(c) – Policies and procedures relating to individuals

Paragraph 31(c) establishes a reasonable person standard with respect to proficiency, rather than prescribing specific courses or other training requirements. However, we note that a derivatives firm and an individual transacting in, or providing advice in relation to, a derivative on behalf of the derivatives firm may be subject to more specific education, training and experience requirements, including under other securities legislation, if applicable.

Subparagraph 31(c)(i) contemplates that industry experience can be a substitute for formal education and training. We are of the view that this is particularly relevant in respect of formal education and training prior to commencing an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative. However, we expect that all individuals who perform such activity receive appropriate training on an ongoing basis. We expect training program to include compliance training, periodic training sessions on fundamentals and other relevant developments to the derivatives market, as well as training on new derivatives products and services.

Subparagraph 31(c)(iii) relates to integrity of the individuals who perform an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative. We expect individuals performing such activities to conduct themselves with integrity, which includes honesty and good faith, particularly in dealing with clients.

Prior to employing an individual in a derivatives business unit, we expect that a derivatives firm will assess the integrity of the individual by having regard to the following:

- references provided by previous employers, including any relevant complaint of fraud or misconduct against the individual;

- if the individual has been subject to any disciplinary action by its previous employer or to any adverse finding or settlement in civil proceedings;
- whether the individual has been refused the right to carry on a trade, business or profession requiring a licence, registration or other professional designation;
- in light of the individual's responsibility, whether the individual's reputation may have an adverse impact on the firm for which the activity is to be performed.

On an ongoing basis, a firm-wide code of conduct/ethics policies can be relied on as part of satisfying the obligation under subparagraph 31(c)(iii). We also expect derivatives firms to require the employees in its derivatives business unit to read the code of conduct and for each employee to provide some form of an acknowledgement (typically updated annually) to the derivatives firm that they are complying with such code of conduct.

Section 32 – Designation and responsibilities of a senior derivatives manager

Paragraph 32(1)(a) imposes an obligation on a derivative dealer to designate a senior derivatives manager in respect of a derivatives business unit (unless the derivatives dealer is exempt from this obligation under section 44 [*Exemptions from certain requirements in this Instrument for certain notional amounts of commodity derivatives and other derivatives activity*].

Depending on its size, level of derivatives activity and organizational structure, a derivatives dealer may have a number of different derivatives business units and therefore, it would be appropriate to designate a senior derivatives manager for each business unit. For example, a large dealer with multiple trading desks covering different products may have a number of different senior managers. The specific title or job description of the individual designated as "senior derivatives manager" for a derivatives business unit could vary between derivatives dealers, depending once again on their size, level of derivatives activity and organizational structures. In general, we would not expect that the same individual would be designated as the senior derivatives manager for more than one derivatives business unit.

Except in a small derivatives dealer operating a single derivatives business unit, a senior derivatives manager should not be the same individual as the chief executive officer of the derivatives dealer, or another individual registered under securities legislation.

It is the responsibility of the derivatives dealer to identify within the organizational structure of their business the individual that should be designated as the senior derivatives manager of a derivatives business unit.

Following implementation of the Instrument, we expect to monitor the process derivatives dealers use to identify the individual or individuals that are designated as senior derivatives managers.

Paragraph 32(2)(b) – Responsibilities of a senior derivatives manager

Under paragraph 32(2)(b), an appropriate response to non-compliance is a contextual determination, depending on the harm or potential harm, of the non-compliance. We are of the view that an appropriate response could include one or more of the following, depending on the circumstances:

- rectifying the non-compliance;
- disciplining one or more individuals who perform an activity on behalf of the derivatives firm relating to transacting in, or providing advice in relation to, a derivative;
- working with a chief compliance officer or other person responsible for the policies, to improve (or recommending improvements to) processes, policies and procedures aimed at ensuring compliance with the Instrument, applicable securities legislation and the policies and procedures required under section 31 [*Policies and procedures*].

An appropriate response could include directing a subordinate to respond to the non-compliance.

A senior derivatives manager's responsibilities under this Division apply to the senior derivatives manager even in situations where that individual has delegated his or her responsibilities.

Subsection 32(3) – Senior derivatives manager's report to the board

Whether non-compliance with the Instrument or applicable securities legislation is "material" will depend on the specific circumstances. For example, material non-compliance with respect to a small, unsophisticated derivatives party may differ from the material non-compliance with respect to a large, more sophisticated derivatives party. Further, if the non-compliance is part of a continual pattern or practice of activities constituting non-compliance within the derivatives business unit or by an individual employee within the derivatives business unit, even if a single incident of non-compliance would not be material, the pattern of

non-compliance itself may be "material". Any single incident of fraud, price fixing, manipulation of benchmark rates, or front-running of trades would be considered material.

We expect that in complying with the requirement to submit a report under paragraph 32(3)(b) to the board of directors, that reasonable care will be exercised in determining when and how often material non-compliance should be reported to the board. For example, in a case of serious misconduct, we expect the board to be made aware promptly of the misconduct. In the ordinary course, it may otherwise be appropriate to consolidate the senior derivatives manager's report into an annual report; however, the senior derivatives manager should be involved in preparing the report on behalf of the derivatives business unit, even in the circumstances where the senior derivatives manager's obligation to submit the report to the board of directors is being fulfilled by the derivatives dealer's chief compliance officer.

Section 33 – Responsibility of a derivatives dealer to report to the regulator or securities regulatory authority

The requirement on a derivatives dealer to make a report to the regulator under section 33 will depend on whether the particular non-compliance would reasonably be considered by the derivatives dealer to be non-compliance with the Instrument or applicable securities legislation and create a risk of material harm to a derivatives party or to capital markets, or otherwise reflect a significant pattern of non-compliance.

The derivatives dealer should establish a standard for determining when there is a risk of material harm to a derivatives party of the firm or to the capital markets. Whether the harm is "material" is dependent on the specific circumstances. Material harm to a small, unsophisticated derivatives party may differ from the material harm to a large, more sophisticated derivatives party.

We expect that the report to the regulator could be provided by any one of the following individuals:

(a) the chief executive officer of the derivatives dealer, or if the derivatives dealer does not have a chief executive officer, an individual acting in a capacity similar to that of a chief executive officer;

(b) a partner or the sole proprietor of the registered derivatives dealer;

(c) if the derivatives dealer has other significant business activities, the officer in charge of the division of the derivatives firm that acts as a derivatives dealer; or

(d) the chief compliance officer of the derivatives dealer.

See Appendix A of this Policy for the suggested form that a derivatives dealer may use to report the type of non-compliance contemplated in section 33 to the regulator.

This section does not apply to derivatives advisers.

DIVISION 2 – RECORDKEEPING

Section 34 – Derivatives party agreement

The Instrument does not prescribe a form of agreement. Appropriate subject matter for the derivatives party agreement typically includes terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution. In determining whether the requirements of section 34 are met, we would generally take into consideration harmonized disclosure, reporting and other documentary practices that may be developed from time to time by global trade associations in standard form industry documentation based on requirements applicable in the major global markets.

The process of reaching an agreement with a new counterparty may involve setting out the essential terms before the transaction, followed by more general terms (such as events of default) in the trade confirmation, prior to executing a master agreement. We would accept in some circumstances that this process could satisfy the obligations in section 34. We expect that the agreement would also cover other areas as appropriate in the context of the transactions into which the parties will enter. For example, where transactions will be subject to margin, we expect the agreement to include terms that cover margin requirements, assets that are acceptable as collateral, collateral valuation methods, investment and rehypothecation of collateral, and custodial arrangements for initial margin, if applicable.

We understand that it is not market practice by Canadian market participants for certain types of foreign exchange transactions to be documented in standard form industry documentation. Rather, firms will typically rely on a trade confirmation (including a SWIFT confirmation) to evidence the agreement between the parties. In this circumstance, we would generally accept that the requirements in section 34 can also be satisfied through a trade confirmation (including a SWIFT confirmation) required to be delivered under subsection 28(1), which may not include all the terms that are otherwise typically included in standard form industry documentation.

Section 35 – Records

Section 35 imposes a general obligation on a derivatives firm to keep full and complete records relating to the derivatives firm's derivatives, transactions in derivatives, and all of its business activities relating to derivatives, trading in derivatives or advising in derivatives. These records must be kept in a form that is readily accessible and searchable. This list of records is not intended to be exhaustive but rather sets out the minimum records that must be kept. We expect a derivatives firm to consider the nature of its derivatives-related activity when determining the records that it must keep and the form of those records.

The principle underlying section 35 is that a derivatives firm should document, through its records,

- compliance with all applicable securities legislation (including the Instrument) for its derivatives-related activities,
- the details and evidence of each derivative which it has been a party or in respect of which it has been an agent,
- the circumstances surrounding the entry into and termination of those derivatives, and
- related post-transaction matters.

We expect, for example, a derivatives firm to be able to demonstrate, for each derivatives party, the details of compliance with the obligations in section 11 [*Know your derivatives party*] and, if applicable, the obligations in section 14 [*Derivatives-party-specific needs and objectives*] and section 15 [*Suitability*] (and if sections 14 and 15 are not applicable, the reason as to why they are not).

If a derivatives firm wishes to rely on any exemption or exclusion in the Instrument or other related securities legislation, it should be able to demonstrate that the conditions of the exemption or exclusion are met.

With respect to records required under paragraph 35(b), demonstrating the existence and nature of the derivatives firm's derivatives, and records required under paragraph 35(a) documenting the transactions relating to the derivatives, we expect

- a derivatives firm to accurately and fully document every transaction it enters into, and
- to keep records to the extent that they demonstrate the existence and nature of the derivative (this includes documentation capable of being represented in computer code, if the records meet the requirements in the Instrument).

We also expect a derivatives firm to maintain notes of communications that could have an impact on a derivatives party's account or its relationship with the derivatives firm. These records of communications kept by a derivatives firm may include notes of oral and written communications, including all communications by e-mail, regular mail, fax, instant messaging, chat rooms, mobile device, or other digital or electronic media performed across a technology platform.

While a derivatives firm may not need to save every voicemail or e-mail, or record all telephone conversations with every derivatives party, we expect a derivatives firm to maintain reasonable records of all communications with a derivatives party relating to derivatives transacted with, for or on behalf of the derivatives party. What is "reasonable" for larger derivatives firms may be different from what is "reasonable" for a smaller derivatives firm.

Section 36 – Form, accessibility and retention of records

Derivatives firms are required to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential derivatives party and counterparty information. We expect a derivatives firm to be particularly vigilant if it maintains books and records in a location that may be accessible by a third party. In this case, we expect the derivatives firm to have a confidentiality agreement with the third party.

The Instrument requires records to be kept for 7 years (or 8 years in Manitoba) from the date such record is created. For greater certainty, this principle does not override the record retention requirements found in other CSA derivatives instruments that applicable firms are subject to, such as derivatives trade reporting rules.

PART 6
EXEMPTIONS

The Instrument provides several exemptions from the requirements in the Instrument. If a firm is exempt from a requirement in the Instrument, the individuals acting on its behalf are likewise exempt.

DIVISION 1 – EXEMPTION FROM THE INSTRUMENT

Section 37 – Exemption for foreign liquidity providers – transactions with derivatives dealers

General principle

This exemption allows foreign liquidity providers (i.e., foreign derivatives dealers) to transact with derivatives dealers that are located in Canada without being subject to the conduct requirements in the Instrument in order to facilitate access and liquidity in the inter-dealer market.

Availability of the exemption

There are no notice or filing requirements (or any additional conditions) imposed on foreign derivatives dealers relying on this exemption when they transact with local derivatives dealers. Foreign dealers that seek wider access to Canadian derivatives markets on an exempt basis would need to rely on the foreign derivatives dealer exemption in section 39 [*Exemption for foreign derivatives dealers*].

A derivatives dealer that is a Schedule I or Schedule II bank under the *Bank Act* (Canada) is not permitted to rely on this exemption; however, we intend for this exemption to be available to derivatives dealers that are Schedule III banks (foreign bank branches of foreign derivatives dealers authorized under the Bank Act to do business in Canada), since the exemption is intended to be available to a foreign bank (i.e., the foreign legal entity that is counterparty to a transaction with a local derivatives dealer).

For example, a derivatives dealer located in the U.S., regardless of whether it is a registered swaps dealer or otherwise operates under an exemption from having to be registered (because they fall below certain financial thresholds that would require them to register as a U.S. swaps dealer), is exempt from the conduct requirements in the Instrument when transacting with a Canadian financial institution that is a derivatives dealer. Similarly, the conduct requirements in the Instrument would not apply to a derivatives dealer solely in commodities that is located in the U.S., regardless of whether it is a registered swaps dealer or otherwise operates under an exemption from having to be registered (because they fall below certain financial thresholds that would require them to register as a U.S. swaps dealer), when they are transacting with a person or company referenced in paragraph 37(a).

For the purposes of this exemption, we consider “securities, commodity futures or derivatives legislation in a foreign jurisdiction” to include banking legislation of a foreign jurisdiction.

Section 38 – Exemption for certain derivatives end-users

Section 38 provides an exemption from the provisions of the Instrument for a person or company that (i) does not engage in the activities described in section 38 and (ii) does not have the status described in paragraph 38(2)(a) or 38(2)(b).

For example, a person or company that frequently and regularly transacts in derivatives to hedge business risk but that does not undertake any of the activities referred to in paragraphs 38(1)(a) to (e) may qualify for this exemption. It is also possible for a person or company to frequently engage in derivatives transactions for speculative purposes (i.e., for the purpose of gaining market returns) and qualify for the end-user exemption. Typically, in these cases, such a person or company would transact with a derivatives dealer who itself may be subject to some or all of the requirements of the Instrument.

Section 39 – Exemption for foreign derivatives dealers

General principle

Section 39 provides an exemption from the provisions of the Instrument for foreign derivatives dealers that are regulated under the laws of a foreign jurisdiction to conduct the activities it proposes to conduct with an eligible derivatives party in Canada that achieve comparable regulatory outcomes to the requirements in the Instrument.

Availability of the exemption

The exemption is available to foreign derivatives dealers whose head office or principal place of business is in a jurisdiction listed in Appendix A if the transaction is with persons or companies that are eligible derivatives parties and the foreign derivatives dealer otherwise satisfies the conditions in that section for relying on the exemption.

With respect to foreign derivatives dealers that are foreign banks whose home jurisdiction is listed on Appendix A and that operate a foreign bank branch in Canada (i.e., a Schedule III bank under the *Bank Act* (Canada)), this exemption will extend to its Canadian branches.

This exemption is only available where a foreign derivatives dealer complies with the laws of the foreign jurisdiction specified in Appendix A that are applicable to the dealer with respect to its derivatives activities with a derivatives party located in Canada. If a foreign derivatives dealer is not subject to laws in its ‘home’ jurisdiction with respect to its derivatives activities, including where

it relies on an exclusion or an exemption (including discretionary relief) from those regulations in the foreign jurisdiction, the exemption in section 39 will not be available. If the foreign derivatives dealer relies on an exclusion or exemption in the foreign jurisdiction (or there is otherwise no regulatory regime that applies to its derivatives activities with a derivatives party) and is unable to rely on another exemption in the Instrument, it would need to apply to the relevant securities regulatory authorities for consideration of similar exemptive or discretionary relief to exempt the foreign derivatives dealer from the requirements of the Instrument.

For example, if a foreign derivatives dealer is licensed or registered in a foreign jurisdiction (e.g., is a CFTC registered swaps dealer), then we would expect that derivatives dealer to make use of this exemption for its derivatives activity with its counterparties that qualify as eligible derivatives parties and are located in a jurisdiction of Canada, unless the foreign derivatives dealer is relying on the exemption in section 37 [*Exemption for foreign liquidity providers – transactions with derivatives dealers*]), which is an outright exemption for transactions that take place with a local Canadian derivatives dealer. For greater certainty, because the U.S. is listed as a jurisdiction in Appendix A, then the expectation is that this exemption functions as an entity-level exemption – that is, the foreign derivatives dealer is not expected to compare the rules of its home jurisdiction to the obligations found in the Instrument in order to rely on this exemption.

If, however, a foreign derivatives dealer is not registered, licensed or otherwise authorized in respect of its derivatives activity in its home jurisdiction, even if its home jurisdiction is listed in Appendix A, it will not be able to rely on the exemption provided in section 39 of the Instrument. Instead, the foreign derivatives dealer will have to rely on the other exemptions available to foreign derivatives dealers in the Instrument, if applicable, such as the exemption provided in section 37 of the Instrument for foreign liquidity providers or the exemption provided in section 44 of the Instrument for certain notional levels of derivatives activity. If the foreign derivatives dealer is unable to satisfy the requirements in the other available exemptions, then foreign derivatives dealer will have to either comply with the full requirements of the Instrument or apply to the relevant securities regulatory authorities for consideration of exemptive or discretionary relief.

Appendix A may be updated from time to time to include additional foreign jurisdictions once CSA Staff have had a chance to consider the regulatory regimes in these additional foreign jurisdictions. Industry associations, market participants, or foreign regulators with an interest in a particular jurisdiction that is not listed may make applications for exemptive relief or otherwise make submissions to CSA Staff in support of comparability assessments for jurisdictions that are not found in Appendix A for the purposes of future amendments to the Instrument.

Additional conditions

This exemption in section 39 is available if the foreign derivative dealer is dealing only with persons or companies that are eligible derivatives parties. The foreign derivatives dealer must comply with the conditions set out in subsection 39(2).

Foreign derivatives dealers are only expected to file one submission to jurisdiction form to the regulator. In other words, if a foreign derivative dealer files a Form 93-101F1 *Submission to Jurisdiction and Appointment of Agent for Service* with the regulator, this satisfies the filling requirement.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC PROVISIONS IN THE INSTRUMENT

Section 41 – Investment dealers

Section 41 of the Instrument includes an exemption from certain provisions in the Instrument that are listed in Appendix B for a derivatives dealer that is a dealer member of CIRO provided the derivatives dealer complies with the corresponding CIRO rules relating to a transaction with a derivatives party. We regard compliance with applicable CIRO procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable CIRO rules.

A derivatives dealer cannot rely on this exemption unless (i) they are complying with the CIRO requirements that correspond to the provisions specified in Appendix B and (ii) notify the regulator of material non-compliance with the CIRO requirements that correspond to the provisions specified in Appendix B.

Section 42 – Canadian financial institutions

Section 42 of the Instrument includes an exemption from certain provisions in the Instrument that are listed in Appendix C for a derivatives dealer that is a Canadian financial institution that is prudentially regulated by OSFI provided the derivative dealer complies with the corresponding OSFI requirements or *Bank Act* (Canada) provisions relating to a transaction with a derivatives party. We regard compliance with applicable Bank Act, OSFI guidelines, rules, regulations, interpretations, advisory and practices of OSFI as relevant to compliance with the applicable OSFI requirements.

A derivatives dealer cannot rely on this exemption unless (i) they are complying with the OSFI requirements or Bank Act requirements that correspond to the provisions specified in Appendix C and (ii) notify the regulator of material non-compliance with the OSFI requirements or Bank Act requirement that correspond to the provisions specified in Appendix C.

Section 43 – Derivatives transacted on a derivatives trading facility where the identity of the derivatives party is unknown

Where a derivatives dealer enters into a transaction with a derivatives party on a derivatives trading facility or an analogous regulated platform or trading venue (i.e., a trading facility referred to and regulated as a swap execution facility under CFTC rules or a multilateral trading facility under E.U. rules and regulated in Canada as an exempt exchange), in certain limited circumstances, it may not be possible for the derivatives dealer to establish the identity of the derivatives party prior to entering into the transaction because of rules or regulations that prohibit such regulated marketplace from disclosing the identity of a counterparty prior to entering into the derivative. This exemption is intended to address this practical limitation that results from those regulations - it is not intended to have broad use by any derivatives dealer outside this narrow context. We understand that such a trading facility would perform know-your-derivatives party diligence prior to accepting a derivatives party for trading on the platform, as well as provide trade confirmation to each counterparty to a transaction; accordingly, this section of the Instrument includes an exemption for the derivatives dealer in these circumstances, as well as other pre-transaction level requirements that cannot be fulfilled due to the fact that the identity of the derivatives party is unknown at the time the transaction is executed.

The types of rules that give rise to the context necessitating this exemption (e.g., the CFTC swap execution facility rules) do not permit non-eligible derivatives parties to transact on a derivatives trading facility. This exemption is not intended to be available if the transaction involves a non-eligible derivatives party.

Section 44 – Exemptions from certain requirements in this Instrument for certain notional amounts of certain commodity derivatives and other derivatives activity

Section 44 provides for exemptions (the **notional amount exemptions**) from the requirements in this Instrument, other than section 9 [*Fair dealing*], section 10 [*Conflicts of Interest*] and section 28 [*Content and delivery of transaction information*] if its aggregate notional amount of derivatives activity falls below certain financial thresholds. To rely on the notional amount exemptions, a derivatives dealer must either,

- have an aggregate month-end gross notional amount of derivatives outstanding in any of the previous 24 months that does not exceed CAD$250 million (subsection 44(1)) (the **general notional amount exemption**); or
- for derivatives dealers that deal solely in commodity derivatives, have an aggregate month-end gross notional amount of commodity derivatives outstanding in any of the previous 24 months that does not exceed CAD$10 billion (subsection 44(2)) (the **commodity derivatives dealer notional amount exemption**).

The calculation of the notional amount exemption threshold

For a local derivatives dealer, the “notional amount” referred to in subparagraphs 44(1)(c)(i) (i.e., the general notional amount exemption for local derivatives dealers) and 44(2)(d)(i) (i.e., the notional amount exemption for local physical commodity derivatives dealers) should be calculated by:

- determining the notional amount of all its transactions, minus inter-affiliate transactions; and
- adding the notional amount of all transactions of its affiliates that are a Canadian local counterparty, minus their inter-affiliate transactions.

For a foreign derivatives dealer, the “notional amount” in subparagraphs 44(1)(c)(ii) (i.e., the general notional amount exemption for foreign derivatives dealers) and 44(2)(d)(ii) (i.e., the commodity derivatives dealer notional amount exemption for foreign physical commodity derivatives dealers) should be calculated by:

- determining the notional amount of all its transactions with local counterparties, minus inter-affiliate transactions; and
- adding the notional amount of all transactions of its affiliates that are a local counterparty, minus their inter-affiliate transactions.

For greater certainty, local and foreign derivatives dealers exclude from their calculations all transactions of a foreign affiliate (provided the foreign affiliate is not a local counterparty, such as a guaranteed affiliate), regardless of who that affiliate is transacting with.

While in most cases, the notional amount for a particular derivative will be the monetary amount specified in the derivative, in some cases, the derivative may reference a non-monetary amount, such as a notional quantity (or volume) of an underlying asset. In these latter cases, calculating the monetary notional amount outstanding will require converting the notional quantity of the underlying asset into a monetary value. We expect the method that derivatives dealers use for determining how the monetary notional amount should be calculated is taken from the methodology specified in the Technical Guidance - *Harmonisation of critical OTC derivatives data elements (other than UTI and UPI)* published in April of 2018 by the Committee on Payments and Market

Infrastructures and the Board of the International Organization of Securities Commissions. It is commonly referred to as the CDE methodology.

The local counterparty nexus

The purpose of including the reference to "local counterparty" in this section of the Instrument is to clarify the scope of the derivatives activity that is included for the purposes of calculating the notional amount exemption thresholds.

While the "local counterparty" concept is based on the harmonized definition of "local counterparty" under National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as a practical matter, the term "local counterparty" as it is used in this section of the Instrument is essentially aligned with the "local counterparty" concept in the trade reporting rules (we note that the CSA's respective derivatives trade reporting rule contains a definition of "local counterparty" for the purposes of those rules; however, the definition in the trade reporting rules is not harmonized across jurisdictions).

Accordingly, the calculation of the "notional amount" is intended to capture transactions involving local counterparties under the trade reporting rules to be consistent with the derivatives data reported to a designated or recognized trade repository and collected by the CSA. Therefore, derivatives dealers that are reporting counterparties under the trade reporting rules can rely on the information they use to report transactions under those rules, for the purpose of calculating whether they are able to rely on a notional amount exemption. Similarly, we also expect that inter-affiliate transactions that are excluded from the calculation would generally be consistent with transactions that are reported as inter-affiliate transactions under the trade reporting rules.

Use of this exemption by certain foreign dealers

We expect most foreign derivatives dealers to rely on the exemptions in section 37 [*Exemption for foreign liquidity providers – transactions with derivatives dealers*] and section 39 [*Exemption for foreign derivatives dealers*] of the Instrument in respect of their derivatives business in Canada in lieu of relying on the notional amount exemptions. However, there are certain circumstances where it may not be possible for a foreign dealer to rely on such exemptions. For example:

- if a U.S. derivatives dealer dealing solely in commodity derivatives is transacting with non-dealers in Canada that qualify as eligible derivatives parties, and the U.S. derivatives dealer is not registered with the CFTC, then the derivatives dealer is not able to rely on the exemption under section 39 [*Exemption for foreign derivatives dealers*]. Accordingly, it could potentially rely on a notional amount exemption (i.e., the commodity derivatives dealer notional amount exemption) provided the conditions for relying on the exemption are met.

The only requirements a derivatives dealer that relies on a notional amount exemption is subject to when they transact with eligible derivatives parties, are the following:

- section 9 [*Fair dealing*];
- section 10 [*Conflicts of Interest*]; and
- section 28 [*Content and delivery of transaction information*].

There are no other notice, filing or additional obligations imposed on derivatives dealers relying on a notional amount exemption.

Exemption not available to affiliates of derivatives dealers

As set out in paragraph 44(2)(c), the commodity derivatives dealer notional amount exemption is not an exemption that is available for a commodity derivatives dealer that is an affiliate of a derivatives dealer that is not itself solely a commodity derivatives dealer (e.g., is an affiliate of a bank). Rather, the commodity derivatives dealer notional amount exemption is intended to be exclusively available to derivatives dealers in commodities markets whose derivatives activity is ancillary to its physical commodities business.

The CSA will monitor the use and application of the notional amount exemptions, both generally and in commodity derivatives markets.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Section 45 – Advising generally

Section 45 contains an exemption from the requirements applicable to a derivatives adviser if advice does not purport to be tailored to the needs of the recipient.

In general, we would not consider advice to be tailored to the needs of the recipient if it

- is a general discussion of the merits and risks of a derivative or class of derivatives,

- is delivered through newsletters, articles in general circulation newspapers or magazines, websites, e-mail, internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient.

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific transactions in specific derivatives or class of derivatives, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 45(3), if an individual or a firm relying on the exemption has a financial or other interest in the derivative or class of derivatives it recommends, or in an underlying interest of the derivative, it must disclose the interest to the recipient when it makes the recommendation.

Section 46 – Foreign derivatives advisers

General principle

Section 46 provides, in respect of advice provided to a derivatives party, an exemption from the provisions in the Instrument for foreign derivatives advisers that are regulated under the laws of a foreign jurisdiction to conduct the activities it proposes to conduct with an eligible derivatives party in Canada that achieve comparable regulatory outcomes to the requirements in the Instrument.

There is a separate exemption in section 48 [*Registered advisers under securities or commodities futures legislation*] for derivatives advisers that are registered as an adviser under securities or commodity futures legislation.

Availability of the exemption

The exemption is available to foreign derivatives advisers whose head office or principal place of business is in a jurisdiction listed in Appendix D in respect of derivatives-related advice given to persons or companies that are eligible derivatives parties. Appendix D may be updated from time to time to include additional foreign jurisdictions once CSA Staff have had a chance to consider the regulatory regimes in these additional foreign jurisdictions. Industry associations, market participants, or foreign regulators with an interest in a particular jurisdiction that is not listed may make applications for exemptive relief or otherwise make submissions to CSA Staff in support of comparability assessments for jurisdictions that are not found in Appendix D for the purposes of future amendments to the Instrument.

This exemption is only available where a foreign derivatives adviser complies with the laws of the foreign jurisdiction specified in Appendix D that are applicable to the adviser with respect to its derivatives activities with a derivatives party located in Canada. If a foreign derivatives adviser is not subject to regulations in its 'home' jurisdiction with respect to its derivatives activities, including where it relies on an exclusion or an exemption (including discretionary relief) from those regulations in the foreign jurisdiction, the exemption in section 46 will not be available. If the foreign derivatives adviser relies on an exclusion or exemption in the foreign jurisdiction, it would need to apply to the relevant securities regulatory authorities for consideration of similar exemptive or discretionary relief from the Instrument.

Additional conditions

The foreign derivatives adviser must comply with each of the conditions set out in subsection 46(2). The disclosures provided in paragraph 46(2)(b) can be made by a derivatives adviser in account opening documentation.

Section 47 – Foreign derivatives sub-advisers

The exemption is available to foreign derivatives sub-advisers whose head office or principal place of business is in a jurisdiction listed in Appendix E.

This exemption permits a foreign derivatives sub-adviser to provide advice to certain derivatives advisers (and derivatives dealers), without having to register as an adviser in Canada. In these arrangements, the derivatives adviser or derivatives dealer is the foreign derivatives sub-adviser's client, and it receives the advice, either for its own benefit or for the benefit of its clients. One of the conditions of this exemption is that the derivatives adviser or derivatives dealer has entered into an agreement with its client that it is responsible for losses that arise out of certain failures by the sub-adviser. We expect that a derivatives firm taking on this liability will conduct appropriate initial and ongoing due diligence on the sub-adviser and ensure the investments are suitable for their client. We also expect that the derivatives firm will maintain records of the due diligence conducted.

Section 48 – Registered advisers under securities or commodity futures legislation

Registered advisers under securities or commodities futures legislation are exempt from the provisions listed in Appendix F of the Instrument. This exemption is available to registered advisers provided they comply with the corresponding requirements in NI 31-103 in respect of their derivatives activity.

This exemption is intended to allow registered advisers to extend their existing compliance systems to cover their derivatives activities with their clients for requirements related to for example, among other things, the suitability requirement and referral arrangements (section 15 [*Suitability*] and section 16 [*Permitted referral arrangements*]). The remaining provisions that apply to registered advisers in respect of their derivatives activity are principles based and therefore, we similarly expect for their existing compliance systems to accommodate the application of the core principles such as the fair dealing obligations.

See Appendix B of this Policy for an overview of the parts, divisions and sections in MI 93-101 that still apply to registered advisers relying on this exemption, as well as a summary of the parts, divisions and sections in the Instrument that do not apply to registered advisers that comply with the corresponding requirements in NI 31-103 in respect of their derivatives activity. Appendix B of this Policy also lists the provisions under NI 31-103 that are generally applicable in respect of a registered adviser's derivatives activity if such registered adviser is relying on this section 48 exemption.

With respect to risk disclosure found in section 14.2 [*Relationship disclosure information*] of NI 31-103, we expect registered advisers to review their risk disclosure statement to be certain that it adequately discloses the risks associated with derivatives. For example, registered advisers can consider whether a statement similar to the statement in paragraph 20(1)(c) [*Pre-transaction disclosure*] of the Instrument is appropriate given the use of derivatives by that registered adviser in relation to its client's account or client's portfolio.

PART 8
TRANSITION AND EFFECTIVE DATE

Section 50 – Transition representations for existing derivatives parties

Under the Instrument, a derivatives firm may qualify for specific exemptions where each of its derivatives parties is an eligible derivatives party. The transition provision is intended to provide derivatives firms with a substantial period of time, following the effective date of the Instrument, to re-paper a derivatives party as an "eligible derivatives party" as defined in the Instrument in their respective contracts and relationship documentation. Accordingly, in circumstances where the derivatives firm has received any one of the representations contemplated in this section prior to the date the Instrument takes effect in the applicable local jurisdiction, such as

- permitted client,
- non-individual accredited investor (in Ontario),
- accredited counterparty (in Québec),
- a qualified party (in a number of jurisdictions),
- an eligible contract participant (in the United States),
- a financial counterparty (in the European Union and the United Kingdom) or a non-financial counterparty above certain clearing thresholds (in the European Union and the United Kingdom, which is generally referred to by the acronym **NFC+**),

the derivatives firm can treat obtaining such representation as having obtained the required eligible derivatives party representation for purposes of the transition period (the **Transition Representations**). For greater certainty, for the purposes of the Transition Representations, the concept of financial counterparty and the concept of non-financial counterparty above certain clearing thresholds (i.e., NFC+) is also intended to include counterparties that are located in the United Kingdom that qualify as a financial counterparty, or as an NFC+ counterparty, as a result of United Kingdom legislation that onshores the *European Market Infrastructure Regulation*.

The transition period begins on the date the Instrument comes into force (the **Effective Date**) and expires 5 years thereafter.

If prior to the Effective Date, a derivatives firm has already obtained a Transition Representation from a derivatives party, including in documentation such as an ISDA agreement, account opening documentation, or an investment management agreement, the derivatives firm may treat the derivatives party as an eligible derivatives party for the purposes of the Instrument until the transition period expires. For example, if a derivatives firm enters into a derivatives transaction with a sophisticated derivatives party (such as a pension fund) following the Effective Date and the derivatives firm has already confirmed the derivatives party's status under an applicable Transition Representation in any of its documentation, the derivatives firm is able to treat the derivatives party as having represented to the derivatives firm in writing that the derivatives party is an eligible derivatives party for the purposes of the transition period.

For greater certainty, a deemed repetition of a Transition Representation with respect to a transaction entered into after the Effective Date still allows a derivatives firm to benefit from the transition provision under section 50 even if on a technical interpretation, such representation is made after the Effective Date.

After the Effective Date, if a derivatives firm is not able to rely on a Transition Representations in respect of a derivatives party, then the expectation is that a derivatives firm will confirm the derivatives party's status on the basis of the "eligible derivatives party" definition found in subsection 1(1) of the Instrument [*Definitions and interpretation*]. Practically, this means that unless the derivatives firm can rely on a Transition Representation, the derivatives firm has one year between when the Instrument is published in its final form and the Effective Date to obtain the necessary status representations from its counterparty or client in order to comply with the Instrument.

We understand that because of the registration exemption in subsection 35.1 (1) of the *Securities Act* (Ontario), certain Canadian banks may not have obtained "permitted client" status representations from their institutional counterparties; however, they may have obtained an "accredited investor" representation for the population of counterparties that would have otherwise qualified as "permitted clients" in relation to their over-the-counter derivatives activity. Accordingly, solely for the purposes of the transition period, the non-individual "accredited investor" status representation has been included as a Transition Representation since this population of counterparties would otherwise each qualify as a "permitted client" and "permitted client" is one of the Transition Representations.

The definitions of "permitted client" and "accredited investor" do not include an "eligible commercial hedger" concept. In any circumstance where a derivatives party is relying on the "eligible commercial hedger" category to qualify as an eligible derivatives party and is not able to rely on any of the Transition Representations in the local jurisdiction (e.g., "qualified party" or an "accredited counterparty" representation), the derivatives firm is required to confirm a derivatives party's status as an eligible derivatives party according to subsection 1(1) of the Instrument.

CSA Staff strongly encourage derivatives firms to update their internal compliance programs in anticipation of the Effective Date and as soon as practicable to begin the process of updating their documentation, as well as establishing a plan to conduct the necessary outreach to ensure the appropriate representations have been updated following the expiry of the transition period.

Section 51 – Transition for existing transactions that remain in place in accordance with their original terms

The fair dealing obligation (section 9 [*Fair dealing*]) applies to transactions executed prior to the Effective Date that remain in place in accordance with their original terms after the Effective Date (e.g., no material amendment or modification which would result in a significant change in the value of a derivative, differing cash flows, change to the method of settlement or creation of upfront payments). Derivatives are not point-in-time specific transactions. There are ongoing relationships and obligations between the parties following implementation of the Instrument.

With respect to pre-existing transactions with non-eligible derivatives parties (i.e., retail clients), following the Effective Date, all applicable provisions in the Instrument apply to the extent that it is reasonably practicable. We note that for the population of firms that are registered with CIRO and offer over-the-counter derivatives to retail clients, they are already subject to business conduct obligations under CIRO's regulatory regime. The Instrument will now overlay those obligations and we expect those firms will be relying on the exemption available to CIRO registered firms for complying with the relevant CIRO provisions.

Section 52 – Transition for obtaining waivers for certain individuals and eligible commercial hedgers

Paragraph 8(2)(a) of the Instrument means that the additional protections in the Instrument are presumed to apply to eligible derivatives parties that are individuals or eligible commercial hedgers, unless they waive some or all of the additional protections in the Instrument. For the purposes of transitioning to the new regulatory framework, CSA Staff expect that it may take some time for a derivatives firm to obtain the necessary waivers from the population of clients that this provision may otherwise apply to. Accordingly, derivatives firms are given a period of one year following the Effective Date to obtain the waiver. During this period, the core obligations in the Instrument still apply. This transition period is intended to assist derivatives firms in circumstances where their client is an individual (and the waiver is still required to be obtained due to the application of paragraph 8(2)(a)), or where a client can only qualify as an eligible derivatives party on the basis of the eligible commercial hedger prong of the eligible derivatives party definition.

Section 53 – Effective Date

The Instrument comes into force on September 28, 2024 (the **in-force date**). Any transaction entered into by a derivatives firm from this date forward is subject to the terms of the Instrument.

In Saskatchewan, if the Instrument is filed with the Registrar of Regulations after the in-force date, the Instrument comes into force on the day on which they are filed with the Registrar of Regulations.

Appendix A

Suggested form of report for reportable material non-compliance under section 33 [*Responsibility of a derivatives dealer to report to the regulator or the securities regulatory authority*]

1. Identify any entities, business units, and/or individuals involved.

2. Provide details of the non-compliance, including:

   a. describe the context (how and by whom the issue was identified, derivatives party complaints, internal testing or audit, other surveillance);

   b. set out whether it relates to (a) a risk of material harm to a derivatives party, (b) a risk of material harm to capital markets, and/or (c) is part of a pattern of non-compliance.

3. Provide a timeline setting out the following:

   a. when the non-compliance occurred,

   b. when the non-compliance was discovered,

   c. when the non-compliance was remedied, and

   d. when the non-compliance was reported.

4. Provide details of what steps, if any, have been taken to address/remedy the non-compliance.

Appendix B

Summary of parts, divisions and sections under MI 93-101 that apply to registered advisers relying on section 48
[*Registered advisers under securities or commodity futures legislation*]

Relevant parts and divisions	**Sections that apply to registered advisers under MI 93-101**	**Sections registered advisers are exempt from under the Instrument if they are in compliance with the corresponding provisions of NI 31-103 with respect to their derivatives activities with a client**	**Corresponding provisions of NI 31-103 that apply, as applicable, in respect of a registered adviser's derivatives activity for the purposes of relying on the exemption under section 48**
Part 1, Definitions and interpretation	All sections, if applicable to derivatives advisers		
Part 2, Application and exemption	All sections, if applicable to derivatives advisers		
Part 3, Dealing with or advising derivatives parties **Division 1 – General obligations towards all derivatives parties**	Section 9, Fair dealing Section 10, Conflicts of interest Section 11, Know your derivatives party	Section 12, Handling complaints	Section 13.15, Handling complaints
		Section 13, Tied selling	Section 11.8, Tied selling
Part 3, Dealing with or advising derivatives parties **Division 2 – Additional obligations when dealing with or advising certain derivatives parties**	None	Section 14, Derivatives-party-specific needs and objectives	Paragraph 13.2(2)(c) and Subsection 13.2(4), Know your client
		Section 15, Suitability	Section 13.3, Suitability determination
		Section 16, Permitted referral arrangements	Section 13.8, Permitted referral arrangements
		Section 17, Verifying the qualifications of the person or company receiving the referral	Section 13.9, Verifying the qualifications of the person or company receiving the referral
		Section 18, Disclosing referral arrangements to a derivatives party	Section 13.10, Disclosing referral arrangements to clients
Part 4 – Derivatives party accounts **Division 1 – Disclosure to derivatives parties**	None	Section 19, Relationship disclosure information	Section 14.2, Relationship disclosure information
		Section 20, Pre-transaction disclosure	Section 14.2, Relationship disclosure information
		Subsection 21(2), Valuation Reporting	Subsection 14.14(3) Account statements
		Section 22, Notice to derivatives parties by non-resident derivatives dealers	Section 14.5, Notice to clients by non-resident registrants
Part 4 – Derivatives party accounts **Division 2 – Derivatives party assets**	None	Division 2, Derivatives party assets of Part 4, Derivatives party accounts	Division 3, Client assets and investment fund assets of Part 14, Handling client accounts – firms

Part 4 – Derivatives party accounts **Division 3 – Reporting to derivatives parties**	None	Section 29, Derivatives party statements	Section 14.14 Account statements, Section 14.14.1 Additional statements
Part 5 – Compliance and recordkeeping **Division 1 – Compliance**	Section 31, Policies and procedures	None	None
Part 5 – Compliance and recordkeeping **Division 2 – Recordkeeping**	None	Section 34, Derivatives party agreement	Section 11.5, General requirements for records
		Section 35, Records	Section 11.5, General requirements for records
		Section 36, Form, accessibility and retention of records	Section 11.6, Form, accessibility and retention of records

B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.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).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Financial 15 Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Dec 14, 2023
NP 11-202 Preliminary Receipt dated Dec 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06062643

Issuer Name:
Maple Leaf Critical Minerals 2024 Enhanced Flow-Through Limited Partnership - Quebec Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 14, 2023
NP 11-202 Preliminary Receipt dated Dec 14, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06063321

Issuer Name:
Maple Leaf Critical Minerals 2024 Enhanced Flow-Through Limited Partnership - National Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 14, 2023
NP 11-202 Preliminary Receipt dated Dec 14, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06063303

Issuer Name:
TDb Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Dec 12, 2023
NP 11-202 Preliminary Receipt dated Dec 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06062642

Issuer Name:
CI WisdomTree Canada Quality Dividend Growth Index Fund
CI WisdomTree International Quality Dividend Growth Index Hedged Fund
CI WisdomTree U.S. Quality Dividend Growth Index Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 13, 2023
NP 11-202 Preliminary Receipt dated Dec 14, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06062981

Issuer Name:
Franklin Canadian Low Volatility High Dividend Index ETF
Franklin International Low Volatility High Dividend Index ETF
Franklin U.S. Low Volatility High Dividend Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 12, 2023
NP 11-202 Preliminary Receipt dated Dec 14, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06061547

Issuer Name:
Dividend Select 15 Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Dec 14, 2023
NP 11-202 Preliminary Receipt dated Dec 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06062664

Issuer Name:
Mawer Global Credit Opportunities Fund
Principal Regulator – Alberta
Type and Date:
Preliminary Simplified Prospectus dated Dec 15, 2023
NP 11-202 Preliminary Receipt dated Dec 18, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06063992

Issuer Name:
Encasa Canadian Bond Fund
Encasa Canadian Short-Term Bond Fund
Encasa Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 13, 2023
NP 11-202 Final Receipt dated Dec 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06043277

Issuer Name:
Balanced Income Portfolio
Conservative Income Portfolio
Enhanced Income Portfolio
Imperial Canadian Bond Pool
Imperial Canadian Diversified Income Pool
Imperial Canadian Dividend Income Pool
Imperial Canadian Equity Pool
Imperial Emerging Economies Pool
Imperial Equity High Income Pool
Imperial Global Equity Income Pool
Imperial International Bond Pool
Imperial International Equity Pool
Imperial Money Market Pool
Imperial Overseas Equity Pool
Imperial Short-Term Bond Pool
Imperial U.S. Equity Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 14, 2023
NP 11-202 Final Receipt dated Dec 15, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06037600

Issuer Name:
CI U.S. Enhanced Momentum Index ETF
CI U.S. Enhanced Value Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Dec 15, 2023
NP 11-202 Final Receipt dated Dec 18, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06049733

Issuer Name:
CIBC 2025 Investment Grade Bond Fund
CIBC 2026 Investment Grade Bond Fund
CIBC 2027 Investment Grade Bond Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 15, 2023
NP 11-202 Preliminary Receipt dated Dec 15, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06063665

Issuer Name:
Meritage American Equity Portfolio
Meritage Balanced Income Portfolio
Meritage Balanced Portfolio
Meritage Canadian Equity Portfolio
Meritage Conservative Income Portfolio
Meritage Conservative Portfolio
Meritage Diversified Fixed Income Portfolio
Meritage Global Balanced Portfolio
Meritage Global Conservative Portfolio
Meritage Global Growth Plus Portfolio
Meritage Global Growth Portfolio
Meritage Global Moderate Portfolio
Meritage Growth Income Portfolio
Meritage Growth Plus Income Portfolio
Meritage Growth Plus Portfolio
Meritage Growth Portfolio
Meritage International Equity Portfolio
Meritage Moderate Income Portfolio
Meritage Moderate Portfolio
Meritage Tactical ETF Balanced Portfolio
Meritage Tactical ETF Equity Portfolio
Meritage Tactical ETF Growth Portfolio
Meritage Tactical ETF Moderate Portfolio
NBI Canadian Equity Fund
NBI Jarislowsky Fraser Select Balanced Fund
NBI Jarislowsky Fraser Select Income Fund
NBI North American Dividend Private Portfolio
NBI SmartBeta Canadian Equity Fund
NBI SmartBeta Global Equity Fund
Principal Regulator – Quebec
Type and Date:
Amendment #4 to Final Simplified Prospectus dated November 15, 2023
NP 11-202 Final Receipt dated Dec 12, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03502415

Issuer Name:
1832 AM Global Credit Pool (formerly Scotia Private Global Credit Pool)
Principal Regulator – Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated December 7, 2023
NP 11-202 Final Receipt dated Dec 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03519837

Issuer Name:
Fidelity ClearPath® 2065 Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 14, 2023
NP 11-202 Final Receipt dated Dec 15, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030295

Issuer Name:
NBI Active U.S. Equity ETF
Principal Regulator – Quebec
Type and Date:
Amendment #1 to Final Long Form Prospectus dated December 7, 2023
NP 11-202 Final Receipt dated Dec 14, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03499753

NON-INVESTMENT FUNDS

Issuer Name:
Boardwalk Real Estate Investment Trust
Principal Regulator – Alberta
Type and Date:
Final Short Form Base Shelf Prospectus dated Dec 14, 2023
NP 11-202 Final Receipt dated Dec 14, 2023
Offering Price and Description:
Trust Units, Warrants to Purchase Trust Units, Debt Securities, Subscription Receipts, Units
Filing# 06063286

Issuer Name:
Chesapeake Gold Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Dec 8, 2023
NP 11-202 Preliminary Receipt dated Dec 13, 2023
Offering Price and Description:
$100,000,000.00
Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing# 06061813

Issuer Name:
Fission Uranium Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated Dec 11, 2023
NP 11-202 Final Receipt dated Dec 12, 2023
Offering Price and Description:
$400,000,000.00
Common Shares, Subscription Receipts, Units, Debt Securities, Warrants, Share Purchase Contracts
Filing# 06059409

Issuer Name:
Golden Rapture Mining Corporation
Principal Regulator – Alberta
Type and Date:
Final Long Form Prospectus dated Dec 14, 2023
NP 11-202 Final Receipt dated Dec 14, 2023
Offering Price and Description:
Units
Number of Securities: 6,666,667/666,667
Price per Security: $0.15 per Unit
Filing# 06031497

Issuer Name:
GoviEx Uranium Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated Dec 8, 2023
NP 11-202 Preliminary Receipt dated Dec 11, 2023
Offering Price and Description:
$12,000,000.00
75,000,000 Units
$0.16 per Unit
Filing# 06060616

Issuer Name:
Keyera Corp.
Principal Regulator – Alberta
Final Short Form Base Shelf Prospectus dated Dec 12, 2023
NP 11-202 Final Receipt dated Dec 13, 2023
Offering Price and Description:
Common Shares, Preferred Shares, Subscription Receipts, Debt Securities, Warrants, Units
Filing# 06062630

Issuer Name:
Pembina Pipeline Corporation
Principal Regulator – Alberta
Type and Date:
Final MJDS Short Form Base Shelf Prospectus dated Dec 13, 2023
NP 11-202 Final Receipt dated Dec 13, 2023
Offering Price and Description:
Common Shares, Preferred Shares, Warrants, Debt Securities, Subscription Receipts, Units
Filing# 06062851

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	The Catalyst Capital Group Inc.	Portfolio Manager	December 13, 2023
Name Change	From: Independent Accountants' Investment Counsel Inc. To: TriCert Investment Counsel Inc.	Portfolio Manager	October 19, 2023
New Registration	Ocean 6 Investment Solutions Inc.	Mutual Fund Dealer	December 14, 2023
Consent to Suspension (Pending Surrender)	Traynor Ridge Capital Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	December 15, 2023

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 SpectrAxe, LLC – Application for Exemption from Recognition as an Exchange and from the Marketplace Rules – Notice of Commission Order

NOTICE OF COMMISSION ORDER

APPLICATION BY
SPECTRAXE, LLC
FOR EXEMPTION FROM RECOGNITION AS AN EXCHANGE
AND FROM THE MARKETPLACE RULES

On December 12, 2023, the Commission issued an order (the **Order**) exempting SpectrAxe LLC (the **Applicant**) from:

a. the requirement to be recognized as an exchange under section 21(1) of the *Securities Act* (Ontario) (the **Act**) pursuant to section 147 of the Act; and

b. the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101, and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103.

A copy of the Order is published in Chapter B.2 of the OSC Bulletin published on December 21, 2023.

The Commission published the Applicant's application and draft order for comments on October 26, 2023 in the OSC Bulletin and on the OSC website. No comments were received. No changes were made to the draft order published for comment.

The Order is consistent with Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges* and the updated exemption criteria included at Appendix 1 to Schedule A of the Order.

B.11.2.2 Nasdaq CXC Limited – Broker Preferencing for Anonymous Hidden Orders on CXC and CX2 – Notice of Proposed Changes and Request for Comment

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

BROKER PREFERENCING FOR ANONYMOUS HIDDEN ORDERS ON CXC AND CX2

Nasdaq CXC Limited (Nasdaq Canada) has announced plans to implement the changes described below subject to regulatory approval. Nasdaq Canada is publishing this Notice of Proposed Changes in accordance with the requirements set out in the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto (Exchange Protocol). Pursuant to the Exchange Protocol, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by January 22, 2024 to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: marketregulation@osc.gov.on.ca

And to

Matt Thompson
Chief Compliance Officer
Nasdaq CXC Limited
25 York St., Suite 900
Toronto, ON M5J 2V5
Email: matthew.thompson@nasdaq.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES

Summary of Proposed Changes

Currently hidden orders are only eligible for broker preferencing if they are attributed on the CXC and CX2 Trading Books. Nasdaq Canada is proposing to also make anonymous hidden orders eligible for broker preferencing on CXC and CX2 (Proposed Change).

Expected Date of Implementation

It is expected that the Proposed Change will be introduced in the first quarter of 2024.

Rationale and Relevant Supporting Analysis

The Proposed Change is being made to provide participants with more opportunities to benefit from internalization. The Canadian equity market is unique because of the common use of broker preferencing in its market structure where orders are matched by marketplaces with orders resting in the order book entered by the same market participant which can in turn break pure price/time priority. Broker preferencing facilitates on-exchange internalization opportunities where off-exchange trading is not permitted. The opportunity to internalize orders in turn can provide the benefits of lower trading costs and facilitating best execution. By introducing the Proposed Change participants using hidden orders will be given more opportunities to benefit from internalization.

The Proposed Change is also being made for competitive reasons. Today it is common for both dark venues and hidden orders on lit venues to consider anonymous orders eligible for broker preferencing in their matching logic. Nasdaq Canada currently supports this feature for orders on its CXD Trading Book but limits broker preferencing for hidden orders on its lit venues to attributed orders only. By making the Proposed Change CXC and CX2 will compete more effectively with lit books that support broker preferencing for anonymous hidden orders today.

Expected Impact on Market Structure

Nasdaq Canada Members will be offered new opportunities to internalize hidden orders on CXC and CX2 which in turn will lower trading costs and increase execution quality for those participants which utilize this feature.

Expected Impact on the Exchange's Compliance with Ontario Securities Law

The Proposed Change will not impact Nasdaq Canada's compliance with Ontario Securities Law including fair access as this feature is a permitted feature by regulation today and widely supported by many marketplaces.

Consultation and Review

Consultations with a selection of Nasdaq Canada's largest clients were made who were supportive of the Proposed Change.

Estimated Time Required by Subscribers and Vendors (or why a reasonable estimate is not provided)

None.

Will Proposed Fee Change or Significant Change introduce a Fee Model or Feature that Currently Exists in other Markets or Jurisdictions

Yes. TSX Inc. and Lynx ATS are lit venues that currently consider anonymous hidden orders eligible for broker preferencing. Dark Venues including MatchNow, Neo-D, and the CXD Trading Book also support this feature.

Any questions regarding these changes should be addressed to Matt Thompson, Nasdaq CXC Limited: matthew.thompson@nasdaq.com, T: 647-243-6242

Appendix A

Text of the Public Interest Rule Change to Nasdaq Canada Trading Rules and Policies

5.7 Order Processing

5.7.1 CXC Book

CXC is a lit book with matching based on price/broker/time priority. Visible orders are given a higher priority over hidden orders at the same price. Orders that are not immediately matched are posted in the CXC Book.

CXC orders are attributed by default and are automatically eligible for broker preferencing. Members may elect pre trade or post-trade anonymity as an option.

Anonymous displayed orders and jitney orders are not eligible for broker preferencing. Anonymous hidden orders are eligible for broker preferencing.

CXC supports Bound Lot, Mixed Lot and Odd Lot orders.

5.7.2

CX2 is a lit book with matching based on price/broker/time priority. Visible orders have a higher priority over hidden orders at the same price. Orders that are not immediately matched are posted in the CX2 Book.

CX2 orders are attributed by default and are automatically eligible for broker preferencing. Members may not opt-out of broker preferencing for attributed orders.

Anonymous displayed orders and jitney orders are not eligible for broker preferencing. Anonymous hidden orders are eligible for broker preferencing.

CX2 supports Board Lot, Mixed Lot and Odd Lot orders.

B.11.3 Clearing Agencies

B.11.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Rules, Operations Manual and Risk Manual of the CDCC to Move to T+1 Settlement – Notice of Material Rule Submission

NOTICE OF MATERIAL RULE SUBMISSION

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

**PROPOSED AMENDMENTS TO
THE RULES, OPERATIONS MANUAL AND RISK MANUAL OF
THE CDCC TO MOVE TO T+1 SETTLEMENT**

CDCC has submitted to the Commission proposed amendments to the CDCC Rules, Operations Manual, and Risk Manual to move to T+1 Settlement.

In light of the industry-wide initiative to migrate to a standard T+1 settlement cycle, the purpose of the proposed amendments, which are subject to Commission approval, is to allow for a successful migration to T+1 settlement on May 27, 2024.

The proposed amendments have been posted for public comment on CDCC's **website**. The comment period ends on January 18, 2024.

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B.12
Other Information

B.12.1 Consents

B.12.1.1 Spitfyre Capital Inc. – s. 21(1) of Ont. Reg. 398/21 of the OBCA

Headnote

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

Statutes Cited

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

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 398/21, as am., s. 21(b).

IN THE MATTER OF
ONTARIO REGULATION 398/21,
AS AMENDED
(the "Regulation")

MADE UNDER
THE BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c.B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
SPITFYRE CAPITAL INC.

CONSENT
(Subsection 21(b) of the Regulation)

UPON the application of Spitfyre Capital Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission pursuant to subsection 21(b) of the Regulation, for the Applicant to continue into the federal jurisdiction pursuant to section 181 of the OBCA (the "**Continuance**");

AND UPON considering the application and the recommendation of staff of the Commission; **AND UPON** the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA on June 24, 2021 as "Spitfyre Capital Inc."

2. The registered office of the Applicant is located at 100 King St. West, Suite 1600, 1 First Canadian Place, Toronto, Ontario, M5X 1G5, Canada.

3. The Applicant is an offering corporation under the OBCA.

4. The Applicant is authorized to issue an unlimited number of common shares (the "**Common Shares**"), of which 5,750,000 Common Shares were issued and outstanding as of December 12, 2023.

5. The Common Shares of the Applicant are listed and posted for trade on the TSX Venture Exchange (the "**TSXV**") under the symbol "FYRE:P".

6. The Applicant intends to apply (the "**Application for Continuance**") to the Director of the OBCA pursuant to section 181 the OBCA for authorization to continue under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**).

7. The principal reason for the Continuance is to allow the Applicant to participate in a qualifying transaction with NeoTerrex Corporation ("**NeoTerrex**") pursuant to which, a subsidiary of the Applicant, 15363497 Canada Inc. will amalgamate with NeoTerrex pursuant to the provisions of the CBCA and the resulting entity ("**Amalco**") will become a wholly-owned subsidiary of the Applicant (the "**Amalgamation**"). Following closing of the Amalgamation, the Applicant intends to amalgamate with Amalco.

8. The qualifying transaction will close on or about December 21, 2023.

9. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by OBCA.

10. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia and Alberta, and will remain a reporting issuer in these jurisdictions following the Continuance. The Applicant's principal regulator is the Commission and will remain as the Commission following the Continuance.

11. The Applicant is not in default of any of the provisions of the OBCA, the *Securities Act*, (Ontario) R.S.O. 1990, c. S.5, as amended (the "**Act**") including the regulations or rules made thereunder, or the applicable securities legislation of any other jurisdiction in which it is a reporting issuer.

12. The Applicant is not subject to any proceeding under the OBCA, the Act or the applicable securities legislation of any other jurisdiction in which it is a reporting issuer.

13. The Applicant is not in default of any provision of the rules, regulations or policies of the TSXV.

14. The Applicant's management information circular dated September 22, 2023 for its annual general and special meeting of its shareholders held on October 23, 2023 (the **Shareholders' Meeting**) described the proposed Continuance and disclosed the reasons for it and its implications. It also disclosed full particulars of the dissent rights of the Applicant's shareholders under section 185 of the OBCA.

15. The Applicant's shareholders approved the proposed Continuance at the Shareholders' Meeting by a special resolution that was approved by 100% of the votes cast; No shareholders of the Applicant exercised their dissent rights pursuant to section 185 of the OBCA.

16. Subsection 21(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the CBCA.

DATED at Toronto on this 18th day of December, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0628

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