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

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Chapter 1

Notices

1.1 Notices

1.1.1 CSA Staff Notice 13-315 (Revised) Securities Regulatory Authority Closed Dates 2022



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Staff Notice 13-315 (Revised) Securities Regulatory Authority Closed Dates 2022

December 9, 2021

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the Ontario Securities Commission (OSC) has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

The following is a list of the closed dates of the securities regulatory authorities for 2022 and January 2023. Bracketed information indicates those jurisdictions that are closed on the particular date. Issuers should note these dates in structuring their affairs.

1. Saturdays and Sundays (all)
2. Monday, January 3 (all)
3. Tuesday January 4 (QC)
4. Monday, February 21 (BC, AB, SK, MB, ON, NB, PE, NS)
5. Friday, February 25 (YT)
6. Monday, March 14 (NL)
7. Friday, April 15 (all)
8. Monday, April 18 (all except AB, SK, NU, ON)
9. Monday, May 23 (all)
10. Tuesday, June 21 (YT, NT)
11. Friday, June 24 (QC)
12. Monday, June 27 (NL)
13. Friday, July 1 (all)
14. Monday, July 11 (NL, NU)
15. Friday, July 29 (SK)
16. Monday, August 1 (all except YT, QC, NL, PE)

Notices

17. Wednesday, August 3 (NL*)
18. Monday, August 15 (YT)
19. Friday, August 19 (PE)
20. Monday, September 5 (all)
21. Friday, September 30**
22. Monday, October 10 (all)
23. Friday, November 11 (all except AB, ON, QC)
24. Thursday, December 22 (NT, NU)
25. Friday, December 23 (NT, NU, SK, QC)
26. Friday, December 23 after 12:00 p.m. (NB, PE, NS), after 1:00 p.m. (YT, BC)
27. Monday, December 26 (all)
28. Tuesday, December 27 (all except SK)
29. Wednesday, December 28 (NT, NU)
30. Thursday, December 29 (NT, NU)
31. Friday, December 30 (NT, NU, QC)
32. Friday, December 30 after 12:00 p.m. (NB), after 1:00 p.m. (BC)
33. Monday, January 2, **2023** (all)
34. Tuesday, January 3, **2023** (QC)

*Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

**This is the National Day of Truth and Reconciliation. Please check securities regulatory authorities' websites closer to this date to see if a particular jurisdiction's offices will be closed.

1.1.2 CSA Staff Notice 11-344 Notice of Local Amendments in Certain Jurisdictions



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Staff Notice 11-344
Notice of Local Amendments in Certain Jurisdictions

December 9, 2021

From time to time, a local jurisdiction may amend a national or multilateral instrument or change a policy or companion policy that affects activity only in that jurisdiction. The CSA recognize that such a local amendment or change may nonetheless be of interest or importance beyond the local jurisdiction and CSA staff are issuing this Notice to identify amendments and changes implemented in Alberta and Québec. For public convenience, CSA members in other jurisdictions will update the text of the applicable material on their websites to reflect these local amendments and changes.

The local amendments referred to in this notice comprise those shown in Annexes A to D. These local amendments are to the following instruments:

- National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (Québec);
- National Instrument 45-102 *Resale of Securities* (Alberta);
- National Instrument 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions* (Québec);
- National Instrument 81-105 *Mutual Fund Sales Practices* (Québec).

The text of rule and policy consolidations on the websites of CSA members will be updated, as necessary, to reflect these local amendments. You may direct questions regarding this Notice to:

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ANNEX A

Local Amendments to
National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*
in Québec

National Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended:

- (a) *by adding in subsection 1(1) “except the Bank of Canada,” after “securities regulatory authority,” in paragraph (a) of the definition of designated benchmark administrator;*
- (b) *by replacing “Except in Québec, a” with “A” in subsections 24(1) and (2);*
- (c) *by replacing “Except in Québec, before” with “Before” in subsection 24(3);*
- (d) *by replacing “Except in Québec, a” with “A” in subsections 24(4) and (5);*
- (e) *by replacing “Except in Québec, a” with “A” in subsections 25(1) and (2);*
- (f) *by replacing “Except in Québec, a” with “A” in subsections 30(1) and (2);*
- (g) *by replacing “Except in Québec, if” with “If” in subsection 33(1);*
- (h) *by replacing “Except in Québec, a” with “A” in subsection 33(2);*
- (i) *by replacing “Except in Québec, if” with “If” in subsection 37(1);*
- (j) *by replacing “Except in Québec, the” with “The” in subsection 37(2);*
- (k) *by replacing “Except in Québec, a” with “A” in subsections 38(1) and (2);*
- (l) *by replacing “Except in Québec, the” with “The” in subsection 38(3);*
- (m) *by replacing “Except in Québec, a” with “A” in subsections 39(2) to (4);*
- (n) *by replacing “Except in Québec with respect to benchmark contributors, a” with “A” in subsection 39(5);*
- (o) *by replacing “Except in Québec, the” with “The” in subsection 39(6); and*
- (p) *by replacing “Except in Québec, a” with “A” in subsections 39(7) and (8).*

These amendments became effective in Québec on July 13, 2021.

ANNEX B

Local Amendment to
National Instrument 45-102 *Resale of Securities*
in Alberta

National Instrument 45-102 Resale of Securities is amended in Appendix D by replacing “section 3.1 of Alberta Securities Commission Rule 72-501 Distributions to Purchasers Outside Alberta;” with “section 5 and section 7 of Alberta Securities Commission Rule 72-501 Distributions to Purchasers Outside Alberta;” in Item 1 under the heading “Restricted Period Trades (Section 2.3)”.

This amendment became effective in Alberta on April 15, 2021.

ANNEX C

Local Amendment to
National Instrument 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions*
in Québec

National Instrument 45-110 Start-Up Crowdfunding Registration and Prospectus Exemptions is amended in subsection 3.2 (1) of the Instructions of Form 45-110F1, Offering Document by adding “(except in Québec),” after “general partnership”.

This amendment became effective in Québec on September 21, 2021.

ANNEX D

Local Amendment to
National Instrument 81-105 *Mutual Fund Practices*
in Québec

National Instrument 81-105 Mutual Fund Sales Practices is amended in section 1.1 by adding “except in Québec,” before “a rule or policy of the Mutual Fund Dealers Association of Canada” in paragraph (c) of the definition of “suitability determination”.

This amendment became effective in Québec on December 31, 2020.

1.1.3 CSA Staff Notice 44-306 Blanket Orders Exempting Well-known Seasoned Issuers from Certain Prospectus Requirements



CSA Staff Notice 44-306 *Blanket Orders Exempting Well-known Seasoned Issuers from Certain Prospectus Requirements*

December 6, 2021

PART 1 - Introduction

On December 6, 2021, the Canadian Securities Administrators (**CSA**) published temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned issuers (**WKSIs**). The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country. This notice contains CSA staff's views about the exemptions in the following local blanket orders (collectively, the **Blanket Orders**):

- In Alberta, Alberta Securities Commission Blanket Order 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In British Columbia, BC Instrument 45-503 *Exemption from Certain Prospectus Requirements for Canadian Well-known Seasoned Issuers*
- In Ontario, Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)*
- In Québec, DÉCISION N° 2021-PDG-0066 *Décision générale relative à une dispense de certaines obligations du régime de prospectus préalable au bénéfice d'émetteurs établis bien connus*
- In Manitoba, Blanket Order 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In New Brunswick, Blanket Order 44-503 EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR CANADIAN WELL-KNOWN SEASONED ISSUERS
- In Newfoundland and Labrador, Blanket Order # 121 EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR WELL-KNOWN SEASONED ISSUERS
- In Nova Scotia, Blanket Order 44-505 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In Saskatchewan, General Order 44-501 *Exemption from Certain Prospectus Requirements for Well-Known Seasoned Issuers*
- In Prince Edward Island, Blanket Order 44-501 - *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In the Northwest Territories, Superintendent Order 2021/07 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In Yukon, Superintendent Order 2021-07 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*
- In Nunavut, Superintendent Order 2021-07 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers*

PART 2 - Description of Blanket Orders

The Blanket Orders are intended to reduce regulatory burden for issuers that are well-known reporting issuers, have a strong market following, complete public disclosure record and sufficient public float. They permit issuers that satisfy the conditions of the Blanket Orders to file a final base shelf prospectus as the first step in a shelf offering.

The Blanket Orders exempt an issuer that meets the WKSIs qualifications and certain conditions from the requirements:

- (a) to file and obtain a receipt for a preliminary base shelf prospectus included in each jurisdiction's local legislation;
- (b) in section 5.4 of National Instrument 44-102 *Shelf Distributions* (NI 44-102) to limit distributions under the base shelf prospectus to the dollar value the issuer reasonably expects to distribute within 25 months after the date of the receipt for the base shelf prospectus;
- (c) in item 5 of section 5.5 of NI 44-102 to state the aggregate dollar amount of securities that may be raised under the base shelf prospectus;
- (d) in item 1.4 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1) to include the number of securities qualified for distribution under the base shelf prospectus;
- (e) in item 5 of Form 44-101F1 to include a plan of distribution in the base shelf prospectus, other than to indicate that the plan of distribution will be described in the supplement for any distribution of securities;
- (f) in item 7 of Form 44-101F1 to describe the securities being distributed, other than as necessary to identify the types of securities qualified for distribution under the base shelf prospectus; and
- (g) in item 8 of Form 44-101F1 to describe any selling securityholders in the base shelf prospectus.

PART 3 - Background

NI 44-102 permits qualified issuers to omit "shelf information" from a base shelf prospectus, if not known on the date the base shelf prospectus is filed. Such information is required to be included in a prospectus supplement, which is not subject to review. Shelf information consists of information such as the variable terms of the securities that may be distributed under the base shelf prospectus, the dollar amount, size and other specific terms of each tranche of securities that may be distributed, the variable terms of the plan of distribution, and any other information that is not known and cannot be ascertained at the time of filing of the base shelf prospectus.

The CSA received feedback to its Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*¹ that certain prospectus requirements in the base shelf context create unnecessary regulatory burden for large, established reporting issuers that have strong market following and up-to-date disclosure records. The feedback recommended enhancing the current prospectus system by amending the base shelf prospectus regime to implement a Canadian WKSIs regime. In our experience, base shelf prospectuses filed by these types of issuers are less likely to result in a significant number of substantive deficiency comments.

As a result, in early 2018 the CSA undertook a research project that included research of the United States WKSIs regime² and targeted consultations with market participants. The CSA is considering whether future rule amendments to implement a Canadian WKSIs regime would be appropriate.

PART 4 – Pilot Program

The Blanket Orders will allow the CSA to implement accelerated processes for the filing of a base shelf prospectus by a WKSIs on a trial basis to determine how best to adopt these procedures through future rule amendments. The Blanket Orders will also provide an opportunity to evaluate the appropriateness of the eligibility criteria and identify any potential public interest concerns or operational considerations that should be addressed in future rule amendments.

Any amendments to implement accommodations for WKSIs will be adopted by the CSA through the normal rule-making procedures on a coordinated basis.

The Blanket Orders will allow an issuer that meets the WKSIs qualifications and certain conditions to file a final base shelf prospectus with its principal regulator and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus³. In the ordinary course, for a final base shelf prospectus filed with the principal regulator before

¹ See CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

² In the United States, the WKSIs regime is codified in the *General Rules and Regulations, Securities Act of 1933*, and has been in regular use for several years.

³ As described in the Blanket Orders, an issuer is required to file, in place of the preliminary short form base shelf prospectus, a letter with requisite information.

noon, local time, and in compliance with the requirements of NI 44-102 and the Blanket Orders, we expect that the accelerated procedures will permit the receipt to be issued on the same business day. If a final base shelf prospectus is filed with the principal regulator after noon, local time, and in compliance with the requirements of NI 44-102 and the Blanket Orders, we expect that the accelerated procedures will permit the receipt to be issued before noon on the next business day.

PART 5 – Questions

If you have any questions regarding the Blanket Order or the WKSJ pilot program, please contact any of the following:

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1.1.4 OSC Notice of General Order – Ontario Instrument 44-501 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)

NOTICE OF GENERAL ORDER

**ONTARIO INSTRUMENT 44-501
EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS FOR WELL-KNOWN SEASONED ISSUERS
(INTERIM CLASS ORDER)**

December 6, 2021

The Ontario Securities Commission (the **Commission**) has made an order under subsection 143.11(2) of the Securities Act (Ontario) (the **Act**) providing an exemption from certain prospectus requirements for a qualifying Well-known Seasoned Issuer (**WKS**I).

Description of Order

The Commission has made Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)* (the **Class Order**) exempting qualifying issuers from the requirements:

- (a) to file and obtain a receipt for a preliminary prospectus in section 53 of the Act,
- (b) in section 5.4 of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) to state the maximum dollar value in a base shelf prospectus and limit distributions to the amount the issuer reasonably expects to distribute,
- (c) in item 5 of section 5.5 of NI 44-102 to state the aggregate dollar amount of securities that may be raised under the base shelf prospectus,
- (d) in item 1.4 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) to include the number of securities qualified for distribution under the prospectus,
- (e) in item 5 of Form 44-101F1 to include a plan of distribution in the base shelf prospectus, other than to indicate that the plan of distribution will be described in the supplement for any distribution of securities,
- (f) in item 7 of Form 44-101F1 to describe the securities being distributed, other than as necessary to identify the types of securities qualified for distribution under the base shelf prospectus, and
- (g) in item 8 of Form 44-101F1 to describe any selling securityholders in the base shelf prospectus.

Issuers seeking to rely on these exemptions must satisfy all eligibility criteria and conditions set out in the Class Order.

The Class Order is intended to reduce regulatory burden for issuers that are well-known reporting issuers, have a strong market following, complete public disclosure record and sufficient public float, by permitting issuers that satisfy the conditions of the Class Order to file a final base shelf prospectus as the first step in a shelf offering.

Reasons for the Order

Staff of the Commission have received feedback from a number of market participants in Ontario that certain prospectus requirements in the base shelf context create unnecessary regulatory burden for large, established reporting issuers that have strong market following and up-to-date disclosure records.

Similar submissions have also been made by the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**). The Taskforce Final Report included a recommendation that the Commission develop a WKS I model in Ontario to streamline the prospectus process for issuers that meet certain eligibility criteria.¹

In the United States, the WKS I regime is codified in the *General Rules and Regulations, Securities Act of 1933*, and has been in regular use for several years.

The Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption from the requirements described above subject to the conditions of the Class Order.

Day on which the Order Ceases to Have Effect

¹ See Recommendation No. 17 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>

Notices

The Class Order comes into effect on January 4, 2022, and remains in effect until the earlier of the following:

- (a) July 4, 2023, unless extended by the Commission, and
- (b) the effective date of an amendment to NI 44-102 that addresses substantially the same subject matter as the Class Order.

Questions

If you have any questions regarding the Class Order, please contact any of the following:

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1.1.5 OSC Staff Notice 33-753 – OSC Consultation on Tied Selling and other Anti-Competitive Practices in the Capital Markets

OSC STAFF NOTICE 33-753

**OSC CONSULTATION ON TIED SELLING AND
OTHER ANTI-COMPETITIVE PRACTICES IN THE CAPITAL MARKETS**

November 29, 2021

Introduction

On November 19, 2021, the Honourable Peter Bethlenfalvy, Minister of Finance, requested that the Ontario Securities Commission (the **Commission** or **we**) undertake an analysis of questions regarding the practice of tied selling raised by the Capital Markets Modernization Taskforce (the **Taskforce**) in their consultations last year. As part of this analysis, we will engage with all relevant stakeholders including members of the Taskforce, as well as those who participated in the Taskforce's consultations.

The request by the Minister has been made in the wake of recent amendments to the mandate¹ of the Commission to include, among other objectives, fostering capital formation and competitive markets.

As discussed below, the Taskforce identified concerns that certain commercial lenders may be engaging in improper practices that may impede competition, such as arrangements where a lender requires issuer clients to retain the services of a dealer or adviser affiliate of the lender for their capital raising and/or advisory needs, as a condition of entering into a commercial lending transaction, or vice versa.

We are publishing this notice (the **Notice**) to request submissions together with supporting evidence and analysis from issuers, dealers and other market participants as well as from investors and other stakeholders with a view to establishing the extent to which such conduct that may impede competition is occurring.

The Commission believes that such conduct by commercial lenders and their affiliated firms, if it is occurring, is likely to impede effective capital formation, distort pricing for capital markets services and undermine both the efficiency of, and confidence in, our capital markets. Taking steps to effectively respond to such practices is within the Commission's mandate to foster fair, efficient and competitive capital markets and capital formation.

Pursuant to Section 143.7 of the *Securities Act*, we will be reporting our findings, as well as potential recommendations, to the Minister by February 28, 2022.

Background

The Capital Markets Modernization Taskforce

In February 2020, the Ontario government created the Taskforce to review and modernize Ontario's capital markets regulatory framework.

In July 2020, the Taskforce published a Consultation Paper² that included a request for comment on several recommendations, including a recommendation aimed at prohibiting registered dealers affiliated with commercial lenders from benefiting from tying or bundling of capital market and commercial lending services.

In January 2021 the Taskforce released its final report.³ In the final report, the Taskforce reiterated the concern that financial institutions and other commercial lenders may be engaging in practices that impede competition, such as arrangements where a commercial lender requires clients to retain the services of an affiliated investment dealer for their capital raising and advisory needs, as a condition in commercial lending transactions:⁴

Independent investment dealers and issuers have repeatedly raised the issue of intermediaries engaging in practices that may impede competition, such as arrangements where a commercial lender requires clients to retain the services of an affiliated investment dealer for their capital raising and advisory needs, as a condition in commercial lending transactions. As a consequence, issuers do not maintain existing relationships with the independent investment dealer or exempt market dealer who intermediated their early capital raising activities.

¹ The purposes of the *Securities Act* (Ontario) (the **Act**) as set out in section 1.1 of the Act are
(a) to provide protection to investors from unfair, improper or fraudulent practices;
(b) to foster fair, efficient and competitive capital markets and confidence in capital markets;
(b.1) to foster capital formation; and
(c) to contribute to the stability of the financial system and the reduction of systemic risk.

² Capital Markets Modernization Taskforce: Consultation Paper July 2020, available at <https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-report-en-2020-07-09.pdf>

³ Capital Markets Modernization Taskforce: Final Report January 2021, available at: <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>.

⁴ Ibid at p. 58.

The Taskforce noted that, although the practice of “tied selling” is restricted under the *Bank Act*⁵ and for registered firms under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103),⁶ the Taskforce had heard repeatedly from dealers and issuers that commercial lenders, through their affiliated dealers, continue to engage in these practices. The Taskforce concluded that these practices are having a significant negative impact on competition but also noted that these practices may result in lower financing costs for issuers:

We heard from multiple stakeholders that these practices are having significant negative impacts on the viability of independent dealers and on the ability of issuers to receive independent advice and on competition. However, we also learned that some intermediaries indicate that their bundling of capital markets services and other services may result in lower financing costs for issuers.

In light of these concerns, the Taskforce recommended action to enhance restrictions on tying commercial lending services and capital markets activities to facilitate growth of independent dealers and ensure issuer choice. The text of these findings and recommendations is reproduced as Appendix A to this Notice.

Concerns expressed by the UK Financial Conduct Authority

We also note that similar concerns have been identified in other jurisdictions. For example, in May 2020, the UK Financial Conduct Authority (the **FCA**) expressed similar concerns that banks may have used their lending relationships to exert pressure on corporate clients to secure roles on equity mandates that the issuer would not otherwise appoint them to.⁷

We have heard credible reports of a small number of banks failing to treat their corporate clients fairly when negotiating new or existing debt facilities, as clients navigate the current exceptional circumstances. In particular, we have heard reports that banks may have used their lending relationship to exert pressure on corporate clients to secure roles on equity mandates that the issuer would not otherwise appoint them to. In some cases, these roles may be ‘in name only’, with few or no additional services being provided in exchange for a share of the fee pool. We will be looking into this further, but want any practice of this nature to cease immediately.

We are concerned that tying clients to take additional services, or demanding fees for services not provided is not in the best interests of those clients, distorts competition, undermines market confidence and calls into question firms’ and individuals’ integrity. This conduct is also likely to increase overall transaction costs for corporates trying to raise money.

This communication followed on steps taken by the FCA to prohibit the use of restrictive clauses in capital markets engagements that could limit issuers in the future choices regarding market services.⁸

Request for submissions

We welcome submissions on the issues discussed in this Notice and the need for regulatory or other action related to relationships involving dealers and commercial lenders. While we expect that this will be a subject of ongoing concern for the Commission, we would appreciate receiving submissions to the address below by January 10, 2022 to allow us to incorporate these comments into our report and recommendations to the Minister.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
comments@osc.gov.on.ca

All comments received will be posted on the Commission’s website at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

We have set out a series of specific questions below but also invite comment generally on any matter that is relevant to the contents of this Notice.

We are also interested in hearing from academic and regulatory experts and professional advisors in related fields, including Banking and Competition law and on the economic impact of tied selling and other anti-competitive practices.

1. Is there evidence of commercial lenders requesting issuer clients to retain the services of a dealer or adviser affiliated with the commercial lender to assist with the issuer’s capital raising and/or advisory needs, or vice versa? If yes, please provide particulars.

⁵ See Section 459.1 [Restriction on tied selling] of the *Bank Act* <https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-459.1.html>.

⁶ See Section 11.8 [Tied selling] of NI 31-103 and related Companion Policy guidance in section 11.8 of CP 31-103.

⁷ <https://www.fca.org.uk/publication/correspondence/dear-ceo-ensuring-fair-treatment-corporate-customers-preparing-raise-equity-finance.pdf> ; See also the [IOSCO Report](https://www.iosco.org/news/pdf/IOSCONEWS576.pdf), Conflicts of interest and associated conduct risks during the debt capital raising process - Final Report (September 2020) which references the FCA findings: <https://www.iosco.org/news/pdf/IOSCONEWS576.pdf>

⁸ <https://www.fca.org.uk/publication/policy/ps17-13.pdf>

2. To the extent there is evidence of commercial lenders requesting issuer clients to retain the services of an affiliated dealer or adviser, please explain the nature of the request. Specifically,
 - (a) Can the request reasonably be characterized as “bundling” of services or “relationship pricing”, which is specifically contemplated and permitted by the *Bank Act* and NI 31-103?
 - (b) Can the request reasonably be characterized as a requirement or condition of financing; namely that the commercial lender would only make available a credit facility, or a credit facility at a more favourable cost, if the issuer client retained the services of an affiliated dealer or adviser?
 - (c) Did the request require a minimum amount of business be allocated to the affiliated dealer or adviser?
3. Did the request include a condition that the issuer not retain or discontinue the use of services provided by any other dealer or adviser, such as a dealer or adviser affiliated with a competitor of the commercial lender?
4. Some commenters have suggested that, if improper tied selling is occurring, this should be addressed through existing enforcement mechanisms such as the *Competition Act*, the *Bank Act* and/or NI 31-103. Do you feel this is an effective way to deal with the potential concerns outlined in this Notice? If not, why not?
5. Some commenters have suggested that the recommendations of the Taskforce contained in the Final Report (reproduced in Appendix A) will, if adopted, restrict issuer choice and negatively impact capital raising and/or simply benefit foreign dealers at the expense of Canadian dealers. Do you agree or disagree with these comments? Please explain.
6. The Taskforce recommended that the Commission work with the Canadian Securities Administrators (the **CSA**) to amend National Instrument 33-105 *Underwriting Conflicts* and/or through the adoption of a local rule to require an independent underwriter in prospectus offerings in circumstances where the issuer would be considered a “connected issuer” to one or more of the underwriters involved in the offering by virtue of any commercial lending relationship between an affiliate of the underwriter and the issuer. Do you agree or disagree with this recommendation? Please explain.
7. The Taskforce also recommended that, where a registered firm provides capital markets services to an issuer and also has an affiliated commercial lender, there should be a ban on certain restrictive clauses in capital markets engagement letters. This includes agreements that restrict a client’s choice of future providers of capital market services (as defined above), such as “right to act” and “right of first refusal” clauses, where a commercial lending and capital markets relationship exists. Do you agree or disagree with this recommendation? Please explain.
8. Are there any other practices that commercial lenders and their affiliated firms are engaging in that are negatively affecting competition in the Ontario capital markets?
9. Are there regulatory changes that the Commission should consider to increase competition for capital markets services in Ontario?

Questions

Please refer your questions to any of the following:

Lina Creta
Manager, Corporate Finance
(416) 204-8963
lcreta@osc.gov.on.ca

David Surat
Senior Legal Counsel, Corporate Finance
(416) 593-8052
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Dena Staikos
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Paul Hayward
Senior Legal Counsel, Compliance and Registrant Regulation
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phayward@osc.gov.on.ca

Appendix A
Excerpt from the Capital Markets Modernization Taskforce: Final Report
January 2021⁹

2.3 Ensuring a Level Playing Field

Healthy competition fosters fair and efficient capital markets by creating an ecosystem that can provide more choice for investors and opportunities for entrepreneurs. The Taskforce envisions a regulatory framework that leads to a level playing field between small and large market participants, where an appropriate level of competition helps grow Ontario's economy.

In our consultations, smaller intermediaries have noted the challenges and frustrations they face when they are unable to continue to assist their growing clients' needs in accessing capital. To ensure an appropriate level of competition, the Taskforce includes recommendations that aim to increase capital raising opportunities for small intermediaries and increase the variety and quality of independent investment products available to retail investors.

Globally, the relationships between investors and issuers continues to evolve. Companies and their shareholders are realizing that diverse boards and executives provide more effective and capable oversight and strategic direction.

These recommendations are aimed to drive competition among intermediaries and products and provide investors with more choice in their investment decisions.

Enhance restrictions on tying commercial lending services and capital markets activities to facilitate growth of independent dealers and ensure issuer choice

Facilitating the incubation of entrepreneurial and venture issuers is critical for the growth of our primary market in Ontario. Independent investment dealers and issuers have repeatedly raised the issue of intermediaries engaging in practices that may impede competition, such as arrangements where a commercial lender requires clients to retain the services of an affiliated investment dealer for their capital raising and advisory needs, as a condition in commercial lending transactions. As a consequence, issuers do not maintain existing relationships with the independent investment dealer or exempt market dealer who intermediated their early capital raising activities.

Although tied selling is restricted under the *Bank Act*, as well as National Instrument 31-103, the Taskforce has heard repeatedly from dealers and issuers that commercial lenders, through their affiliated dealers, continue to engage in these practices. We heard from multiple stakeholders that these practices are having significant negative impacts on the viability of independent dealers and on the ability of issuers to receive independent advice and on competition. However, we also learned that some intermediaries indicate that their bundling of capital markets services and other services may result in lower financing costs for issuers.

Furthermore, the Taskforce heard that some commercial lenders and their affiliated investment dealers calculate their return on capital across product lines. Then, in order to meet an internally specified client threshold return, they are requiring issuers and clients to which they have extended credit to transfer capital markets business to their affiliated investment dealer.

In addition, it may not always be in the best interest of issuers to procure their underwriting and advisory services from their lender — they may benefit from independent advice.

Recommendation:

To address this concern, the Taskforce recommends the following:

1. Enhance the Tied-Selling Restriction in National Instrument 31-103

The Taskforce recommends making legislative amendments to Ontario securities legislation, including amendments to National Instrument 31-103 and/or through the adoption of a local rule, to prohibit registrants, as a consequence of an exclusivity arrangement, from providing capital markets services under certain circumstances.

An exclusivity arrangement would be defined to exist when:

- There is an outstanding loan, a loan proposed to be made or the continuation of an outstanding loan including any modification thereof, with an issuer or any affiliate; and
- In connection with such loan, a bank practically or legally imposes a requirement for such a loan to be made or maintained pursuant to an agreement, commitment, or understanding that an affiliate of the bank (typically a

⁹ Capital Markets Modernization Taskforce: Final Report January 2021, available at: <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>.

bank-owned dealer) be retained to provide capital markets services, as defined, for the issuer or an affiliate thereof, or be required to be retained for future capital markets services.

Capital markets services would be defined to include debt and equity financing activities such as acting as a dealer or underwriter in an equity or debt offering or negotiating a new or existing credit facility, as well as M&A advisory activities such as providing a fairness opinion on a transaction.

The Taskforce believes that providers of capital markets services should compete on their merits and that an issuer should be free to choose the registrant that best suits its needs without a concern that its choice of registrant may negatively impact the availability of credit to the issuer. Accordingly, it would be prohibited for a registrant affiliated with a commercial lender to provide capital markets services to an issuer in circumstances such as the exclusivity arrangement defined above, where the affiliated commercial lender has previously tied a decision to extend, renew or limit credit to the issuer on whether the issuer provides capital markets business to the affiliated registrant.

2. Attestation

A senior officer of a registrant such as the Ultimate Designated Person, would be required to attest that no such prohibited conduct has occurred each time the registrant provides such capital markets services to a reporting issuer with whom the affiliated commercial lender has a banking relationship.

As part of the attestation, the registrant should engage with the affiliated commercial lender to ensure that such conduct did not occur. The Taskforce would expect that commercial lenders provide meaningful support and cooperation to their affiliated registrant firms in complying with this attestation requirement. If it becomes apparent that this is not occurring, the OSC should consider imposing terms and conditions on the registration of the affiliated registrant that would restrict its ability to act as a dealer or underwriter in offerings involving an issuer that has a relationship with a commercial lender affiliated with the registrant.

3. Amend NI 33-105 to require an Independent Underwriter with a Connected Issuer

The Taskforce recommends that the OSC work with the CSA to amend National Instrument 33-105 and/or through the adoption of a local rule to require an Independent Underwriter in prospectus offerings:

- The issuer would be considered a “connected issuer” to one or more of the underwriters involved in the offering by virtue of any commercial lending relationship between an affiliate of the underwriter and the issuer.

The Taskforce recommends adding a definition that considers an issuer that has a commercial lending relationship with an affiliate of the registered firm as a “connected issuer” and thus, under the new amendment to NI 33-105, at least one Independent Underwriter would be required in a syndicate.

The Independent Underwriter would be required to underwrite at least 20 per cent of the offering or receive at least 20 per cent of the total fees. These steps are carefully tailored to ensure that this requirement would be in line with provincial jurisdiction over registrants.

The Taskforce recommends that the OSC work with the CSA to update the Companion Policy to NI 33-105 to clarify that commercial lending relationships that would rely on the underlying credit of the issuer would be presumed to give rise to a connected issuer relationship.

Where part or all of the proceeds of the offering are intended to be used to repay indebtedness to a commercial lender affiliated with an underwriter involved in the offering, there exists an acute potential conflict of interest between the underwriter and the issuer. In these cases, the role of an independent underwriter in structuring and pricing the transaction is particularly important. Accordingly, the OSC should consider introducing a new requirement that an independent underwriter act as the lead manager or co-lead manager (or “bookrunner” or “co-bookrunner”) for offerings in these circumstances.

For greater clarity, if the proceeds of the underwriting are used to pay down a commercial loan (of a syndicate member), the Independent Underwriter would then be required to be a book runner.

4. Ban on Restrictive Clauses

Finally, where a registrant of an affiliated lender provides capital markets services, the Taskforce recommends a ban on certain restrictive clauses in capital markets engagement letters. This includes agreements that restrict a client’s choice of future providers of capital market services (as defined above), such as “right to act” and “right of first refusal” clauses, where a commercial lending and capital markets relationship exists. This would align with the U.K. Financial Conduct Authority’s similar enacted ban in 2017.

The above recommendations in relation to the provision by registrants of capital market services to issuers are focused on non-investment fund issuers and exemptions for investment funds should be provided where similar competitive concerns do not arise.

These recommendations would create competition in Ontario's capital markets, incubate a diverse and healthy intermediary market and increase choices for issuers, without dampening existing economic activities. The objective of these recommendations is to significantly increase the amount of competition in Ontario's capital markets. In this regard, the Taskforce recommends that the OSC be mandated to review the effectiveness of these recommendations in achieving this objective after implementation. If it is determined that the recommendations are not having the intended outcome, then the OSC would proceed with further reforms.

1.1.6 Stableview Asset Management Inc. and Colin Fisher

File Nos.: 2020-40

IN THE MATTER OF
STABLEVIEW ASSET MANAGEMENT INC. AND
COLIN FISHER

NOTICE OF WITHDRAWAL

The Ontario Securities Commission withdraws the Motion dated November 11, 2021 for further and better witness summaries.

DATED this 6th day of December 2021.

Staff of Ontario Securities Commission

20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Robert Gain

Senior Litigation Counsel
Tel: (416) 593-3653
Email: rgain@osc.gov.on.ca

1.4 Notices from the Office of the Secretary

1.4.1 Stableview Asset Management Inc. and Colin Fisher

**FOR IMMEDIATE RELEASE
December 7, 2021**

**STABLEVIEW ASSET MANAGEMENT INC. AND
COLIN FISHER,
File No. 2020-40**

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal in the above noted matter.

A copy of the Notice of Withdrawal dated December 6, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 Stableview Asset Management Inc. and Colin Fisher

**FOR IMMEDIATE RELEASE
December 7, 2021**

**STABLEVIEW ASSET MANAGEMENT INC. AND
COLIN FISHER,
File No. 2020-40**

TORONTO – Take notice that the hearing of a motion in the above named matter scheduled to be heard on January 12, 2022 will not proceed as scheduled.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Middlefield Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss.15.3(4)(c) and (f), and 19.1.

November 30, 2021

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
MIDDLEFIELD LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing and future mutual funds of which the Filer is, or in the future will be, the investment fund manager and to which National Instrument 81-102 *Investment Funds (NI 81-102)* applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and
2. the rating or ranking is to the same calendar month end that is:
 - (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and
 - (b) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards (as defined below) and Lipper Leader Ratings to be referenced in sales communications relating to the Funds.

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the 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.

Representations

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

The Filer and the Funds

1. The Filer is a corporation organized under the laws of the Province of Alberta.
2. The head office of the Filer is located in Toronto, Ontario.
3. The Filer is registered as an investment fund manager in Alberta, Ontario, Québec, and Newfoundland and Labrador.
4. The Filer is, or will be, the manager of each of the Funds.
5. Each of the Funds is, or will be, an open-ended mutual fund trust established under the laws of one of the Jurisdictions or a class of shares of a mutual fund corporation established under the laws of one of the Jurisdictions. The securities of each of the Funds are, or will be, qualified for distribution pursuant to one or more prospectuses or simplified prospectuses, as the same may be amended or renewed from time to time.
6. Each Fund is, or will be, a reporting issuer under the laws of the Jurisdictions and subject to the requirements of NI 81-102, including Part 15 which governs sales communications.
7. Neither the Filer nor any of the existing Funds is in default of securities legislation in any of the Jurisdictions.

FundGrade Ratings and FundGrade A+ Awards

8. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.
9. Fundata Canada Inc. (**Fundata**) is a “mutual fund rating entity” as that term is defined in NI 81-102. Fundata supplies mutual fund information, analytical tools, and commentary. Fundata’s fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.
10. One of Fundata’s programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.
11. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.
12. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a fund must show consistently high scores for all ratios across all time periods.

13. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.
14. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.
15. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Lipper Leader Ratings and Lipper Awards

16. The Filer also wishes to include in sales communications of the Funds references to Lipper Leader Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Ratings for Consistent Return, Lipper Ratings for Total Return, Lipper Ratings for Preservation and the Lipper Ratings for Expense, which are described below) and Lipper Awards (as described below) where such Fund has been awarded a Lipper Award.
17. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102. Lipper is part of the Refinitiv group of companies, and supplies mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.
18. One of Lipper's programs is the Refinitiv Lipper Fund Awards program (the **Lipper Awards**). This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper Awards take place in approximately 17 countries.
19. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards. For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three and five year periods, and it is expected that awards for ten year periods will be given in the future.
20. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by CIFSC (or a successor to CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three or five years of performance history, as applicable) will claim a Lipper ETF Award.
21. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.
22. In Canada, the Lipper Leader Rating System includes Lipper Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), Lipper Ratings for Total Return (reflecting funds' historical total return performance relative to funds in the same classification), Lipper Ratings for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification) and Lipper Ratings for Expense (reflecting funds' expense minimization relative to funds with similar load structures). In each case, the categories for fund classification used by Lipper for the Lipper Leader Ratings are those maintained by CIFSC (or a successor to CIFSC). Lipper Leader Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an unweighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.
23. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent

Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month and 60 month periods only) wins a Lipper Award.

Sales communication disclosure

24. The FundGrade Ratings fall within the definition of “performance data” under NI 81-102 as they constitute “a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund”, given that the FundGrade Ratings are based on performance measures calculated by Funddata. The FundGrade A+ Awards may be considered to be “overall ratings or rankings”, given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
25. Paragraph 15.3(4)(c) of NI 81-102 imposes a “matching” requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or “match”, each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e. for one, three, five and ten year periods, as applicable).
26. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the “matching” requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for the Funds to use FundGrade Ratings in sales communications.
27. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication “otherwise complies” with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the “matching” requirement in subsection 15.3(4) of NI 81-102 because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, also required in order for the Funds to reference the FundGrade A+ Awards in sales communications.
28. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.
29. Because the evaluation of funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.
30. The Lipper Leader Ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leader Ratings as described above. Therefore, references to Lipper Leader Ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
31. In Canada and elsewhere, Lipper Leader Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader Rating cannot comply with the “matching” requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader Ratings in sales communications.
32. In addition, a sales communication referencing the overall Lipper Leader Ratings and the Lipper Awards, which are based on the Lipper Leader Ratings, must disclose the corresponding Lipper Leader Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader Ratings, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.
33. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader Ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) of NI 81-102 is available only if a sales communication “otherwise complies” with the requirements

of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards cannot comply with the “matching” requirement in subsection 15.3(4) of NI 81-102 because the underlying Lipper Leader Ratings are not available for the one year period, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for the Funds to reference overall Lipper Leader Ratings and the Lipper Awards in sales communications.

34. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The paragraph provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.
35. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.
36. The Exemption Sought is required in order for the FundGrade Ratings, FundGrade A+ Awards, Lipper Leader Ratings and Lipper Awards to be referenced in sales communications relating to the Funds.
37. The Filer submits that the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. These awards and ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of FundGrade or Lipper, as applicable, in fund analysis that alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

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 the Exemption Sought is granted provided that:

- (a) the sales communication complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:
 - (i) the name of the category for which the Fund has received the award or rating;
 - (ii) the number of funds in the category for the applicable period;
 - (iii) the name of the ranking entity, i.e., Fundata or Lipper;
 - (iv) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award, FundGrade Rating, Lipper Award or Lipper Leader Rating is based;
 - (v) a statement that FundGrade Ratings or Lipper Leader Ratings are subject to change every month;
 - (vi) in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Award, as applicable;
 - (vii) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award) or a Lipper Leader Rating (other than Lipper Leader Ratings referenced in connection with a Lipper Award), a brief overview of the FundGrade Rating or Lipper Leader Rating, as applicable;
 - (viii) where Lipper Awards are referenced, the corresponding Lipper Leader Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;
 - (ix) where a Lipper Leader Rating is referenced, the Lipper Leader Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;
 - (x) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category) or Lipper Leader Ratings from 1 to 5 (e.g., rating of 5 indicates a fund is in the top 20% of its category), as applicable; and

- (xi) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Fundata or Lipper, as applicable;
- (b) the FundGrade A+ Awards and Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and
- (c) the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of mutual funds within a specified category established by CIFSC (or a successor to CIFSC).

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

Application File #: 2021/0666
SEDAR #: 3300239

2.1.2 Hollister Biosciences Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2, 12.3, and 19.1.

Form 41-101F1 Information Required in a Prospectus, ss. 1.13 and 10.6.

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.

Form 44-101F1 Short Form Prospectus, ss. 1.12 and 7.7.

National Instrument 51-102 Continuous Disclosure Obligations, Part 10 and s. 13.1.

OSC Rule 56-501 Restricted Shares, Parts 2 and 3, and s. 4.2.

October 29, 2021

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
HOLLISTER BIOSCIENCES INC.
(the Filer)

DECISION

Background

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

- a) section 12.2 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), relating to the use of restricted security terms, sections 1.13 and 10.6 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) and sections 1.12 and 7.7 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) relating to restricted security disclosure shall not apply to the common shares of the Filer (the **Common Shares**) (the **Prospectus Disclosure Exemption**) in connection with future prospectuses that may be filed by the Filer under NI 41-101, or National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), including a prospectus filed under National Instrument 44-102 *Shelf Distributions* (**Prospectuses**);
- b) section 12.3 of NI 41-101 relating to prospectus filing eligibility for distributions of restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities shall not apply to distributions of Common Shares, Proportionate Voting Shares (as defined below), or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, Common Shares or Proportionate Voting Shares (the **Prospectus Eligibility Exemption**) in connection with Prospectuses;
- c) Part 2 of Ontario Securities Commission Rule 56-501 *Restricted Shares* (**OSC Rule 56-501**) relating to the use of restricted share terms and restricted share disclosure shall not apply to the Common Shares (the **OSC Rule 56-501 Disclosure Exemption**) in connection with dealer and adviser documentation, rights offering circulars and offering memoranda (**OSC Rule 56-501 Documents**) of the Filer;

- d) Part 3 of OSC Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted shares or subject securities, shall not apply to the distribution of the Common Shares, Proportionate Voting Shares, or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, Common Shares or Proportionate Voting Shares (the **OSC Rule 56-501 Withdrawal Exemption**) in connection with stock distributions (as defined in OSC Rule 56-501) of the Filer; and
- e) Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) relating to the use of restricted security terms and restricted security disclosure shall not apply to the Common Shares (the **CD Disclosure Exemption**) in connection with continuous disclosure documents (the **CD Documents**) that may be filed by the Filer under NI 51-102.

The aforementioned requirements are collectively referred to as the **Restricted Security Rules**. The Prospectus Disclosure Exemption, the Prospectus Eligibility Exemption, the OSC Rule 56-501 Disclosure Exemption, the OSC Rule 56-501 Withdrawal Exemption and the CD Disclosure Exemption are collectively referred to as the **Exemption Sought**.

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NP 11-202, NP 11-203, NI 41-101, NI 44-101, NI 51-102 and OSC Rule 56-501 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 validly existing and in good standing under the *Business Corporations Act* (British Columbia).
2. The registered office of the Filer is located in Vancouver, British Columbia and the head office of the Filer is located in Hollister, California.
3. The Filer is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.
4. The authorized capital of the Filer consists of an unlimited number of Common Shares.
5. The Common Shares are listed on the Canadian Securities Exchange (the **CSE**) under the symbol "HOLL".
6. The Filer will be seeking shareholder approval at its meeting on November 22, 2021 to amend its notice of articles and articles to create an unlimited number of a new class of securities (the **Amendments**), being the proportionate voting shares (the **Proportionate Voting Shares**).
7. The Filer desires to create the Proportionate Voting Shares to minimize the proportion of the outstanding voting securities of the Filer that are held by "U.S. persons" for the purposes of determining whether the Filer is a "foreign private issuer" for the purposes of United States securities laws.
8. Although the Filer does not anticipate requiring any specific U.S. resident shareholder to elect to convert their Common Shares into Proportionate Voting Shares, the Filer expects that its directors and officers who are U.S. residents will elect to convert their Common Shares into Proportionate Voting Shares. Additionally, Proportionate Voting Shares may be issuable at the discretion of the Filer's board of directors.
9. The creation of the Proportionate Voting Shares will constitute a restricted security reorganization (as defined in NI 41-101) and a reorganization (as defined in OSC Rule 56-501).
10. The Proportionate Voting Shares will constitute subject securities (as defined in NI 41-101 and OSC Rule 56-501) and will be the Filer's only issued and outstanding subject securities.

11. Following the effective time of the Amendments, the Filer's authorized share capital will consist of (a) an unlimited number of Common Shares; and (b) an unlimited number of Proportionate Voting Shares.
12. The Common Shares may at any time, at the option of the holder, be converted into Proportionate Voting Shares at a ratio of one (1) Proportionate Voting Share for one thousand (1,000) Common Shares.
13. The Proportionate Voting Shares may at any time, at the option of the holder thereof, be converted into Common Shares on the basis of one thousand (1,000) Common Shares for one (1) Proportionate Voting Share subject to adjustments for certain corporate changes.
14. No fractional Common Shares shall be issued upon the conversion of any Proportionate Voting Shares and the number of Common Shares to be issued shall be rounded down to the nearest whole Common Share.
15. Fractional Proportionate Voting Shares (to three decimal points) may be issued upon the conversion of any Common Shares.
16. Holders of Common Shares shall be entitled to notice of and to attend at any meeting of the shareholders of the Company, except a meeting of which only holders of another particular class or series of shares of the Company shall have the right to vote. At each such meeting, holders of Common Shares will be entitled to one vote in respect of each Common Share.
17. Holders of Proportionate Voting Shares shall be entitled to notice of and to attend at any meeting of the shareholders of the Filer, except a meeting of which only holders of another particular class or series of shares of the Filer shall have the right to vote. At each such meeting, holders of Proportionate Voting Shares will be entitled to one vote in respect of each Common Share into which such Proportionate Voting Share could ultimately then be converted, being 1,000 votes per Proportionate Voting Share.
18. As long as any Common Shares remain outstanding, the Company will not, without the consent of the holders of the Common Shares by separate special resolution, prejudice or interfere with any right or special right attached to the Common Shares.
19. The Company will not, without the consent of the holders of the Proportionate Voting Shares by separate special resolution, prejudice or interfere with any right or special right attached to the Proportionate Voting Shares. Consent of the holders of a majority of the outstanding Proportionate Voting Shares is required for any action that authorizes or creates shares of any class having preferences superior to or on a parity with the Proportionate Voting Shares.
20. The Proportionate Voting Shares are subject to restrictions on conversion to ensure the filer maintains its status as a "foreign private issuer" (as determined in accordance with Rule 3b-4 under the United States *Securities Exchange Act of 1934*, as amended), and to ensure that no holder of Proportionate Voting Shares would, after conversion, hold more than 9.99% of the outstanding Common Shares.
21. The holders of Proportionate Voting Shares shall have the right to receive dividends *pari passu* (on an as converted to Common Share basis) as to dividends and any declaration or payment of any dividend on the Common Shares. No dividend will be paid on the Proportionate Voting Shares unless the Filer simultaneously pays equivalent dividends (on an as-converted to Common Share basis) on the Common Shares.
22. In the event of the liquidation, dissolution or winding-up of the Filer the holders of Proportionate Voting Shares will be entitled to participate *pari passu* along with all other holders of Proportionate Voting Shares and Common Shares (on an as-converted to Common Share basis).
23. No consolidation or subdivision of the Common Shares or Proportionate Voting Shares may be carried out unless, at the same time, the shares of the other class are consolidated or subdivided in the same manner and on the same basis, so as to preserve the relative rights of the holders of each such class of shares.
24. In addition to the conversion rights described above, if an offer (**Offer**) is made for Proportionate Voting Shares where: (a) by reason of applicable securities legislation or stock exchange requirements, the Offer must be made to all holders of the class of Proportionate Voting Shares; and (b) no equivalent offer is made for the Common Shares, the holders of Common Shares shall have the right, at their option, to convert their Common Shares into Proportionate Voting Shares for the purposes of allowing the holders of the Common Shares to tender to the Offer, provided however that such conversion will be solely for the purpose of tendering the Proportionate Voting Shares to the Offer in question and that any Proportionate Voting Shares that are tendered to the Offer but that are not, for any reason, taken up and paid for by the offeror will automatically be reconverted into the Common Shares that existed prior to such conversion.
25. In the event that holders of Common Shares are entitled to convert their Common Shares into Proportionate Voting Shares in connection with an Offer, holders of an aggregate of an odd lot of Common Shares of less than one hundred (100) (an **Odd Lot**) will be entitled to convert all but not less than all of such Odd Lot of Common Shares into an applicable

fraction of one Proportionate Voting Share, provided that such conversion into a fractional Proportionate Voting Share will be solely for the purpose of tendering the fractional Proportionate Voting Share to the Offer in question and that any fraction of a Proportionate Voting Share that is tendered to the Offer but that is not, for any reason, taken up and paid for by the offeror will automatically be reconverted into the Common Shares that existed prior to such conversion.

26. The Filer is seeking the Exemption Sought in respect of, among other things, references to the Common Shares in Prospectuses and CD Documents.
27. Section 12.2 of NI 41-101 requires that an issuer must not refer to a security in a prospectus by a term or a defined term that includes the word “common” unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.
28. Section 12.3 of NI 41-101 requires that an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless:
 - (a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or
 - (b) at the time of any restricted security reorganization related to the securities to be distributed:
 - (i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,
 - (ii) the issuer was a reporting issuer in at least one jurisdiction, and
 - (iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.
29. Sections 1.13 and 10.6 of Form 41-101F1 and sections 1.12 and 7.7 of Form 44-101F1 require that an issuer provide certain restricted security disclosure.
30. Section 2.2 of OSC Rule 56-501 requires dealer and adviser documentation to include the appropriate restricted share term if restricted shares and the appropriate restricted share term or a code reference to restricted shares or the appropriate restricted share term are included in a trading record published by the CSE or other exchange listed in OSC Rule 56-501.
31. Section 2.3 of OSC Rule 56-501 requires that a rights offering circular or offering memorandum for a stock distribution prepared for a reporting issuer comply with certain requirements including, among others, that restricted shares may not be referred to by a term or a defined term that includes “common”, “preference” or “preferred” and that such shares shall be referred to using a term or a defined term that includes the appropriate restricted share term.
32. Section 3.2 of OSC Rule 56-501 provides that the prospectus exemptions under Ontario securities law are not available for a stock distribution of securities of a reporting issuer unless either the stock distribution received minority approval of shareholders or all the conditions set out in subsection 3.2(2) are satisfied and the information circular relating to the shareholders’ meeting held to obtain such minority approval for the stock distribution included prescribed disclosure.
33. Section 10.1 of NI 51-102 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its information circular, a document required by NI 51-102 to be delivered upon request by a reporting issuer to any of its securityholders, an annual information form prepared by the reporting issuer as well as any other documents that it sends to its securityholders.
34. Section 10.2 of NI 51-102 sets out the procedure to be followed with respect to the dissemination of disclosure documents to holders of restricted securities.

35. Pursuant to the Restricted Security Rules, a “restricted security” means an equity security of a reporting issuer if any of the following apply:
- (a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater number of votes per security relative to the equity security,
 - (b) the conditions of the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer’s constating documents have provisions that nullify or, to a reasonable person appear to significantly restrict the voting rights of the equity securities, or
 - (c) the reporting issuer has issued another class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities.
36. The multiple votes attaching to the Proportionate Voting Shares would, absent the Exemption Sought, have the following consequences in respect of the technical status of the Common Shares:
- (a) pursuant to NI 41-101 and NI 44-101, the Filer would be unable to use the word “common” to refer to the Common Shares in the Prospectuses and the Filer would be required to provide the specific disclosure required by NI 41-101 and NI 44-101 because the Proportionate Voting Shares would represent a security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are more, per security, than the voting rights attached to the Common Shares,
 - (b) the Common Shares would be considered “restricted shares” pursuant to OSC Rule 56-501 and the Filer would be subject to the dealer and advisor documentary disclosure obligations and distribution restrictions in OSC Rule 56-501 because the Proportionate Voting Shares would represent a security to which is attached voting rights exercisable in all circumstances, irrespective of the number or percentage of shares owned, that are more, on a per share basis, than the voting rights attaching to the Common Shares and the Filer would be unable to use the word “common” to refer to the Common Shares in a rights offering circular or offering memorandum for a stock distribution, and
 - (c) the Common Shares could be considered “restricted securities” pursuant to para. (a) of the definition of the term in NI 51-102 and the Filer would be required to provide the specific disclosure required by NI 51-102 in respect of the Common Shares because the Proportionate Shares would represent another class of securities of the Filer that, to a reasonable person, appears to carry a greater number of votes per security relative to the Common Shares.
37. The CSE advised the Filer on October 15, 2021 that it will permit the Filer to designate the Common Shares as common shares.

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) in connection with the Prospectus Disclosure Exemption and the Prospectus Eligibility Exemption as they apply to Prospectuses, at the time the Filer relies on the Exemption Sought:
 - (i) the representations in paragraphs 12 to 25, above, continue to apply;
 - (ii) the Filer has no restricted securities (as defined in section 1.1 of NI 41-101) issued and outstanding other than the Common Shares; and
 - (iii) the Prospectuses include disclosure consistent with the representations in paragraphs 12 to 25 above;
- (b) in connection with the OSC Rule 56-501 Disclosure Exemption as it applies to the OSC Rule 56-501 Documents, at the time the Filer relies on the Exemption Sought:
 - (i) the representations in paragraphs 12 to 25, above, continue to apply; and
 - (ii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Common Shares;

- (c) in connection with the OSC Rule 56-501 Withdrawal Exemption, at the time the Filer relies on the Exemption Sought:
 - (i) the representations in paragraphs 12 to 25, above, continue to apply; and
 - (ii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Common Shares;
- (d) in connection with the CD Disclosure Exemption as it applies to the CD Documents, at the time the Filer relies on the Exemption Sought:
 - (i) the representations in paragraphs 12 to 25, above, continue to apply; and
 - (ii) the Filer has no restricted securities (as defined in subsection 1.1(1) of NI 51-102) issued and outstanding other than the Common Shares.

“Winnie Sanjoto”
Manager, Corporate Finance
Ontario Securities Commission

2.1.3 Fidelity Investments Canada ULC and the Fidelity Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from paragraph 2.5(2)(b) of NI 81-102 to permit fund to invest in mutual fund that holds greater than 10% of its net assets in securities of other mutual funds, including commodity ETFs that are not managed by the filer or an affiliate – relief is subject to conditions.

Applicable Legislative Provisions

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

November 29, 2021

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

AND

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

AND

IN THE MATTER OF
FIDELITY INVESTMENTS CANADA ULC
(the Filer)

AND

IN THE MATTER OF
THE FIDELITY FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application on behalf of the current and future mutual funds, exchange-traded funds and alternative mutual funds managed by the Filer or an affiliate of the Filer (the **Fidelity Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Fidelity Funds from the requirement in clause 2.5(2)(b) of National Instrument 81-102 *Investment Funds (NI 81-102)* to permit each Fidelity Fund to purchase and hold directly or indirectly securities of the Fidelity Inflation Focused Fund (the **Inflation Focused Fund**), which is managed by the Filer, which Inflation Focused Fund may hold, directly or indirectly (a) securities of other conventional mutual funds, alternative mutual funds, and exchange-traded investment funds managed by the Filer (the **Third-Tier Funds**) that, immediately after the purchase of such securities by the Inflation Focused Fund, Third-Tier Funds collectively constitute not more than 10% of the net asset value of the Inflation Focused Fund, and (b) securities of one or more Commodity ETFs (as defined herein) that, immediately after the purchase of a Commodity ETF by the Inflation Focused Fund, Commodity ETFs collectively constitute not more than 10% of the net asset value of the Inflation Focused Fund (the **Exemption Sought**).

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

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

Interpretation

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

Commodity ETFs means exchange-traded funds traded on a stock exchange in Canada or the United States that do not qualify as index participation units that have exposure to one or more physical commodities, including, but not limited to, gold and silver on an unlevered basis.

Commodity ETF Relief refers to a decision dated May 18, 2018, that among other things, granted relief to the Fidelity Funds (including the Inflation Focused Fund) to purchase securities of a Commodity ETF provided that such purchase does not result in the Fidelity Fund having more than 10% of its net assets invested in securities of Commodity ETFs.

Policy means the Filer's retail Fund of Fund Significant Trade Policy dated as of May 18, 2018, as the same may be amended, restated, or replaced from time to time and last reviewed by the Fidelity Funds' independent review committee on June 1, 2021.

Three-Tier Structure means the structure where a Fidelity Fund purchases and holds, or will purchase and hold, securities of one or more investment funds, and such investment funds in turn, holds or will hold, more than 10% of its net asset value in securities of one or more investment funds.

Representations

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

1. The Filer is a corporation continued under the laws of the Province of Alberta with its head office located in Toronto, Ontario.
2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in each of the Jurisdictions, as a commodity trading manager in Ontario and as a mutual fund dealer in each of the Jurisdictions.
3. The Filer or an affiliate is, or will be, the investment fund manager of the Fidelity Funds, the Inflation Focused Fund, and the Third-Tier Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Fidelity Funds

5. Each Fidelity Fund, the Inflation Focused Fund and each Third-Tier Fund is, or will be, an open-ended mutual fund or a class of a mutual fund corporation, including an exchange-traded fund or an alternative mutual fund, organized and governed by the laws of a Jurisdiction or the laws of Canada.
6. Each Fidelity Fund, is, or will be, a reporting issuer in one or more Jurisdictions governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.
7. None of the Fidelity Funds are in default of securities legislation in any of the Jurisdictions.

The Inflation Focused Fund

8. The Inflation Focused Fund seeks a real return consistent with reasonable investment risk by using a balanced approach. It invests primarily in a mix of equity and fixed income securities of issuers located anywhere in the world which are expected to be collectively resilient to inflation.
9. While most of the investments of the Inflation Focused Fund will be in securities of government and corporate issuers, the Inflation Focused Fund may invest in underlying funds as well.
10. The Inflation Focused Fund expects to invest in Third-Tier Funds for tactical purposes. These investments will, immediately after purchase, comprise, in aggregate, up to 10% of the net asset value of the Inflation Focused Fund.
11. As a result of market movement, Third-Tier Funds may comprise more than 10% of the net asset value of the Inflation Focused Fund at any time.

Commodity ETFs

12. The Inflation Focused Fund also seeks exposure of approximately 10% of its net assets to commodities and proposes to attain that exposure through investment in Commodity ETFs, pursuant to the Commodity ETF Relief.
13. The Inflation Focused Fund's portfolio manager believes that the intended exposure to commodities can be attained most cost-effectively and efficiently through investment in Commodity ETFs

14. As a result of market movement, the proportion of the Inflation Focused Fund's net assets invested in Commodity ETFs could exceed 10% of the Inflation Focused Fund's net asset value from time to time.
15. The Filer or its affiliates are not the investment fund managers of the Commodity ETFs.
16. The Commodity ETFs do not issue "index participation units" as defined in NI 81-102.

Investment in the Inflation Focused Fund

17. The Filer anticipates that one or more Fidelity Funds will seek to invest a portion of their net assets in securities of the Inflation Focused Fund.
18. Subsection 2.5(2)(b) of NI 81-102 prohibits an investment fund from investing in another investment fund, if at the time of purchase, the other investment fund has more 10% of its net assets invested in securities of other investment funds (the **Multi-Tier Prohibition**).
19. Because the Inflation Focused Fund's investment in securities of the Third Tier Funds and the Commodity ETFs, may each, from time to time exceed 10% of the Inflation Focused Fund's net assets, the Multi-Tier Prohibition will prohibit a Fidelity Fund from investing in the Inflation Focused Fund.
20. An investment by a Fidelity Fund in the Inflation Focused Fund will not fit within the exceptions to the Multi-Tier Prohibition found in subsection 2.5(4) of NI 81-102.

The Multi-Tier FOF Decision

21. A decision was issued to the Filer on October 20, 2020, (the **Multi-Tier FOF Decision**) granting relief from the Multi-Tier Prohibition to permit Three-Tier Structures. Under the Multi-Tier FOF Decision, however, (a) each fund in the Three-Tier Structure must be a Fidelity Fund, for which the Filer or an affiliate acts as investment fund managers and (b) each Fidelity Fund that invests in a mutual fund that invests in Third-Tier Funds must not invest in portfolio securities directly (other than cash equivalents and specified derivatives).
22. A Fidelity Fund cannot therefore rely on the Multi-Tier FOF Decision to invest in the Inflation Focused Fund (a) due to Inflation Focused Fund's investments in Commodity ETFs, which are not managed by the Filer or an affiliate, and (b) due to the fact that a Fidelity Fund may invest in portfolio securities directly.

Generally

23. An investment by a Fidelity Fund in securities of the Inflation Focused Fund would be permitted if the Inflation Focused Fund invested in commodities directly or indirectly, through permitted certificates or specified derivatives. The Filer obtained the Commodity ETF Relief on the basis that Fidelity Funds attaining exposure to commodities through an investment in Commodity ETFs is more efficient and provides greater liquidity to the Fidelity Funds, than investing in commodities directly or through specified derivatives.
24. Each fund-of-fund investment in a Three-Tier Structure is subject to the Policy. The purpose of the Policy is to seek the fair treatment for investors in all investment funds managed by the Filer that are involved in a fund of fund structure by allocating transaction costs fairly between funds. The Policy is designed to isolate the transaction costs associated with significant trades and to prevent the dilution of a fund's assets when these material transactions occur by taking steps to ensure that the applicable fund or funds bear(s) the appropriate economic impact of such transaction costs.
25. The prospectus of each Fidelity Fund in a Three-Tier Structure discloses or will disclose that the Fund invests in securities of one or more mutual funds, and that each such other mutual fund may invest more than 10% of its net asset value in the securities of Third Tier Funds and Commodity ETFs.
26. The prospectus of each Fund in a Three-Tier Structure discloses or will disclose that the accountability for portfolio management is (a) at the level of each other mutual fund with respect to the selection of Third Tier Funds to be purchased by that other mutual fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that other mutual fund and (b) 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.
27. There will be no duplication of fees between each tier of the Three-Tier Structure. The prospectus of each Fidelity Fund will disclose that fees and expenses will not be duplicated as a result of investments in underlying funds.
28. Except for clause 2.5(2)(b), a Fidelity Fund's investment in the Inflation Focused Fund will be made in accordance with the provisions of section 2.5 of NI 81-102.

29. The purchase and holding of Inflation Focused Fund by a Fidelity Fund represent the business judgment of the portfolio manager of the Fidelity Fund and is consistent with, or necessary to meet, the investment objectives of the Fidelity Fund.

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:

- (i) the Filer is the investment fund manager and portfolio manager of each Fidelity Fund but not any Commodity ETF;
- (ii) the investment strategies of each Fidelity Fund that invests in Inflation Focused Fund, as stated in its prospectus (which, in the case of an existing Fidelity Fund, means the prospectus next receipted after the Fidelity Fund becomes part of a Three-Tier Structure), states that the Fidelity Fund will invest in one or more other mutual funds and that each of these other mutual funds may invest more than 10% of its net assets in one or more other investment funds;
- (iii) an investment by the Inflation Focused Fund in Third-Tier Funds, will, immediately after purchase, comprise, in aggregate, no more than 10% of the net asset value of the Inflation Focused Fund, but, as a result of market movement may exceed 10% of the Inflation Focused Fund's net asset value at any time;
- (iv) an investment by the Inflation Focused Fund in Commodity ETFs, will, immediately after purchase, comprise, in aggregate, no more than 10% of the net asset value of the Inflation Focused Fund, but, as a result of market movement may exceed 10% of the Inflation Focused Fund's net asset value at any time;
- (v) the proposed investment of each Fidelity Fund in the Inflation Focused Fund 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;
- (vi) there is no duplication of management fees or administrative fees between each tier of the Three-Tier Structure;
- (vii) 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;
- (viii) 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 Fidelity Fund in a Three-Tier Structure is managed as a stand-alone investment for purposes of these policies and procedures;
- (ix) each Fidelity 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 Fidelity Fund was investing directly in the Third Tier Funds; and
- (x) neither Inflation Focused Fund nor any Third Tier Fund is 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 #: 2021/0493
SEDAR #: 3275967

2.1.4 Arrow Capital Management Inc. and Arrow Global Opportunities Alternative Class

Headnote

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

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

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1.

Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document.

National Instrument 81-102 Investment Funds, ss.15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1),15.8(3)(a.1) and 19.1.

National Instrument 81-106 Investment Fund Continuous Disclosure, ss.4.4 and 17.1.

Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance.

November 23, 2021

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
ARROW CAPITAL MANAGEMENT INC.
(the Filer)

AND

ARROW GLOBAL OPPORTUNITIES ALTERNATIVE CLASS
(AGOC)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of AGOC, of which the Filer is the investment fund manager, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that exempts AGOC from:

- (a) section 4.4 of National Instrument 81-106 - *Investment Fund Continuous Disclosures* (**NI-81-106**) from Form 81-106F1 - *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**);
- (b) items 3.1(7) and 4.1(1) of Part B in respect of the requirement to comply with section 15.3(2) of NI-81-102, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit AGOC to include, in its annual and interim management reports of fund performance (**MRFPs**), past

performance data notwithstanding that such data relates to a period prior to AGOC offering its securities under a simplified prospectus;

- (c) sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of National Instrument 81-102 *Investment Funds (NI-81-102)* to permit AGOC to include performance data in sales communications notwithstanding that such performance data relates to a period prior to AGOC offering its securities under a simplified prospectus; and AGOC has not distributed its securities under a simplified prospectus for 12 consecutive months;
- (d) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)* for the purposes of relief requested herein from Form 81-101F3 *Contents of Fund Facts Document (Form 81-101F3)*;
- (e) items 5(2), 5(3) and 5(4) and Instructions (1) and (5) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of NI 81-102 to permit AGOC to include in its fund facts the past performance data of AGOC notwithstanding that such performance data relates to a period prior to AGOC offering its securities under a simplified prospectus; and AGOC has not distributed its securities under a simplified prospectus for 12 consecutive months;

(collectively, the **Performance Data Relief**).

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

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

Interpretation

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

AIF means an annual information form of a Fund prepared in accordance with Form 81-101 F2 – *Contents of Annual Information Form* under NI 81-101, as the same may be amended from time to time;

Alternative Fund means a fund that is an “alternative mutual fund” under NI 81-102;

NAV means “net asset value”;

Prospectus means a simplified prospectus of a Fund prepared in accordance with Form 81-101 F1 – *Contents of Simplified Prospectus* under NI 81-101 as the same may be amended from time to time;

Representations

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

The Filer

1. The Filer is a corporation existing under the laws of Ontario having its registered head office in Toronto, Ontario.
2. The Filer is the investment fund manager and portfolio manager of the Fund.
3. The Filer is registered in the following categories in the Canadian Jurisdictions as indicated below:
 - (a) Ontario: Portfolio Manager (**PM**), Investment Fund Manager (**IFM**); Exempt Market Dealer (**EMD**) and Commodity Trading Manager under the *Commodity Futures Act* (Ontario);
 - (b) Alberta: EMD;
 - (c) British Columbia: EMD;
 - (d) Quebec: EMD and IFM; and
 - (e) Newfoundland and Labrador: IFM.
4. The Filer is not in default of securities legislation in any of the Canadian Jurisdictions.

AGOC

5. AGOC will be an open-ended public Alternative Fund governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.
6. AGOC is organized as part of a mutual fund corporation established under the laws of the Province of Ontario.
7. AGOC will distribute securities in each of the Canadian Jurisdictions pursuant to a Prospectus, AIF and fund facts documents, prepared and filed in accordance with NI 81-101 and accordingly, the Fund, is, or will be, a reporting issuer in the Canadian Jurisdictions where the Performance Data Relief is relied upon.
8. AGOC is not in default of applicable securities legislation in any of the Canadian Jurisdictions.
9. AGOC, a class of shares of a mutual fund corporation, was established on June 15, 2020. AGOC currently has Series A, F and I shares issued and outstanding. Series A, F and I Shares of AGOC were first issued on June 30, 2020.
10. The investment objective of AGOC is to achieve superior capital appreciation over both short and long term horizons primarily through the selection and management of long and short positions in global equity securities and equity derivative securities.
11. Since the inception of each series of AGOC, shares of each series of AGOC have only been distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in the Canadian Jurisdictions.

Exemption Sought

12. The Filer intends to qualify for distribution under a prospectus each of the series of shares of AGOC.
13. Since inception, AGOC has prepared annual and interim financial statements in accordance with NI 81-106.
14. Since inception, AGOC has not deviated from the investment restrictions contained in NI 81-102 for Alternative Funds, which are described in the offering memorandum of AGOC.
15. AGOC will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer. As a result of AGOC becoming a reporting issuer:
 - (a) AGOC's investment objectives will not change, other than to provide additional detail as required by NI 81-101;
 - (b) The management fee charged to AGOC by the Filer will not change;
 - (c) The day-to-day administration of AGOC will not change, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which will impact the portfolio management of AGOC); and
 - (d) The management expense ratios of each of the series of shares of AGOC (excluding performance fees) are not expected to increase by a material amount.
16. The Filer proposes to present the performance data of each of the series of shares of AGOC for the time period since the inception of AGOC in sales communications.
17. Without the Performance Data Relief, sales communications pertaining to AGOC cannot include performance data of AGOC that relate to a period prior to it becoming a reporting issuer.
18. Without the Performance Data Relief, sales communications pertaining to AGOC would not be permitted to include performance data until AGOC has distributed securities under a simplified prospectus for 12 consecutive months.
19. As a reporting issuer, AGOC will be required under NI 81-101 to prepare and file Fund Facts for each series of shares offered.
20. The Filer proposes to include in the Fund Facts for each of the series of shares of AGOC past performance data in the disclosure required by Items 5(2), 5(3) and 5(4) under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to AGOC becoming a reporting issuer in any of the Canadian Jurisdictions.
21. Without the Performance Data Relief, the Fund Facts for each of the series of shares of AGOC cannot include performance data that relate to a period prior to AGOC becoming a reporting issuer.

22. As a reporting issuer, AGOC will be required under NI 81-106 to prepare, file and send MRFPs.
23. Without the Performance Data Relief, the MRFPs of AGOC cannot include financial highlights and performance data of AGOC that relate to a period prior to it becoming a reporting issuer.
24. The performance data and other financial data of AGOC for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors in making an informed decision on whether to purchase units of AGOC.
25. Without the Performance Data Relief, investors in AGOC following AGOC becoming a reporting issuer will have no information about AGOC's past performance or financial highlights on which to base their investment decision.

Decision

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

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

1. any sales communication, any MRFPs and any Fund Facts that contain performance data of AGOC relating to a period prior to when AGOC was a reporting issuer discloses:
 - (a) that AGOC was not a reporting issuer during such period;
 - (b) that the expenses of AGOC would have been higher during such period had AGOC been subject to the additional regulatory requirements applicable to a reporting issuer;
 - (c) performance data of AGOC for 10, 5, 3 and one year periods, when applicable;
 - (d) that the financial statements of AGOC are posted on AGOC's website and are available to investors upon request;
2. the information contained under the heading "Fund Expenses Indirectly Borne by Investors" in Part B of the simplified prospectus of AGOC based on the management expense ratio (**MER**) for AGOC for the financial year ended December 31, 2021 be accompanied by disclosure that:
 - (a) the information is based on the MER of AGOC for its last completed financial year when its shares were offered privately during part of such financial year;
 - (b) the MER of AGOC may increase as a result of AGOC offering its shares under the simplified prospectus; and
3. the Filer posts the financial statements of AGOC for the period ended December 31, 2020 and June 30, 2021 on AGOC's website and makes those financial statements available to investors upon request.

"Darren McKall"

Manager

Investment Funds & Structured Products Branch

Ontario Securities Commission

Application File #: 2021/0556

SEDAR #: 3314519

2.2 Orders

2.2.1 Ontario Instrument 44-501 Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)

Ontario Securities Commission

Ontario Instrument 44-501

***Exemption from
Certain Prospectus Requirements for Well-known Seasoned Issuers
(Interim Class Order)***

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective January 4, 2022, Ontario Instrument 44-501 entitled “Exemption from Certain Prospectus Requirements for Canadian Well-known Seasoned Issuers (Interim Class Order)” is made.

December 6, 2021

“Grant Vingo”
Chair
Ontario Securities Commission

“Wendy Berman”
Vice-Chair
Ontario Securities Commission

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 44-501

***Exemption from
Certain Prospectus Requirements for Well-known Seasoned Issuers
(Interim Class Order)
(the Order)***

Interpretation

1. In this Order:

“**Act**” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

“**Form 44-101F1**” means Form 44-101F1 *Short Form Prospectus*;

“**ineligible issuer**” means an issuer to which any of the following apply:

- (a) the issuer has not filed with the securities regulator or securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction;
- (b) the issuer is, or during the past three years the issuer or any of its predecessors was, either of the following:
 - (i) an issuer whose operations have ceased; or
 - (ii) an issuer whose principal asset is cash, cash equivalents, or its exchange listing, including, without limitation, a capital pool company, a special purpose acquisition company, or a growth acquisition corporation or any similar entity, as defined in the applicable stock exchange rules or policies;
- (c) the issuer has in the past three years become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets;
- (d) the issuer or any entity that at the time was a subsidiary of the issuer, was the subject of any penalties or sanctions, including restrictions on the use by the issuer of any type of prospectus, or exemption, imposed by a court relating to securities legislation or by a securities regulatory authority within the past three years;
- (e) the issuer has been the subject of any cease trade order in any Canadian jurisdiction or any suspension of trading under section 12(k) of the 1934 Act within the past three years;

“**NI 41-101**” means National Instrument 41-101 *General Prospectus Requirements*;

“**NI 44-101**” means National Instrument 44-101 *Short Form Prospectus Distributions*;

“**NI 44-102**” means National Instrument 44-102 *Shelf Distributions*;

“**public float**” has the meaning given in National Instrument 71-101 *The Multijurisdictional Disclosure System*;

“**well-known seasoned issuer**” or “**WKS**” means an issuer that has either of the following:

- (a) outstanding listed equity securities that have a public float of C\$500,000,000;
- (b) at least C\$1,000,000,000 aggregate amount of non-convertible securities, other than equity securities, distributed under a prospectus in primary offerings for cash, not exchange, in the last three years.

2. Terms defined in the Act, National Instrument 14-101 *Definitions*, NI 41-101, NI 44-101, NI 44-102, and National Instrument 51-102 *Continuous Disclosure Obligations*, have the same meaning if used in this Order, unless otherwise defined.

Background

3. Staff of the Commission have received submissions expressing concern that certain prospectus requirements in the base shelf prospectus context create unnecessary regulatory burden for large, established reporting issuers that have strong disclosure records.
4. Similar comments were also made by the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**). The Taskforce Final Report included a recommendation that the Commission develop a WKSJ model in Ontario to streamline the prospectus process for issuers that meet certain eligibility criteria.¹
5. In the United States, a regime with accommodations for similar well-known seasoned issuers is codified in the *General Rules and Regulations* under the 1933 Act and has been in regular use for several years.
6. Relief from section 53 of the Act will permit issuers who satisfy the conditions of the Order to file a final short form base shelf prospectus as the first public step in an offering. Issuers who qualify will also be exempt from certain disclosure requirements relating to the final short form base shelf prospectus.

Class Orders under the Securities Act

7. Under subsection 143.11(2) of the Act, if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the Act.
8. The Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, the exemptions set out in paragraphs 10, 11, and 12 below, subject to the conditions of this Order.

Exemption from Certain Prospectus Requirements

9. Consequently, this Order provides for the temporary exemptions listed below.
10. An issuer is exempt from the requirement to file and obtain a receipt for a preliminary prospectus in section 53 of the Act in connection with the filing of a base shelf prospectus provided that, at the time the issuer files the base shelf prospectus, it satisfies all of the following:
 - (a) the issuer meets the definition of a WKSJ as of a date within 60 days preceding the date the issuer files the base shelf prospectus;
 - (b) the issuer is and has been a reporting issuer in at least one jurisdiction of Canada for 12 months;
 - (c) the issuer is eligible to file a short form prospectus under sections 2.2, 2.3, 2.4 or 2.5 of NI 44-101;
 - (d) either
 - (i) the issuer has satisfied the requirements to be qualified to file a short form prospectus under section 2.8 of NI 44-101 or
 - (ii) at least ten business days have passed since the issuer filed the notice under section 2.8 of NI 44-101;
 - (e) if the issuer has mining operations,
 - (i) the issuer's most recent audited financial statements disclose
 - (A) gross revenue, derived from mining operations, of at least C\$55,000,000 for the issuer's most recently completed financial year, and
 - (B) gross revenue, derived from mining operations, of at least C\$165,000,000 in the aggregate for the issuer's 3 most recently completed financial years;

¹ See Recommendation No. 17 in the Taskforce Final Report, available at <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021>

- (ii) the issuer files any technical reports that would be required to be filed with a preliminary short form prospectus under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
 - (f) the issuer is not an ineligible issuer;
 - (g) the issuer is not an investment fund;
 - (h) the issuer has no outstanding asset-backed securities;
 - (i) the base shelf prospectus
 - (i) complies with the requirements of NI 41-101, NI 44-101, and NI 44-102 (except as provided in paragraphs 11 and 12 below),
 - (ii) does not qualify the distribution of any asset-backed security,
 - (iii) includes as part of the basic disclosure about the distribution the following statement on the cover page: "filed in reliance on an exemption from the preliminary base shelf prospectus requirement for a well-known seasoned issuer", and
 - (iv) includes cover page disclosure confirming that the issuer qualifies as a WKSJ and the date of that determination;
 - (j) the issuer pays the fee otherwise required for the filing of a preliminary short form prospectus;
 - (k) the issuer delivers to the regulator any personal information forms that would be required under section 4.1 of NI 44-101 if the issuer were filing a preliminary short form prospectus;
 - (l) the issuer files, in place of a preliminary base shelf prospectus, a letter that
 - (i) is dated as of the date of the base shelf prospectus described in paragraph (i) above,
 - (ii) is executed on behalf of the issuer by one of its executive officers or directors,
 - (iii) states that the issuer is relying on this Order,
 - (iv) sets out, as applicable, the public float of outstanding listed equity securities or aggregate amount of non-convertible securities, other than equity securities, that the issuer has distributed under a prospectus within the last three years that satisfy the definition of WKSJ and the date of that determination,
 - (v) if the issuer has mining operations, describes the basis on which it satisfies the requirement of paragraph (e) above,
 - (vi) specifies the qualification criteria that the issuer is relying on to satisfy the requirement of paragraph (c) above and certifies that those criteria have been satisfied,
 - (vii) certifies that the issuer has satisfied the requirements of paragraphs (a) to (k) above.
11. An issuer that satisfies the conditions set out in paragraph 10 is exempt from the following requirements in respect of the base shelf prospectus and any supplement to the base shelf prospectus
- (a) the requirement in section 5.4 of NI 44-102 to limit distributions under the base shelf prospectus to the dollar value the issuer reasonably expects to distribute within 25 months after the date of the receipt for the base shelf prospectus,
 - (b) the requirement in item 5 of section 5.5 of NI 44-102 to state the aggregate dollar amount of securities that may be raised under the base shelf prospectus, and
 - (c) the requirement in item 1.4 of Form 44-101F1 to include the number of securities qualified for distribution under the base shelf prospectus.
12. An issuer that satisfies the conditions set out in paragraph 10 is exempt from the following requirements in respect of the base shelf prospectus but not any supplement to the base shelf prospectus
- (a) the requirements in item 5 of Form 44-101F1 to include a plan of distribution, other than to indicate that the plan of distribution will be described in the supplement for any distribution of securities,

- (b) the requirements in item 7 of Form 44-101F1 to describe the securities being distributed, other than as necessary to identify the types of securities, and
- (c) the requirements in item 8 of Form 44-101F1 to describe any selling securityholders.

Effective date and term

13. This decision comes into effect on January 4, 2022 and will cease to be effective on the earlier of the following:
- (a) July 4, 2023, unless extended by the Commission;
 - (b) the effective date of an amendment to NI 44-102 that addresses substantially the same subject matter as this Order.

2.2.2 Nasdaq CXC Limited and Ensoleillement Inc. – ss. 21, 144

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

AND

IN THE MATTER OF
NASDAQ CXC LIMITED AND
ENSOLEILLEMENT INC.

ORDER
(Sections 21 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated December 21, 2017, which was varied and restated on April 20, 2018, February 8, 2019 and August 31, 2020, recognizing Ensoleillement Inc. (**CXCH**) and Nasdaq CXC Limited (**Nasdaq Canada**) as exchanges pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS the Recognition Order reflects certain operational arrangements (**NFI Access Arrangements**) between Nasdaq Canada and its U.S. affiliate Execution Access, LLC whereby Nasdaq Canada provides Canadian permitted clients access to the Nasdaq Fixed Income trading system (**NFI**) operated by Execution Access, LLC for purposes of trading non-Canadian fixed income securities;

AND WHEREAS Nasdaq, Inc., the ultimate parent company of Nasdaq Canada and Execution Access, LLC, announced in February 2021 that it had entered into a definitive agreement to sell NFI (**NFI Sale**);

AND WHEREAS as a result of the NFI Sale on June 25, 2021, the NFI Access Arrangements were terminated effective July 22, 2021 (**Effective Date**);

AND WHEREAS the Commission has received an application (**Application**) under section 144 of the Act to vary the Recognition Order to reflect the termination of the NFI Access Arrangements as of the Effective Date;

AND WHEREAS based on the Application and the representations that CXCH and Nasdaq Canada have made to the Commission, the Commission has determined that it is not prejudicial to the public interest to vary the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Recognition Order is varied as follows:

- a) by deleting the third recital “AND WHEREAS Nasdaq Canada separately provides access to Canadian permitted clients wishing to use Nasdaq Fixed Income (NFI), a fixed income trading system for trading in U.S. fixed income securities;” and
- b) by deleting from Section 9 of Schedule 2 to the Recognition Order the following “, except that Canadian “permitted clients” as such term is defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations will have separate access to Nasdaq Fixed Income”.

DATED this 2nd day of December, 2021.

“Cecilia Williams”

“Mary Anne De Monte-Whelan”

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Metalco Manufacturing Inc.	November 3, 2021	December 3, 2021
Avisa Diagnostics Inc.	December 3, 2021	
ESG Capital 1 Inc.	December 3, 2021	
High Fusion Inc.	December 3, 2021	
BYT Holdings Ltd.	December 3, 2021	
Cuda Oil and Gas Inc.	December 6, 2021	
Global Health Clinics Ltd.	December 3, 2021	
GoldHaven Resources Corp.	December 3, 2021	
XRApplied Technologies Inc.	December 3, 2021	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
GreenBank Capital Inc.	November 30, 2021	

4.2.2 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Akumin Inc.	August 20, 2021	
Agrios Global Holdings Ltd.	September 17, 2020	
Reservoir Capital Corp.	May 5, 2021	
Helix BioPharma Corp.	November 1, 2021	
KetamineOne Capital Limited	November 2, 2021	
Cronos Group Inc.	November 16, 2021	
NextPoint Financial Inc.	November 16, 2021	
GreenBank Capital Inc.	November 30, 2021	

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Chapter 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).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:

Addenda HumaniT Balanced Fund
Addenda HumaniT Balanced Growth Fund
Addenda HumaniT Balanced Moderate Fund
Principal Regulator – Quebec

Type and Date:

Preliminary Simplified Prospectus dated Nov 25, 2021
NP 11-202 Preliminary Receipt dated Nov 30, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3308140

Issuer Name:

BMG BullionFund
BMG Gold BullionFund
BMG Silver BullionFund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 26, 2021
NP 11-202 Final Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3292928

Issuer Name:

Ninepoint Convertible Securities Fund
Ninepoint Focused Global Dividend Fund
Ninepoint Resource Fund
Ninepoint Resource Fund Class
Ninepoint Return Advantaged U.S. Equity Index Fund
Ninepoint Risk Advantaged U.S. Equity Index Fund
Ninepoint Silver Equities Fund
Principal Regulator – Ontario

Type and Date:

Combined Preliminary and Pro Forma Simplified Prospectus dated Nov 29, 2021
NP 11-202 Final Receipt dated Dec 6, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3292499

Issuer Name:

Fidelity All-in-One Conservative ETF Fund
Fidelity All-in-One Equity ETF Fund
Fidelity Global Developed Markets Sovereign Bond Index
Hedged Multi-Asset Base Fund
Fidelity Global Inflation-Linked Bond Index Hedged Multi-Asset Base Fund
Fidelity Tactical Yield Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Dec 1, 2021
NP 11-202 Preliminary Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3313986

Issuer Name:

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

Type and Date:

Preliminary Simplified Prospectus dated Dec 3, 2021
NP 11-202 Preliminary Receipt dated Dec 3, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3314721

Issuer Name:

Horizons Tactical Absolute Return Bond ETF
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Nov 30, 2021
NP 11-202 Final Receipt dated Dec 3, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3292355

Issuer Name:

EdgePoint Monthly Income Portfolio
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
November 30, 2021

NP 11-202 Final Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3286466

Issuer Name:

Ninepoint Bitcoin ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Nov 30, 2021
NP 11-202 Preliminary Receipt dated Dec 1, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3313566

Issuer Name:

CI Galaxy Multi-Crypto ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Dec 2, 2021
NP 11-202 Preliminary Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3314453

Issuer Name:

Purpose Structured Equity Yield Portfolio
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
November 29, 2021

NP 11-202 Final Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3187795

Issuer Name:

CIBC Short-Term Income Fund
 CIBC Canadian Bond Fund
 CIBC Monthly Income Fund
 CIBC Global Bond Fund
 CIBC Global Monthly Income Fund
 CIBC Balanced Fund
 CIBC Dividend Income Fund
 CIBC Dividend Growth Fund
 CIBC Canadian Equity Fund
 CIBC Canadian Small-Cap Fund
 CIBC U.S. Equity Fund
 CIBC U.S. Small Companies Fund
 CIBC Global Equity Fund
 CIBC International Equity Fund
 CIBC European Equity Fund
 CIBC Emerging Markets Fund
 CIBC Asia Pacific Fund
 CIBC International Small Companies Fund
 CIBC Financial Companies Fund
 CIBC Canadian Resources Fund
 CIBC Energy Fund
 CIBC Canadian Real Estate Fund
 CIBC Precious Metals Fund
 CIBC Global Technology Fund
 CIBC Canadian Short-Term Bond Index Fund
 CIBC Canadian Bond Index Fund
 CIBC Global Bond Index Fund
 CIBC Balanced Index Fund
 CIBC Canadian Index Fund
 CIBC U.S. Broad Market Index Fund
 CIBC U.S. Index Fund
 CIBC International Index Fund
 CIBC European Index Fund
 CIBC Emerging Markets Index Fund
 CIBC Asia Pacific Index Fund
 CIBC Nasdaq Index Fund
 CIBC Sustainable Canadian Core Plus Bond Fund
 CIBC Sustainable Canadian Equity Fund
 CIBC Sustainable Global Equity Fund
 CIBC Sustainable Conservative Balanced Solution
 CIBC Sustainable Balanced Solution
 CIBC Sustainable Balanced Growth Solution
 CIBC Smart Income Solution
 CIBC Smart Balanced Income Solution
 CIBC Smart Balanced Solution
 CIBC Smart Balanced Growth Solution
 CIBC Smart Growth Solution
 CIBC Managed Income Portfolio
 CIBC Managed Income Plus Portfolio
 CIBC Managed Balanced Portfolio
 CIBC Managed Monthly Income Balanced Portfolio
 CIBC Managed Balanced Growth Portfolio
 CIBC Managed Growth Portfolio
 CIBC Managed Aggressive Growth Portfolio
 CIBC U.S. Dollar Managed Income Portfolio
 CIBC U.S. Dollar Managed Balanced Portfolio
 CIBC U.S. Dollar Managed Growth Portfolio
 CIBC Conservative Passive Portfolio
 CIBC Balanced Passive Portfolio
 CIBC Balanced Growth Passive Portfolio
 Principal Regulator - Ontario

Type and Date:

Amendment # to Final Simplified Prospectus dated December 2, 2021

NP 11-202 Final Receipt dated Dec 6, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3206951

Issuer Name:

BMO Private U.S. Equity Portfolio
BMO Private International Equity Portfolio
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
December 3, 2021

NP 11-202 Final Receipt dated Dec 6, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3200345

Issuer Name:

AGFIQ US Market Neutral Anti-Beta CAD-Hedged ETF
Principal Regulator - Ontario

Type and Date:

Amendment #2 to Final Long Form Prospectus dated
November 29, 2021

NP 11-202 Final Receipt dated Dec 1, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3115068

Issuer Name:

CI Global Balanced Yield Private Pool Class
CI Balanced Yield Private Pool Class
CI Canadian Equity Income Private Pool Class
CI U.S. Equity Private Pool Class
CI U.S. Equity Currency Neutral Private Pool Class
CI Global Equity Income Private Pool Class
CI International Equity Income Private Pool Class
CI Conservative Balanced Income Class
CI Conservative Balanced Income Fund
CI Canadian All Cap Equity Income Class
CI Canadian Equity Income Fund
CI Global Dividend Opportunities Class
CI Global Value Balanced Fund
CI Corporate Bond Class CI High Yield Bond Class
CI Global Investment Grade Class (formerly, CI Global
Investment Grade Private Pool Class)
CI Canadian Equity Income Class
CI Canadian Small/Mid Cap Equity Income Fund
CI U.S. Equity Class
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
December 1, 2021

NP 11-202 Final Receipt dated Dec 3, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3225323

Issuer Name:

CI Enhanced Short Duration Bond Fund
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
December 1, 2021

NP 11-202 Final Receipt dated Dec 2, 2021

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3192728

Issuer Name:

Dividend Growth Split Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus (NI 44-102) dated November 30, 2021

NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

Maximum Offerings: \$300,000,000 Preferred Shares and Class A Shares

Price: \$10.10 Preferred Shares and of the \$6.99 Class A Shares

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3313619

Issuer Name:

TDb Split Corp.
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus (NI 44-102) dated December 1, 2021

NP 11-202 Receipt dated December 2, 2021

Offering Price and Description:

\$150,000,000 Priority Equity Shares and Class A Shares

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3308725

Issuer Name:

Dividend Select 15 Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus (NI 44-102) dated December 6, 2021

NP 11-202 Preliminary Receipt dated December 6, 2021

Offering Price and Description:

Maximum Offerings: \$60,000,000 Equity Shares

Price: \$9.87 per Equity

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3315242

Issuer Name:

Life & Banc Split Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus (NI 44-102) dated November 30, 2021

NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

Maximum Offerings: \$300,000,000 Preferred Shares and Class A Shares

Price: \$10.25 per Preferred Shares and \$10.01 per Class A Shares

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3313623

NON-INVESTMENT FUNDS

Issuer Name:

Atmofizer Technologies Inc. (formerly Consolidated HCI Holdings Corporation)
Principal Regulator - British Columbia

Type and Date:

Preliminary Shelf Prospectus dated December 3, 2021
NP 11-202 Preliminary Receipt dated December 3, 2021

Offering Price and Description:

\$125,000,000.00

Common Shares

Warrants

Units

Debt Securities

Subscription Receipts

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3314710

Issuer Name:

EPCOR Utilities Inc.
Principal Regulator - Alberta

Type and Date:

Preliminary Shelf Prospectus dated November 30, 2021
NP 11-202 Preliminary Receipt dated November 30, 2021

Offering Price and Description:

\$2,000,000,000.00 - Medium Term Note Debentures (unsecured)

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.

CIBC World Markets Inc.

Merrill Lynch Canada Inc.

MUFG Securities (Canada), Ltd.

National Bank Financial Inc.

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

Wells Fargo Securities Canada, Ltd.

Promoter(s):

-

Project #3313506

Issuer Name:

Gander Gold Corporation
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated December 2, 2021
NP 11-202 Preliminary Receipt dated December 3, 2021

Offering Price and Description:

27,231,667 COMMON SHARES ISSUABLE UPON THE EXERCISE OF 27,231,667 PREVIOUSLY ISSUED SPECIAL WARRANT

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3314577

Issuer Name:

Intact Financial Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated November 30, 2021
NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

\$10,000,000,000.00

Debt Securities

Class A Shares

Common Shares

Subscription Receipts

Warrants

Share Purchase Contracts

Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3313602

Issuer Name:

Kingsview Minerals Ltd.
Principal Regulator - Ontario

Type and Date:

Amendment dated November 30, 2021 to Preliminary Long Form Prospectus dated August 27, 2021

NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

No securities are being offered pursuant to this Prospectus.

Underwriter(s) or Distributor(s):

-

Promoter(s):

James Macintosh

Project #3271166

Issuer Name:

LithiumBank Resources Corp.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated November 29, 2021

NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

0.00

Underwriter(s) or Distributor(s):

-

Promoter(s):

Robert Shewchuk

Project #3312941

Issuer Name:

Nova Net Lease REIT
Principal Regulator - Ontario

Type and Date:

Amendment dated December 3, 2021 to Preliminary Long Form Prospectus dated November 26, 2021

NP 11-202 Preliminary Receipt dated December 3, 2021

Offering Price and Description:

Minimum Offering: US\$3,500,000 or 2,800,000 Units
Maximum Offering: US\$6,000,000 or 4,800,000 Units
US\$1.25 per Unit

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.
ECHELON WEALTH PARTNERS
HAYWOOD SECURITIES INC.

Promoter(s):

-

Project #3308974

Issuer Name:

PrairieSky Royalty Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated December 3, 2021

NP 11-202 Preliminary Receipt dated December 3, 2021

Offering Price and Description:

\$200,062,000.00
14,930,000 Common Shares
Price: \$13.40 per Common Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3312289

Issuer Name:

Prudent Minerals Corp.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated November 30, 2021

NP 11-202 Preliminary Receipt dated December 2, 2021

Offering Price and Description:

0.00

Underwriter(s) or Distributor(s):

-

Promoter(s):

Brett R. Matich
Alexander B. Helm

Project #3314072

Issuer Name:

Solar Alliance Energy Inc.

Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated December 3, 2021

NP 11-202 Preliminary Receipt dated December 6, 2021

Offering Price and Description:

C\$50,000,000.00

Common Shares

Warrants

Subscription Receipts

Units

Debt Securities

Share Purchase Contracts

Rights

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3306723

Issuer Name:

St Charles Resources Inc.
Principal Regulator - Ontario

Type and Date:

Preliminary CPC Prospectus dated November 29, 2021

NP 11-202 Preliminary Receipt dated November 30, 2021

Offering Price and Description:

Minimum Offering: \$500,000.00 or 5,000,000 Common Shares

Maximum Offering: \$1,000,000.00 or 10,000,000 Common Shares

Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

iA Private Wealth Inc.

Promoter(s):

-

Project #3312798

Issuer Name:

Starlight Western Canada Multi-Family (No. 2) Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated November 30, 2021

NP 11-202 Preliminary Receipt dated December 1, 2021

Offering Price and Description:

Minimum: \$42,000,000.00

Maximum: \$100,000,000.00 of Class A Units and/or Class B Units and/or Class C Units

Price: \$10.00 per Class A Unit \$10.00 per Class B Unit \$10.00 per Class C Unit

Underwriter(s) or Distributor(s):

CIBC WORLD MARKETS INC.

WELLINGTON-ALTUS PRIVATE WEALTH INC.

SCOTIA CAPITAL INC.

CANACCORD GENUITY CORP.

BMO NESBITT BURNS INC.

NATIONAL BANK FINANCIAL INC.

RICHARDSON WEALTH LIMITED

DESJARDINS SECURITIES INC.

ECHELON WEALTH PARTNERS INC.

IA PRIVATE WEALTH INC.

LAURENTIAN BANK SECURITIES INC.

RAYMOND JAMES LTD.

Promoter(s):

STARLIGHT GROUP PROPERTY HOLDINGS INC.

Project #3313390

Issuer Name:

Aclara Resources Inc.

Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated December 2, 2021

NP 11-202 Receipt dated December 2, 2021

Offering Price and Description:

\$59,500,000.00

35,000,000 Common Shares

Price: \$1.70 per Offered Share

Underwriter(s) or Distributor(s):

RBC DOMINION SECURITIES INC.

CANACCORD GENUITY CORP.

BMO NESBITT BURNS INC.

MERRILL LYNCH CANADA INC.

SCOTIA CAPITAL INC.

SPROTT CAPITAL PARTNERS LP, by its general partner,

SPROTT CAPITAL PARTNERS GP INC.

Promoter(s):

HOCHSCHILD MINING PLC

Project #3289081

Issuer Name:

Aclara Resources Inc.

Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated December 2, 2021

NP 11-202 Receipt dated December 2, 2021

Offering Price and Description:

Distribution in specie by Hochschild Mining PLC of 70,606,502 Common Shares of Aclara Resources Inc.

Underwriter(s) or Distributor(s):

-

Promoter(s):

HOCHSCHILD MINING PLC

Project #3290366

Issuer Name:

Alpha Lithium Corporation

Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated December 3, 2021

NP 11-202 Receipt dated December 3, 2021

Offering Price and Description:

\$21,750,000.00 - 21,750,000 Units Consisting of 21,750,000

Common Shares and 10,875,000 Warrants

Price: \$1.00 per Unit

Underwriter(s) or Distributor(s):

Echelon Wealth Partners Inc.

Promoter(s):

-

Project #3301019

Issuer Name:

BSR Real Estate Investment Trust

Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated December 1, 2021

NP 11-202 Receipt dated December 1, 2021

Offering Price and Description:

US\$500,000,000.00

Units

Debt Securities

Warrants

Subscription Receipts

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3305604

Issuer Name:

Chesswood Group Limited
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated November 30, 2021
NP 11-202 Receipt dated December 1, 2021

Offering Price and Description:

\$500,000,000.00
Debt Securities (unsecured)
Common Shares
Warrants
Subscription Receipts
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3300538

Issuer Name:

Critical Elements Lithium Corporation
Principal Regulator - Quebec

Type and Date:

Final Short Form Prospectus dated November 29, 2021
NP 11-202 Receipt dated November 30, 2021

Offering Price and Description:

\$26,101,250.00 - 14,915,000 Units
PRICE: \$1.75 per Unit

Underwriter(s) or Distributor(s):

CANTOR FITZGERALD CANADA CORPORATION
STIFEL NICOLAUS CANADA INC.
PARADIGM CAPITAL INC.
BEACON SECURITIES LIMITED
RED CLOUD SECURITIES INC.

Promoter(s):

-

Project #3299240

Issuer Name:

Deveron Corp. (formerly, Deveron UAS Corp.)
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated November 30, 2021
NP 11-202 Receipt dated November 30, 2021

Offering Price and Description:

\$50,000,000.00
Common Shares
Debt Securities
Warrants
Subscription Receipts
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3291854

Issuer Name:

Dream Impact Trust (formerly Dream Hard Asset
Alternatives Trust)
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated December 2, 2021
NP 11-202 Receipt dated December 3, 2021

Offering Price and Description:

\$500,000,000.00
Units
Subscription Receipts
Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

DREAM ASSET MANAGEMENT CORPORATION
Project #3304998

Issuer Name:

Field Trip Health Ltd.
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated December 3, 2021
NP 11-202 Receipt dated December 6, 2021

Offering Price and Description:

\$150,000,000.00
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3304644

Issuer Name:

First Cobalt Corp.
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated November 30, 2021 to Final Shelf
Prospectus dated November 26, 2020
NP 11-202 Receipt dated November 30, 2021

Offering Price and Description:

\$70,000,000.00
Common Shares
Warrants
Subscription Receipts
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3138680

Issuer Name:

Frontenac Mortgage Investment Corporation
Principal Regulator - Ontario

Type and Date:

Amendment #6 dated November 30, 2021 to Final Long
Form Prospectus dated June 7, 2021
NP 11-202 Receipt dated December 1, 2021

Offering Price and Description:

Qualifying for Distribution an Unlimited Number of Common
Shares

Price: \$30.00 per Common Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

W.A. ROBINSON ASSET MANAGEMENT LTD.

Project #3209666

Issuer Name:

Giyani Metals Corp.
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated November 30, 2021
NP 11-202 Receipt dated November 30, 2021

Offering Price and Description:

C\$10,000,012.00 - 22,727,300 Units
C\$0.44 per Unit

Underwriter(s) or Distributor(s):

CORMARK SECURITIES INC.
BEACON SECURITIES LIMITED

Promoter(s):

-

Project #3298813

Issuer Name:

Hardwoods Distribution Inc.
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated November 29, 2021
NP 11-202 Receipt dated November 30, 2021

Offering Price and Description:

\$87,503,400.00 - 2,023,200 Common Shares
Price: \$43.25 per Common Share

Underwriter(s) or Distributor(s):

Cormark Securities Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
Acumen Capital Finance Partners Limited
Canaccord Genuity Corp.
BMO Nesbitt Burns Inc.

Promoter(s):

-

Project #3303366

Issuer Name:

Jushi Holdings Inc.
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated December 2, 2021
NP 11-202 Receipt dated December 3, 2021

Offering Price and Description:

C\$500,000,000.00
Subordinate Voting Shares
Warrants
Subscription Receipts
Debt Securities
Convertible Securities
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3300094

Issuer Name:

Morguard Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated December 1, 2021
NP 11-202 Receipt dated December 1, 2021

Offering Price and Description:

\$150,000,000.00 - 5.25% Convertible Unsecured
Subordinated Debentures
Price: \$1,000 per Debenture

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3303336

Issuer Name:

Sigma Lithium Corporation
Principal Regulator - British Columbia

Type and Date:

Final Shelf Prospectus dated December 1, 2021
NP 11-202 Receipt dated December 2, 2021

Offering Price and Description:

US\$250,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Warrants

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3296743

Issuer Name:

TMX Group Limited
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated December 1, 2021
NP 11-202 Receipt dated December 1, 2021

Offering Price and Description:

\$2,000,000,000.00
Common Shares
Preference Shares
Debt Securities
Subscription Receipts
Warrants
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3300908

Issuer Name:

TUGA Innovations, Inc.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated December 1, 2021
NP 11-202 Receipt dated December 2, 2021

Offering Price and Description:

11,118,750 Common Shares and 5,559,375 Warrants
issuable upon deemed conversion of 11,118,750
outstanding Subscription Receipts
Price of \$0.40 per Subscription Receipt

Underwriter(s) or Distributor(s):

-

Promoter(s):

John Hagie
Project #3284994

Issuer Name:

UniDoc Health Corp.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated December 2, 2021
NP 11-202 Receipt dated December 3, 2021

Offering Price and Description:

0.00

Underwriter(s) or Distributor(s):

RESEARCH CAPITAL CORP.

Promoter(s):

Antonio Baldassarre
Project #3246089

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Bitbuy Technologies Inc.	Restricted Dealer	November 30, 2021
New Registration	Samara Multi-Family Office Inc. / Samara Bureau multi-familial Inc.	Portfolio Manager and Exempt Market Dealer	December 3, 2021
New Registration	OceanFront Investment Counsel Inc.	Portfolio Manager	December 6, 2021
Consent to Suspension (Pending Surrender)	18 Asset Management Inc	Portfolio Manager	December 6, 2021
Voluntary Surrender	AFINA Capital Management Inc.	Portfolio Manager	December 6, 2021

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited and Ensoleillement Inc. – Variation of the Recognition Order – Notice of Commission Variation Order

VARIATION OF THE RECOGNITION ORDER OF NASDAQ CXC LIMITED AND ENSOLEILLEMENT INC.

NOTICE OF COMMISSION VARIATION ORDER

On December 2, 2021, the Commission issued an order pursuant to section 144 of the *Securities Act* (Ontario) varying the current recognition order of Nasdaq CXC Limited (**Nasdaq Canada**) and its parent holding company, Ensoleillement Inc. (**CXCH**) to:

- Remove from the recitals to the recognition order the statement that Nasdaq Canada separately provides access to Canadian permitted clients wishing to use Nasdaq Fixed Income (**NFI**); and
- Delete from the end of Section 9 of Schedule 2 of the recognition order the references to Canadian “permitted clients” having separate access to NFI.

A copy of the [variation order](#) is published in Chapter 2 of this bulletin.

13.2.2 Canadian Securities Exchange – Public Interest Rule Amendments – CSE Policies and Related Forms – Notice and Request for Comments

CANADIAN SECURITIES EXCHANGE

PUBLIC INTEREST RULE AMENDMENTS

CSE POLICIES AND RELATED FORMS

NOTICE AND REQUEST FOR COMMENTS

December 9, 2021

The Canadian Securities Exchange (**CSE** or **Exchange**) is proposing amendments to its policies and related forms for listed issuers, in accordance with s. 6(a) of Schedule 3 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of the CSE Recognition Order, as amended.

The proposed amendments include significant changes for public comment and housekeeping and consequential amendments. The CSE is also seeking specific comments on other matters for which changes have not been proposed but are under consideration for future implementation.

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

13.2.3 Canadian Securities Exchange – Proposed Fee Model for TSX and TSXV Listed Securities Trading on the Canadian Securities Exchange – Notice of Proposed Change and Request for Comment

CANADIAN SECURITIES EXCHANGE

**NOTICE OF
PROPOSED CHANGE AND REQUEST FOR COMMENT**

**PROPOSED FEE MODEL FOR
TSX AND TSXV LISTED SECURITIES TRADING ON THE CANADIAN SECURITIES EXCHANGE**

Staff of the Ontario Securities Commission (**OSC**) and British Columbia Securities Commission (**Staff** or **we**) are publishing this Notice and Proposed Changes and Request for Comment (**Notice**) in conjunction with a request for comment on a proposal for a change in trading fees for TSX and TSXV listed securities trading on the Canadian Securities Exchange (**CSE**) (the **2021 Fee Proposal**).

Under the 2021 Fee Proposal, as described in the Notice, trading fees applicable to resting orders of TSX and TSXV listed securities that are executed on the CSE will be calculated based on the nature of the incoming orders against which they execute.

The same fee proposal was published for comment by the OSC on July 7, 2016 (**2016 Fee Proposal**).¹ At the time, OSC staff requested specific comment on the entire proposal, in particular the impact on fair access and leakage of information. Five public comment letters were received.² Following the comment period the CSE decided to withdraw the 2016 Fee Proposal. CSE has now elected to revisit the 2016 Fee Proposal and has, in substantially the same form, filed the 2021 Fee Proposal.

We are requesting comment on the entire 2021 Fee Proposal including in particular the following:

1. Fair access – how would the Fee Proposal, which entails the passive side of a trade paying trading fees depending on the nature of an incoming order, impact fair access to such passive participants?
2. Informational advantage – would the passive participant on the CSE have an informational advantage over other market participants since they would have information about the nature of the incoming order flow and, specifically, about the nature of the counterparties to their trades, that is not available to other market participants?

Comments on this Notice should be in writing and submitted by January 24th, 2022 to:

Market Regulation Branch
Ontario Securities Commission
20 Queen St. West, 22nd Floor
Toronto, ON
M5H 3S8
marketregulation@osc.gov.on.ca

And to:

Michael Grecoff
Securities Market Specialist
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, BC V7Y 1L2
Email: MGrecoff@bcsc.bc.ca

¹ Available at <https://www.osc.ca/en/industry/market-regulation/marketplaces/exchanges/recognized-exchanges/canadian-securities-exchange-cse-rule-review-notices/notice-proposed-change>

² Available at <https://www.osc.ca/en/industry/market-regulation/marketplaces/exchanges/recognized-exchanges/canadian-securities-66/comments-received>

And to:

Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
100 King Street West, Suite 7210,
Toronto, ON, M5X 1E1
Email: Mark.Faulkner@thecse.com

Comments received will be made public on the OSC and BCSC website. Upon completion of the review by Staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Staff's review and the intended implementation date of the changes.

CANADIAN SECURITIES EXCHANGE
SIGNIFICANT CHANGE SUBJECT TO PUBLIC COMMENT
AMENDMENT TO TRADING FEES
NOTICE AND REQUEST FOR COMMENT

December 9, 2021

The Canadian Securities Exchange ("CSE" or the "Exchange") proposes to implement a significant change to its trading fee schedule. The Exchange is publishing this Notice in accordance with the process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendix B to the Exchange's recognition orders.

Description of the Change

Background – In March 2016, the CSE proposed a new fee model on TSX/TSXV listed symbols which was published for comment in CSE [Notice 2016-010](#) (the "[2016 Proposal](#)"). Comments received were generally supportive, however in light of specific concerns expressed, the Exchange did not seek regulatory approval to implement the proposed model. Please see "Consultation and Comments Received", below.

Canadian marketplaces have introduced incentives and rules to encourage liquidity providers to be more aggressive on size and price. These include inverted fee mechanisms, speed bumps which apply to only some members of the trading community, and variable fee mechanisms, including some designed to encourage "dark sweeps" before an order is worked in the lit market.

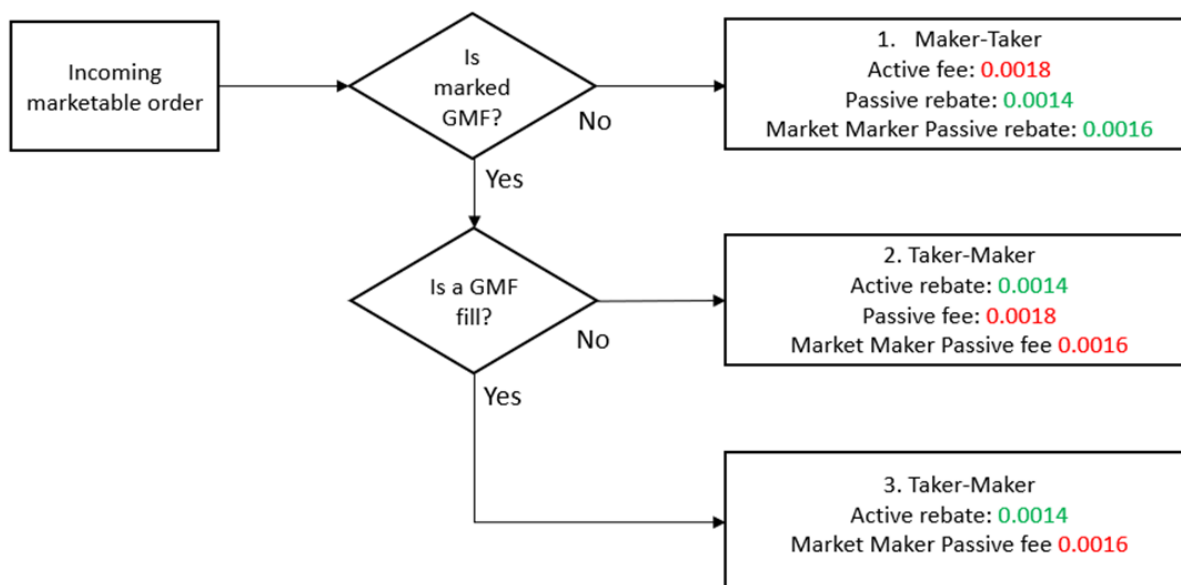
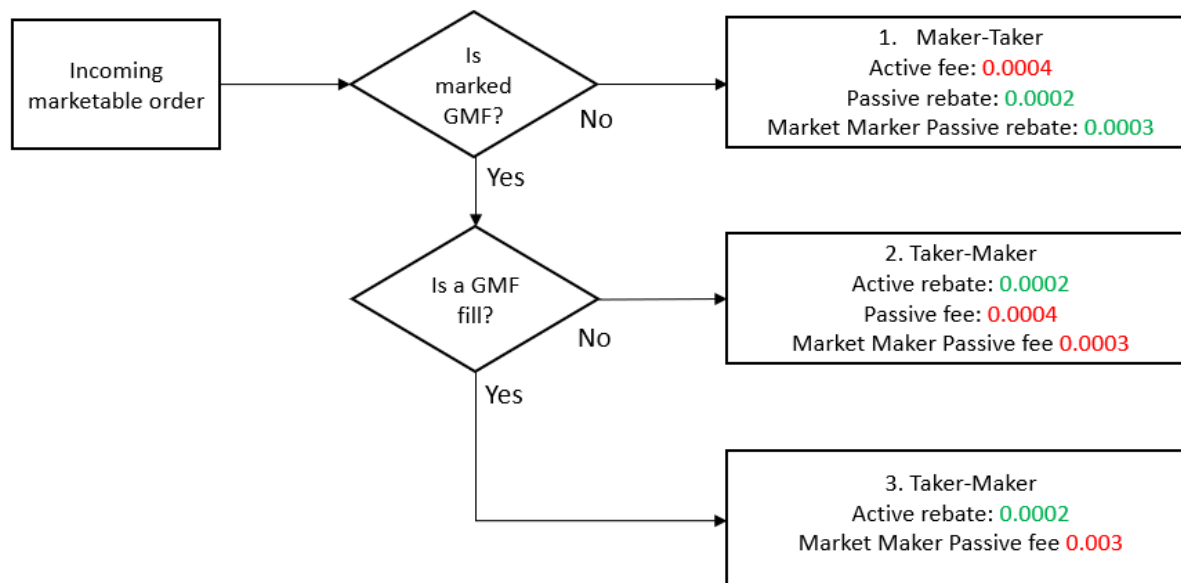
The 2016 Proposal was intended to achieve similar objectives, those being increased liquidity provision size, improved priced discovery and lower execution costs. There are no material differences between the 2016 Proposal and the current proposal.

Proposed Fee Model – Applicable to TSX and TSXV listed securities trading on the CSE:

1. **Incoming order is not GMF (Guaranteed Minimum Fill) eligible** – if the incoming order is not marked as GMF eligible then a Maker-Taker pricing model is applied whereby the active side is assessed a fee (\$0.0018 if $\geq$ \$1 and \$0.0004 if $<$ \$1) and the passive side is given a rebate ($-\$0.0014$ if $\geq$ \$1 and $-\$0.0002$ if $<$ \$1).
2. **Incoming order is GMF eligible with a trade occurring in the continuous auction market** - if the incoming order is marked GMF eligible and trades with a resting order, then a Taker-Maker pricing model is applied whereby the active side is given a rebate ($-\$0.0014$ if $\geq$ \$1 and $-\$0.0002$ if $<$ \$1) and the passive side is assessed a fee (\$0.0018 if $\geq$ \$1 and \$0.0004 if $<$ \$1).
3. **Incoming order is GMF eligible and the residual volume trades on the GMF facility** - if the incoming order is marked GMF eligible and the trade occurs against the GMF facility then a Taker-Maker pricing model is applied whereby the active side is given a rebate ($-\$0.0014$ if $\geq$ \$1 and $-\$0.0002$ if $<$ \$1) and the passive side is assessed a fee (\$0.0016 if $\geq$ \$1 and \$0.0003 if $<$ \$1).

Pricing Model Flow Chart - To assist in explaining the model a Fee Flow Chart is provided with the proposed pricing for both TSX and TSXV securities.

Greater than or equal to \$1

**Less than \$1****Pricing Model Scenarios****Scenario 1: GMF eligible Securities Order Flow on $\geq \$1$** **QUOTE**

SYMBOL	BID SIZE	BID	ASK	ASK SIZE	GMF SIZE
ABC	400	10.00	10.01	500	1000

An incoming GMF eligible client order is received for the purchase of 600 shares. 500 shares will fill at the offer price of 10.01. The balance of 100 shares will fill against the Market Maker ("MM") in the GMF facility.

A Taker-Maker fee model applies.

GMF client: Bought 500 shares at \$10.01 from resting passive order, active order rebate \$-0.0014.

Resting passive order: Sold 500 shares at \$10.01, there will be a passive order fee of \$0.0018, or, if the order was posted by the MM, then a passive fee of \$0.0016.

GMF client: Bought 100 shares at \$10.01 from MM in GMF facility, active order rebate \$-0.0014.

GMF Market Maker: Sold 100 shares at \$10.01, passive order fee \$0.0016.

Scenario 2: Non-GMF eligible Securities Order Flow on $\geq$ \$1

QUOTE

SYMBOL	BID SIZE	BID	ASK	ASK SIZE	GMF SIZE
XYZ	300	10.00	10.01	200	500

A non-GMF eligible order to purchase 200 shares is entered. The order is filled by the 200 shares at the posted offer price of \$10.01.

A Maker-Taker fee model applies.

Incoming order: Bought 200 shares at \$10.01, active order fee \$0.0018

Resting booked order: Sold 200 shares at \$10.01, passive order rebate -\$0.0014, or, if the order was posted by the MM, then a rebate of -\$0.0016.

GMF Market Maker: no interaction, non-GMF eligible order

Scenario 3: GMF eligible Securities Order Flow on $<$ \$1

QUOTE

SYMBOL	BID SIZE	BID	ASK	ASK SIZE	GMF SIZE
EFG	4000	0.80	0.81	5000	8000

An incoming GMF eligible client order is received for the purchase of 6000 shares. 5000 shares will fill at the offer price of 0.81. The balance of 1000 shares will fill against the Market Maker ("MM") in the GMF facility.

A Taker-Maker fee model applies.

GMF client: Bought 5000 shares at \$0.81 from a resting passive order, active order rebate \$-0.0002.

Resting passive order: Sold 500 shares at \$0.81, passive order fee of \$0.0004, or, if the order was posted by the MM, then a fee of \$0.0003.

GMF client: Bought 100 shares at \$0.81 from MM in the GMF facility, active order rebate \$-0.0002.

GMF Market Maker: Sold 100 shares at \$0.81, passive order fee \$0.0003.

Scenario 4: Non-GMF eligible Securities Order Flow on $<$ \$1

QUOTE

SYMBOL	BID SIZE	BID	ASK	ASK SIZE	GMF SIZE
QWE	3000	0.50	0.51	2000	5000

A non-GMF eligible order to purchase 2000 shares is entered. The order is filled by the 2000 shares at the posted offer price of \$0.51.

A Maker-Taker fee model applies.

Incoming order: Bought 2000 shares at \$0.51, active order fee of \$0.0004.

Resting booked order: Sold 2000 shares at \$0.51, a passive order rebate of -\$0.002, or, if the order was posted by the MM, then a rebate of -\$0.0003.

GMF: no interaction, non-GMF eligible order

Expected Implementation Date:

The proposed fee changes are expected to be implemented upon receipt of regulatory approval.

Rationale and Analysis

The rationale and analysis is largely unchanged since the [2016 Proposal](#).

Specifically, the CSE seeks to:

- Improve fill quality and fill size per agency order which will, in turn, lower dealer back-office costs and reduce information leakage caused by the current practice of multiple sweeps.
- Protect passive liquidity providers against specific proprietary trading strategies, allowing visible quotes to persist long enough to interact with incoming GMF eligible orders.
- Maintain reduced execution costs for investment dealers managing GMF-eligible orders by continuing to provide a rebate for active orders on the TSX and TSXV listed securities.

Expected Impact

The CSE anticipates the following outcomes if the proposal is adopted:

- 1) by improving the economics of trading with GMF eligible Orders the CSE expects to see an increase in the number of firms willing to participate on the CSE, resulting in an increase in posted liquidity at the NBBO and a better outcome for marketable inbound GMF eligible order flow.
- 2) Increased execution quality and average trade size on the CSE, resulting in fewer executions to satisfy each client order across multiple marketplaces, less information leakage to alternate marketplaces, and less opportunity for quote fade.
- 3) by using standard maker-taker pricing for resting orders trading against orders that are likely generated from clients executing proprietary strategies (i.e., non-GMF Orders), a measure of protection for the providers of liquidity is provided against proprietary trading strategies. This measure should encourage third party liquidity providers to layer the CSE book with resting orders and encourage the Market Maker to increase the size of their GMF commitment.

Compliance with Securities Law

There will be no impact on the CSE's compliance with Ontario or British Columbia securities law. The changes will not adversely affect fair access or the maintenance of fair and orderly markets. The changes are consistent with the fair access requirements set out in section 5.1 of NI21-101 as they are not confined to a limited number of marketplace participants and all marketplace participants will remain subject to the same rules and conditions.

Consultation & Comments Received

The CSE has consulted extensively, including with current and prospective Market Makers and investment dealers executing agency order flow. Most dealers support the goal of assisting in the execution of agency orders in ways that encourage larger average trade size and overall improved execution quality, while limiting information leakage and potential "quote fade". Dealers consulted also support the notion of achieving these goals through the use of price incentives, instead of through the introduction of complicated order types, speed bumps or separate and segregated books.

The 2016 Proposal and Request for Comments

The 2016 Proposal was published by the OSC on July 7, 2016. In response to the request for comments, CSE received five comment letters from industry participants³. Four of the comment letters came from the dealer community (Leede Jones Gable (LJB), CIBC World Markets (CIBC), RBC Dominion Securities (RBC), and Scotia Capital (BNS)), and one from the Trading Issues Committee of the Canadian Security Traders Association (CSTA). In addition, two other dealers, TD Securities (TD) and ITG Canada (ITG), commented on the CSE's proposals in client publications devoted to developments in Canadian markets.

³ [Comments for: Notice of Proposed Change and Request for Comment - CNSX Markets Inc. | OSC \(gov.on.ca\)](#)

OSC Market Regulation Staff ("Staff") requested specific comment⁴ on:

Fair Access -- Staff question whether the Fee Proposal would be unfair to passive participants because their fees are determined by the nature of an incoming order and not by their own actions or decisions.

Leakage of Information -- Staff are concerned that the Fee Proposal would allow for passive participants in the CSE to have an informational advantage over other marketplace participants, as they would know, based on the fee they pay, whether they are trading against GMF Orders (i.e., "agency" or "non-agency") orders. This information is not available to any other marketplace participant. We note CSE's assertions against the "real time" information leakage, but remain concerned that passive participants would have information that allows them to determine the type of counterparty to the trade.

Comments Specific to Fair Access:

- Three commenters (LJG, BNS and CIBC) did not have any concerns with the variable pricing for passive participants, although BNS did express general concerns about the effort required by a dealer to track the fees applicable to specific trades across all markets. The three dealers agreed with the CSE's view that the participants posting orders to the CSE's book were capable of measuring the impact of the variable pricing model.
- One commenter (RBC), while expressing no particular view on the fairness question, expressed concerns about the technological impact on dealers of order types and identifiers being introduced by marketplaces.
- One commenter (CSTA) submitted that the CSE's proposal would violate fair access principles. The concern appears to be based mainly on the danger of the precedent being set if the CSE proposal is approved. Although an agency account could currently avoid the impact of the CSE's approach by posting on another marketplace, if marketplaces with a significant market share were permitted to implement a similar model, the ability to avoid the impact of the model would be sharply reduced. On that basis, the CSTA committee submitted, the fact that the CSE has a non-material amount of resting agency orders in its book is not relevant to the analysis.

CSE Response to Comments on Fair Access

We belatedly thank the five commenters for submitting their views on the CSE's proposal. As set out in the 2016 Proposal, the object of the pricing model is to encourage better priced and larger sized orders being committed to the CSE book. Both objectives contribute to the overall goal of assisting firms seeking better quality and more cost-effective execution for their retail orders. Canadian market structure rules have long provided for the segmentation of orders for the purposes of execution priority, access to automated execution facilities, price improvement and many other advantages. The variable fee model proposed may be seen in the same light: by reducing the costs to the dealer executing the order (whether the benefit is shared with a client or not), the model will make the Canadian visible market more competitive versus other execution modalities available. These would include US wholesalers and dark markets, neither of whom contribute to the price discovery provided by the continuous auction market.

The Exchange is sensitive to concerns from the community about the impact on dealers to both access and administer the new trading fee model. In devising the model, the CSE sought to minimize the impact by using standard message tags and leveraging its existing service for reporting fees on a daily basis to dealers on a fully granular basis.

CSE was also reminded that institutional orders do rest, from time to time, in the CSE book. As with the 2016 Proposal, the current proposal does not in any way restrict entry of such orders.

Knowledge and analysis of the fee model of a marketplace is an integral part of the decision to post an order at a specific marketplace and participants devote considerable research effort to determine the most cost-effective way to pursue different trade execution strategies. Market participants will continue to assess the risks and opportunities associated with the CSE's fee structure in advance of booking any orders for TSX/V securities on CSE and therefore posting liquidity on the CSE for TSX/V listed securities is done on an opt-in basis. No passive orders for TSX or TSX Venture listed securities are or will be routed or otherwise entered on the CSE without the participant making the informed, strategic choice to do so. In a vast array of order execution alternatives, the CSE proposal does not restrict access in any way but rather provides additional options for marketplace participants to pursue their trading objectives. This fee model is intended to increase price-improvement competition with greater commitment to order size and market making capital, which will directly improve the best/bid offers available to interact with marketable in-bound orders. With a plethora of alternatives available to post resting orders, any fee outcome based on an informed decision and a transparent fee schedule should be considered fair.

⁴ [Notice of Proposed Change and Request for Comment - CNSX Markets Inc. | OSC \(gov.on.ca\)](#)

Comments Specific to Leakage of Information:

- Three commenters (LJG, BNS and CIBC) either believed that the benefits of the 2016 Proposal outweighed any concerns about information leakage or that there were no information advantages in fact conferred on the market maker in view of the fact that the information was only made available at the end of day.
- One commenter (BNS) indicated a preference for real-time information and supported the availability of information being made publicly available *“if there are fairness concerns about only the counterparty having access to this information.”*
- One commenter (RBC) expressed no opinion on the question.
- One commenter (CSTA) expressed the view that the CSE model would provide fee data that *“may be indicative of large directional multi-day orders and allow those particular participants to construct a mosaic of institutional activity.”* This advantage could result in an increase in trading costs to the institutional client, presumably (the CSTA submission is not detailed on the point) because they would not be taking advantage of the inverted fee model available to GMF-eligible clients, and through some form of adverse selection opportunities afforded to the liquidity provider in view of the information advantage. CSTA objected to the proposal on the basis that any informational advantage is not appropriate and should be prevented.

CSE Response to Comments on Information Leakage

The CSE will not provide a real-time mechanism that could be used to identify if an active order was GMF eligible. The only order type classifications that will be available (same as currently) are: provided liquidity (P), took liquidity (T), cross (C) and dark (D). To learn whether a counterparty on a particular trade was for a GMF eligible Order or not, the liquidity provider would need to collate its daily fill report with their daily billing report (each being available in the evening at approximately 6:30 p.m. each trading day).

The Exchange distributes an end-of-day fee file to each Dealer between 6-7 PM every day. Within this file is contained a record of all the Dealer trades for the day, whether the Dealer was active or passive on any particular trade, and the fee/rebate associated with the trade. Important information which is *not contained* in this end-of-day file is the counterparty to any trade. A Dealer would be able to determine whether, based on only their subset of passive orders, the percentage of active flow they traded against which was GMF eligible or non-GMF eligible. A Dealer could potentially reconcile the fee for each trade with the public tape to determine the Dealer on the opposite side of the trade and know whether the order was marked as GMF eligible, but could not identify the account type, volume or limit price of the order. The resulting collation would provide the participant number for the passive side of the trade and an indication as to whether the contra side of the trade was marked GMF eligible. This information would be unlikely to cause either party to the trade to materially alter their strategies. Further, GMF fills can already be distinguished with a reasonable degree of certainty from non-GMF trades due to their nature of being printed once visible liquidity is exhausted.

In considering whether the fee data represents information leakage to the point at which fair access is a concern, CSE notes the following:

GMF eligibility on any specific order does not definitively indicate the intention, or type of participant, behind the order.

For an order to be GMF eligible it must be marked as ‘client’ and be at or below the GMF guarantee size on any security to be eligible for execution in the GMF facility. Although it is more likely that GMF eligible orders will be on behalf of retail clients, this is not a certainty. GMF eligible orders can also be managed institutional client flow which fall within the GMF size.

The CSE has some of the largest GMF sizes per symbol among Canadian marketplaces. GMF size is not retractable by the Market Maker during the trading day, making it a suitable tool for institutions (because of the size of the commitments) to get complete fills and reduced execution costs on smaller orders. Large orders can already be estimated by other participants to be institutional in nature. A GMF-eligible tag on orders within the GMF size gives no additional information as to who the participant is or what their strategy might be, especially when that information is not available until after the market close on a given day.

There is no indication the information in the end-of-day file would be *actionable* to anyone in developing or implementing a trading strategy.

Similar information has been provided by all marketplaces for some time and are accepted features of the Canadian marketplace. See, for example, the two examples below, which, despite potential misuse, have been accepted because the obvious benefits outweigh the potential risks.

- Speedbumps have increased quote fade on certain venues, and should qualify as actionable information leakage, but they also have the positive effect of increasing the quoted displayed volume and improving price discovery.

- Resting dark orders with a minimum quantity allow a participant to gauge the size of other participant's active orders, resulting in information leakage, but at the same time they also protect dark posters from getting hit by toxic order flow probing for liquidity which encourages better liquidity provision.

The concern previously described in the CSTA comment letter⁵ only suggests the information *may* be indicative and *may allow* a participant to determine institutional activity. The *possible* analysis described in the CSTA letter would be inconclusive because it only permits the passive liquidity provider to make assumptions of overall activity based on counterparties to *only its own trades*, not all trades or orders. Further, the simple distinction between retail and institutional orders made in that comment letter is not accurate, as those are not the criteria for the proposed pricing mechanism.

There is no evidence that the proposed fee structure would directly or indirectly provide any meaningful information that could reasonably be incorporated into a viable trading strategy.

Additional Comments Received

Segmentation of Order Flow:

Following the submission of the 2016 Proposal the CSE has participated in additional formal and informal discussions with industry participants on the pricing model. Participants with an institutional equity trading orientation have tended to criticize the CSE's approach on the basis that it promotes an additional layer of "order segmentation". In other words, they believe restricting institutional client access to the predominately retail order flow represented by "GMF eligibility", will result in increased trading costs for their clients and potential harm to the price discovery process. As discussed above, order segmentation is already deeply engrained in Canadian equity market structure. The minimum guarantee fill facility at the Toronto Stock Exchange dates back decades and provides for automated execution of eligible retail orders against the responsible registered trader's book. The CSE's GMF facility operates in similar fashion. We also permit segmentation of flow by dealer (the broker preference rule) and by size (the client order handling rule). Institutional clients have seen an enormous amount of investment over the years in systems that are designed to permit them to locate the trade size they need without suffering the consequences of exposing their trading intentions to the broader market. There are no complaints, to our knowledge, that retail clients aren't somehow able to access these pools of potential liquidity.

The application of different rules, prices and trading modalities to the various kinds of orders present in the market is a well-accepted principle of Canadian equity market structure.

Complexity:

The Exchange has also been made aware of concerns, expressed most clearly in the comment letter from RBC, about the continuing increase in the complexity of Canadian equity market structure. While many dealers support continued investment in innovation from the marketplaces designed to improve liquidity and reduce costs, a number of parties have expressed concern about the impact of these changes on the dealers (and supporting vendors) who have to integrate these services into their order routing, order management, risk and compliance systems.

As the CSE has discussed in this comment summary and in the 2016 Proposal, the design of the CSE's variable fee model was intended to lessen the operational impact on the trading community. The Exchange has sought to deliver the benefits of the variable pricing programme to retail accounts by using existing message tags, trade reporting and information systems. It is an unfortunate reality that some level of increased complexity is inevitable as marketplace operators seek to distinguish themselves from their competitors. In designing the variable pricing programme to deliver key benefits to the retail-oriented dealers and their clients, CSE has taken every possible step to minimize the impact on its client base.

Application of Fee Change to Participants

The proposed fee model will apply to all participants, for all TSX and TSX Venture listed securities traded on CSE. There is no differential treatment across marketplace participants and all participants can place GMF eligible orders where the order meets the GMF eligibility requirements.

In certain circumstances participants may benefit by receiving a rebate and in others they will incur a cost. The mechanism by which this occurs is detailed in Section A.

Expected impact of the Rule or Change on the systems of members and service vendors

There is little, or no, expected impact on the systems of members and service vendors. Trading members already have the capability to mark orders as GMF eligible before sending them to the marketplace. There is no additional development work required.

⁵ https://www.osc.ca/sites/default/files/2021-01/com_20160802_csta.pdf

Alternatives

Other Canadian marketplaces have achieved similar goals through the introduction of separate books with distinct fee structures and unique market features. These marketplaces have introduced order types and features (like speedbumps) offering protection to passive liquidity providers from unwanted inbound order flow, this has resulted in quote fade to the detriment of all participants in Canada.

There has been little support in Canada from market participants for the introduction of new market venues where there is little in the way of innovation as participants and vendors are forced to incur connection costs along with increased complexity in determining order management strategies.

The CSE is proposing price methods to achieve similar goals. This has the net benefit of not needing to introduce additional market venues and complexity or increase the opportunities for quote fade by passive participants.

Other Markets or Jurisdictions

Both quote and order driven systems around the world have struggled to find ways to encourage market makers to increase their quoted size while broadening the range of stocks covered by their liquidity provision efforts.

To summarize, these efforts have typically involved one or more of the following models:

- Participation preference for market makers on incoming marketable orders.
- Pricing advantages or incentives over other resting orders in a book.
- Queue priority advantages based on participant category.
- Protection against interaction with proprietary or other “non-natural” order flow.

Comments

In concept and intent, these models are no different from the pricing model proposed in this submission.

Please submit comments on the proposed amendments no later than January 24th, 2022 to:

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