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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

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Ronald James Aitkens and Roy Juergen Beyer – ss. 127(1), 127(10)

File No.: 2022-1

IN THE MATTER OF
RONALD JAMES AITKENS AND
ROY JUERGEN BEYER

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

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on January 31, 2022.

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

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

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

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

REPRESENTATION

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

FAILURE TO PARTICIPATE

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 1st day of February, 2022

Grace Knakowski
Secretary to the Commission

For more information

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

IN THE MATTER OF
RONALD JAMES AITKENS AND
ROY JUERGEN BEYER

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

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

A. OVERVIEW

2. In its Merits Decision dated February 15, 2018 (the **Findings**) a panel of the Alberta Securities Commission (the **ASC Panel**) found that Ronald James Aitkens (**Aitkens**), Roy Juergen Beyer (**Beyer**), Foundation Group Capital Trust (**the Trust**), 0865701 B.C. Ltd. (**0865701**) and Harvest Capital Management Inc. (**HCMI**) each breached s. 92(4.1) of the *Alberta Securities Act* (the **ASA**) by making materially misleading omissions in certain Trust offering memoranda. The ASC Panel found that Aitkens authorized, permitted or acquiesced in those breaches by the Trust, 0865701 and HCMI, and that Beyer authorized, permitted or acquiesced in those breaches by the Trust and 0865701.
3. The ASC Panel further found that Aitkens, Stoney View Crossing Inc. (**SV Crossing**) and Harbour View Landing Inc. (**HV Landing**) breached s. 93(b) of the ASA by perpetrating a fraud when they allowed these companies to misuse money raised from investors by diverting it to other entities with common ownership or management. The ASC Panel found that Aitkens was the central individual in the Trust Project, the SV Project and the HV Project (each described below) and found that Aitkens authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.
4. Aitkens and Beyer (together, the **Respondents**) raised approximately \$33.6 million through the Trust offering memoranda (**OMs**). Approximately \$31.6 million was raised for a land development project in Calgary, Alberta (the **SV Project**) between October 1, 2007 and August 24, 2012, and approximately \$16.1 million for a land development project on Vancouver Island, British Columbia (the **HV Project**) between February 1, 2009 and October 31, 2012. The ASC Panel found that, of the total money raised between the projects, the transfers of \$3.66 million and \$2.9 million were fraudulent.
5. The Respondents are subject to an order made by the ASC dated October 2, 2019 (the **ASC Order**) that imposes sanctions, conditions, restrictions or requirements upon them. The conduct for which the Respondents were sanctioned occurred between December 2009 and November 2011 (the **Material Time**).
6. Staff are seeking an inter-jurisdictional enforcement order reciprocating the ASC Order pursuant to paragraph 5 of subsection 127(10) of the *Ontario Securities Act*, RSO 1990, c S.5 (the **Act**). Staff submit that a reciprocal order is in the public interest due to the apparent harm to Ontario investors in both the SV Project and the HV Project and Aitken's history of partnership with Ontario corporations for business ventures.

B. FACTS

Staff make the following allegations of fact:

(i) The Respondents

7. The Trust was established on November 20, 2009 with 0865701 as its trustee. The Trust was established to raise funds to engage in oil and gas exploration and development (the **Trust Project**). The Trust issued four offering memorandums (the **Trust OMs**) dated December 10, 2009 (**Trust OM1**), April 30, 2010 (**Trust OM2**), August 18, 2010 and May 12, 2011.
8. 0865701 was the trustee of the Trust. It was incorporated in British Columbia on November 6, 2009. Aitkens was a director and the president and secretary of 0865701. Beyer was a director and vice president. The ASC Panel concluded that Aitkens was the guiding mind of and controlled 0865701.
9. HCMI was the administrator of the Trust and the manager of the Business Trust (defined below). It was incorporated in Alberta on October 1, 2002 and placed in receivership on September 30, 2013. Throughout the Material Time, Aitkens was the president, the sole director and voting shareholder of HCMI. The ASC Panel concluded that Aitkens was the guiding mind of and controlled HCMI.
10. Foundation Capital Corporation (**Foundation Capital**) was incorporated in Alberta on June 15, 2005 and dissolved on December 2, 2014. Foundation Capital promoted and sold securities for the Trust. Aitkens was the sole director of Foundation Capital, was an officer of Foundation Capital, and owned at least 75% of its voting shares. Beyer was

marketing director Foundation Capital from approximately November 2006 to July 2011. The ASC Panel was satisfied that Aitkens was the guiding mind of and controlled Foundation Capital.

11. SV Capital was incorporated in Alberta on July 24, 2008. Aitkens was the sole director and president of SV Capital. The ASC Panel concluded that Aitkens was the guiding mind and controlled SV Capital.
12. SV Crossing was incorporated in Alberta on July 24, 2008 and dissolved on January 2, 2015. Aitkens was the sole director and voting shareholder. The panel concluded that Aitkens was the guiding mind of and controlled SV Crossing. Securities of SV Capital (bonds) and SV Crossing (shares) were issued in connection with the SV Project.
13. HV Capital was incorporated in Alberta on January 13, 2009. Aitkens was the guiding mind of and controlled HV Capital. HV Landing was incorporated in Alberta on January 13, 2009 and dissolved on July 2, 2014. Similarly, Aitkens was the sole director and voting shareholder. The ASC Panel concluded that Aitkens was the guiding mind of and controlled HV Landing. Securities of HV Capital (bonds) and HV Landing (shares) used in connection with the HV Project.
14. Aitkens was the guiding mind of and controlled the decision-making entities involved with the Trust, including, 0865701, HCMI, HV Landing, SV Crossing and Foundation Capital, and the following additional entities:
 - Foundation Capital Investment Corporation (**Foundation Capital Investment**);
 - Foundation Group Development Trust (the **Business Trust**);
 - Foundation Resources GP Corporation (**Foundation Resources GP**);
 - Foundation Resources Limited Partnership (**Foundation Resources LP**);
 - Harvest Group Limited Partnership (**Harvest Group LP**);
 - Stoney View Capital Inc. (**SV Capital**);
 - 1379599 Alberta Ltd. (**1379599**);
 - 1252064 Alberta Ltd. (**1252064**);
 - Harbour View Capital Inc. (**HV Capital**); and
 - 1357686 Alberta Ltd.

15. During the Material Time, Beyer was primarily involved in the marketing aspect of several entities. While the ASC Panel was not satisfied that Beyer was a guiding mind of any of the entities with which he was involved, he was a director and officer of various entities, including the trustee 0865701. Beyer therefore had a responsibility to ensure that Trust property was dealt with appropriately. Beyer was the director and vice-president of Foundation Capital Investment and Foundation Resources GP. Beyer was marketing director of Foundation Capital from November 2006 to July 2011 and director, president, and ultimate designated person of Foundation Securities Corporation (**Foundation Securities**).

(ii) The ASC Proceedings

16. The ASC Panel found that Aitkens, Beyer, the Trust, 0865701 and HCMI made materially misleading omissions in certain Trust OMs. The ASC Panel also found that Aitkens, SV Crossing and HV Landing perpetrated a fraud when they caused these companies to misuse money raised from investors by diverting it to other entities with common ownership or management.
17. The ASC Panel found that Aitkens was the central individual in the Trust Project, the SV Project and the HV Project.
18. The Respondents raised approximately \$33.6 million through Trust OM1 and Trust OM2. Approximately \$31.6 million was raised for the SV Project (between October 1, 2007 and August 24, 2012) and approximately \$16.1 million for the HV Project (between February 1, 2009 and October 31, 2012). The ASC Panel found that, of the total money raised between the projects, the transfers of \$3.66 million and \$2.9 million were fraudulent.

Undisclosed Neo Shares Profit

19. The Trust Project was a way for the Trust to raise money from investors and to acquire indirectly an interest in Neo Exploration Inc. (**Neo**) and other oil and gas interests. Those goals were met through several steps:
 - The Trust held units of the Business Trust.

- The Business Trust held units of Foundation Resources LP (the **Foundation Resources LP Units**) and was to acquire "other Investments" for the Trust.
 - Foundation Resources LP purchased shares in Neo (the **Neo Shares**) from Exen Resources Inc. (**Exen**) and Harvest Group LP.
20. Between approximately January 2010 and November 2011, the Trust issued securities to investors (the **Trust Securities**) using four Trust OMs. The ASC Panel found that there were materially misleading omissions in two OMs issued by the Trust, specifically Trust OM1 and Trust OM2. Those materially misleading omissions were the failures to disclose information about the cost to or profit made by Exen and Harvest Group LP when they sold Neo Shares to Foundation Resources LP. Specifically, Harvest Group LP and Exen acquired Neo Shares from Neo at a value of \$1.75 and sold them to the Trust (via Foundation Resources LP) for prices ranging from \$1.75 to \$3.25 (with the majority sold to the Trust by Harvest Group LP at \$3.25). Trust OMs 1 and 2 did not include information about the profit made by Harvest Group LP and Exen on their sales of Neo Shares to the Trust, nor the prices at which Harvest Group LP and Exen acquired Neo Shares.
21. Harvest Group LP's purchases of Neo Shares occurred through the exercise of the "Harvest Group Warrant" between February 5, 2010 and June 29, 2010. Its sales of Neo Shares to the Trust occurred between February 16, 2010 and July 27, 2010. Exen acquired Neo Shares on September 16, 2009 and sold Neo Shares to the Trust on April 26, 2010 for \$2.25 per Neo Share and on April 27, 2010 for \$3.25 per Neo Share (because the October 27, 2010 sale by Exen to the Trust was at the same \$1.75 value at which Exen acquired the Neo Shares, there was no Neo Shares Profit for that sale). Foundation Resources Inc. (**FRI**) also acquired Neo Shares and sold them to the Trust.
22. The ASC Panel concluded that the negotiation and execution of the Harvest Group Warrant was a significant arm's length transaction which took place at the same time as the issuance of Trust OM1. The Exen and FRI transactions were similarly significant and arm's length, although occurring earlier. Information about these transactions in Trust OMs 1 and 2 would have provided highly relevant data to a prospective reasonable investor in assessing the value of the Neo Shares and, consequently, in determining whether to buy Trust Securities at the price offered. At the time that Trust OMs 1 and 2 were issued, the independently assessed value of Neo's assets reflected in the Trust OMs was demonstrably less than Neo's internal valuation. Despite this, prospective investors in Trust OMs 1 and 2 were not told of the \$1.75 share price or of the internal valuation which that \$1.75 share price represented.
23. The ASC Panel found that Trust OMs 1 and 2 did not state facts which were required and would reasonably have been expected to have had a significant effect on the value of the Trust Securities sold pursuant to those Trust OMs.
24. The ASC Panel found that Trust OMs 1 and 2 contained materially misleading omissions relating to the Neo Shares Profit. The ASC Panel also found that Aitkens, Beyer, the Trust, 0865701 and HCMI (the **Trust Respondents**) made those materially misleading omissions, knew or ought to have known that they were materially misleading, and knew or ought to have known that such omissions would reasonably have been expected to have had a significant effect on the value of the Trust Securities. Accordingly, the Panel found that:
- The Trust Respondents breached s. 92(4.1) of the ASA;
 - Aitkens authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust, 0865701 and HCMI; and
 - Beyer authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust and 0865701.

SV Crossing and HV Landing

25. The ASC Panel found that some of the money raised from investors – which was to be used for purchasing and developing land for the SV Project and the HV Project – was instead used for other business purposes. Aitkens, SV Crossing and HV Landing were responsible for this fraud, thus breaching what was then s. 93(b) of the ASA. Aitkens authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.
26. The two main SV Project companies were SV Capital and SV Crossing, with SV Capital raising the majority of the money (\$31,616,388) and lending it to SV Crossing (the **SV Loan**). The SV Project contemplated that SV Crossing would use the money raised to purchase certain land in Calgary targeted for development (the **SV Land**).
27. The two main HV Project companies were HV Capital and HV Landing, with HV Capital raising the majority of the money (\$16,136,902) and lending it to HV Landing (the **HV Loan**). The HV Project contemplated that HV Landing would use the money raised to purchase certain land in British Columbia targeted for development (the **HV Land**).

28. The ASC Panel was satisfied that intercompany advances were made from SV Crossing to 1379599 between April 7, 2010 and March 25, 2011 totalling approximately \$3.56 million. These funds were "then diverted on a seemingly 'as needed basis' throughout the Aitkens realm", rather than being used to develop the SV Project.
29. The ASC Panel found that SV Crossing advanced \$100,000 to 1252064 on April 22, 2009. Aitkens acknowledged "that if one company needed money for a debt or for a payment or something, then we would've transferred."
30. Further, the ASC Panel found that HV Capital made advances totalling approximately \$2.9 million to the following entities between December 2010 to March 2012:
 - \$37,500 to Foundation Mortgage on May 16, 2011;
 - \$1,000,000 to 1357686 on December 7, 2010;
 - \$330,000 to HCMI in December 2010 and March 2012;
 - \$300,000 to "FM3" via HCMI on December 22, 2011;
 - \$1,234,401 to 1252064 (\$1,084,501 via HV Landing).
31. The ASC Panel found that investor's money raised under the SV OMs and HV OMs was used for purposes unrelated to working capital for the development of the SV Land and HV Land. The ASC Panel concluded that the SV OMs and HV OMs did not disclose to investors that their money would be used for purposes outside the scope of the use of proceeds disclosure in those OMs. The ASC Panel was further satisfied that SV Crossing and the HV Entities were also responsible for the statements made in the SV and HV OMs, respectively, and for the transfers of money for purposes contrary to those statements.
32. Aitkens knew or ought to have known that the transfers from SV Crossing and the HV Entities resulted in deprivation to others by placing their pecuniary interests at risk because he knew that such funds were ultimately being used for other projects and purposes, rather than for the development of the SV Land and the HV Land. The ASC Panel concluded that Aitkens, SV Crossing and HV Landing breached s.93(b) of the ASA by perpetrating a fraud on investors. Aitkens also authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.

(iii) ASC Findings – Conclusions

33. The ASC Panel found that Aitkens, Beyer, the Trust, 0865701 and HCMI each breached s. 92(4.1) of the ASA by making materially misleading omissions in two of the Trust's offering memoranda. Aitkens authorized, permitted or acquiesced in those breaches by the Trust, 0865701 and HCMI. Beyer authorized, permitted or acquiesced in those breaches by the Trust and 0865701.
34. The ASC Panel further found that Aitkens, SV Crossing and HV Landing also breached s. 93(b) of the Act by perpetrating a fraud on investors. Aitkens authorized, permitted or acquiesced in those breaches by SV Crossing and HV Landing.

(iv) The ASC Order

35. The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

Aitkens

- (a) under s. 198(1)(d) of the ASA, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- (b) with permanent effect:
 1. under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;
 2. under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
 3. under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
 4. under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i. any issuer or other person or company that is authorized to issue securities; or

- ii. a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- 5. under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
- 6. under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (c) under s. 199, he must pay an administrative penalty of \$600,000; and
- (d) under s. 202, he must pay costs in the amount of \$180,000.

Beyers

- (e) under s. 198(1)(d) of the ASA, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- (f) for a period of 10 years from the date of this decision or until the administrative penalty set out below is paid in full, whichever is the later:
 - 1. under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;
 - 2. under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
 - 3. under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
 - 4. under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i. any issuer or other person or company that is authorized to issue securities; or
 - ii. a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
 - 5. under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
 - 6. under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (g) under s. 199, he must pay an administrative penalty of \$75,000; and
- (h) under s. 202, he must pay costs in the amount of \$20,000.

The Trust, 0865701, HCMI, SV Crossing and HV Landing

with permanent effect, that:

- (i) under s. 198(1)(a) of the ASA, all trading in or purchasing of securities or derivatives of the Trust, 0865701, HCMI, SV Crossing and HV Landing must cease;
- (j) under s. 198(1)(b), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing must cease trading in or purchasing any security or derivative;
- (k) under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to the Trust, 0865701, HCMI, SV Crossing and HV Landing;
- (l) under s. 198(1)(c.1), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from engaging in investor relations activities;
- (m) under s. 198(1)(e.2), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and

- (n) under s. 198(1)(e.3), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from acting in a management or consultative capacity in connection with activities in the securities market.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 36. The Respondents are subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon them.
- 37. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 38. Staff allege that it is in the public interest to make an order against the Respondents. In the Findings, the ASC Panel noted that there were references to Ontario investors for the SV Project and HV Project. The ASC Panel also noted that Aitkens had a history of partnering with an Ontario corporation for real estate business ventures.
- 39. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

D. ORDER SOUGHT

- 40. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Act:
 - a) against Aitkens that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Aitkens cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Aitkens cease permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Aitkens permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Aitkens resign any positions he holds as a director or officer of an issuer or registrant;
 - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Aitkens is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant or promoter.
 - b) against Beyer that:
 - i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Beyer resign any positions he holds as a director or officer of an issuer or registrant;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Beyer cease until October 2, 2029;
 - iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Beyer cease until October 2, 2029;
 - iv. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Beyer until October 2, 2029;
 - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Beyer is prohibited from becoming or acting as a director or officer of any issuer or registrant until October 2, 2029; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant or promoter until October 2, 2029.
 - c) such other order or orders as the Commission considers appropriate.

41. Staff do not seek to reciprocate the ASC Order as it relates to 0865701, HCMI, SV Crossing or HV Landing, as this proceeding is outside of the two-year time frame specified by the Alberta *Business Corporations Act* and the British Columbia *Business Corporations Act* for bringing proceedings against dissolved corporations. 0865701 was dissolved on September 17, 2018. HCMI, SV Crossing and HV Landing were dissolved between April 2, 2014 and January 2, 2015.
42. In addition, as the trustee (0865701) and the administrator of the Trust (HCMI) have been dissolved, Staff do not seek to reciprocate the ASC Order as it relates to the Trust, as it is no longer an active operating business entity and neither the trustee nor administrator are active operating business entities.

DATED this 31st day of January, 2022.

ONTARIO SECURITIES COMMISSION

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

Sarah McLeod

Email: smcleod@osc.gov.on.ca

Tel: (416) 597-7809

Staff of the Enforcement Branch

1.4 Notices from the Office of the Secretary

1.4.1 Ronald James Aitkens and Roy Juergen Beyer

**FOR IMMEDIATE RELEASE
February 1, 2022**

**RONALD JAMES AITKENS AND
ROY JUERGEN BEYER,
File No. 2022-1**

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

A copy of the Notice of Hearing dated February 1, 2022 and Statement of Allegations dated January 31, 2022 are 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
February 3, 2022**

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

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on February 4, 2022 at 10:30 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.3 Stableview Asset Management Inc. and Colin Fisher

FOR IMMEDIATE RELEASE
February 4, 2022

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

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

A copy of the Order dated February 4, 2022 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

1.4.4 VRK Forex & Investments Inc. and Radhakrishna Namburi

FOR IMMEDIATE RELEASE
February 7, 2022

**VRK FOREX & INVESTMENTS INC. AND
RADHAKRISHNA NAMBURI,
File No. 2019-40**

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on February 23, 2022 at 10:00 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Franklin Templeton Investments Corp. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the cash cover requirements under section 2.8 of NI 81-102 to permit mutual funds to include as cash cover any non-rated short-term debt that is issued, or fully and unconditionally guaranteed as to principal and interest, by the U.S. government or the government of another sovereign state if other evidences of indebtedness of the government or sovereign state that are rated as short-term debt by a designated rating organization or its DRO affiliate have a designated rating – The definition of ‘cash cover’, which refers to the definition of ‘cash equivalent’, treats the short-term debt obligations issued or guaranteed by governments of sovereign states differently than the short-term debt obligations issued or guaranteed by Canadian or foreign financial institutions – NI 81-102 permits non-rated short-term debt instruments of financial institutions to be used as cash cover provided at least one short-term debt instrument of the financial institution has a designated rating issued by a DRO – Inability to use non-rated sovereign debt from highly rated sovereign states as cash cover in the same way as non-rated bank debt is permitted to be used as cash cover limits the universe of short-term debt that qualifies as cash cover for derivative transactions and requires maintenance of higher levels of cash and cash equivalents by the mutual funds, while reducing the cash available for investment, thereby negatively impacting returns of the mutual funds – Relief granted subject to conditions ensuring the creditworthiness and liquidity of the non-rated sovereign debt used as cash cover, including that the sovereign state have a credit rating of A (Fitch), A2 (Moody’s) and A (S&P) or higher.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.8 and 19.1.

January 28, 2022

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
FRANKLIN TEMPLETON INVESTMENTS CORP.
(the Filer)

IN THE MATTER OF
TEMPLETON GLOBAL BOND FUND AND
TEMPLETON GLOBAL BALANCED FUND
(the Existing Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) permitting the Existing Funds and each current and future mutual fund, including exchange-traded fund, managed or sub-advised from time by the Filer or one of the Franklin Templeton Companies (as defined below) (together with the Existing Funds, the **Funds**) to include as cash cover for derivative transactions under section 2.8 of NI 81-102 any evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by the government of the United States of America or the government of another sovereign state (the United States of America and each other sovereign state, a **sovereign state**) if other evidences of indebtedness of the government of that sovereign state that are rated as short-term debt by a designated rating organization or its DRO affiliate (as such terms are defined in NI 81-102) have a designated rating (the **Requested Relief**).

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

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

1. The Filer is the investment fund manager of the Existing Funds. The Filer is registered as an investment fund manager, portfolio manager, mutual fund dealer and exempt market dealer in the Province of Ontario. The Filer is also registered as a portfolio manager, mutual fund dealer and exempt market dealer in all other Canadian provinces and the Yukon Territory and as an investment fund manager in the Provinces of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia and Québec. The head office of the Filer is in Toronto, Ontario.
2. Either the Filer or one of the global Franklin Templeton group of companies (collectively, the **Franklin Templeton Companies**), each of which is an affiliate of the Filer, is, or will be, the investment advisor or the sub-advisor to the Funds.
3. Each Fund is, or will be, a mutual fund created either under the laws of the Province of Ontario or Alberta or under the laws of Canada and is, or will be, subject to the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.
4. None of the Filer nor the Existing Funds are in default of securities legislation in any Jurisdiction.
5. The securities of each Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each Fund is, or will be, a reporting issuer or the equivalent in each Jurisdiction.
6. The investment strategies of each Fund permit, or will permit, the Fund to enter into, among other things, derivative transactions for non-hedging purposes. As a result, each Fund is required to hold, from time to time, cover in accordance with section 2.8 of NI 81-102.
7. In many cases, the portfolio manager of a Fund believes that the most appropriate cash cover to be held by the Fund in respect of its derivative positions are short-term debt instruments issued by, or fully and unconditionally guaranteed as to principal and interest by, the government of one or more sovereign states. In some instances, the actual debt instruments held by the Fund have a designated rating. However, in other cases, the Fund would like to hold short-term debt instruments that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of sovereign states where the debt instruments are not rated.
8. The definition of cash cover in NI 81-102 includes, among other things, cash equivalents (as defined in NI 81-102).
9. Paragraph (b) of the definition of cash equivalent in NI 81-102 includes an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has a designated rating. As defined, only those short-term debt instruments that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of a sovereign state and that have a designated rating meet the definition of cash equivalent and, therefore, can be held as cash cover.
10. Paragraph (c) of the definition of cash equivalent in NI 81-102 includes an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by a Canadian financial institution, or a financial institution that is not incorporated or organized under the laws of Canada or of a jurisdiction if, in either case, evidences of indebtedness of that issuer or guarantor that are rated as short-term debt by a designated rating organization or its DRO affiliate have a designated rating. As defined, provided that at least one short-term debt instrument of the Canadian or foreign financial institution has a designated rating, then any short-term debt instrument of that Canadian or foreign financial institution qualifies as a cash equivalent and can be held as cash cover.
11. Neither NI 81-102 nor Companion Policy 81-102CP explains why the definition of cash cover, which refers to the definition of cash equivalent, treats the short-term debt obligations issued or guaranteed by governments of sovereign states differently than the short-term debt obligations issued or guaranteed by financial institutions.
12. The Filer believes that if the government of a sovereign state has at least one of its short-term debt obligations rated with a designated rating, then all of that government's short-term evidences of indebtedness, and all short-term evidences of indebtedness that are fully and unconditionally guaranteed as to principal and interest by that government, should be capable of being treated as cash cover for purposes of NI 81-102. Whether a rating agency issues a rating for the particular evidence of indebtedness of a government of a sovereign state or for any short-term evidence of indebtedness of that government, the Filer understands that the rating agency conducts a

similar analysis of the financial condition of the government. Given the cost of obtaining a credit rating and the length of time that it can take to rate a particular financial instrument, the Filer believes that many governments of sovereign states choose not to have all of their short-term debt obligations rated. Assuming that at least one short-term debt obligation of the government of a sovereign state has a designated rating, the Filer believes that all short-term debt obligations of that government have similar creditworthiness parameters.

13. The creditworthiness of the sovereign states whose short-term debt will be used as cash cover meets the designated rating requirement in a manner that is consistent with the requirements under NI 81-102. The Filer believes that it is appropriate to assume that sovereign short-term debt instruments that do not have an explicit credit rating have the same creditworthiness of the sovereign state itself, or the sovereign state's other short-term debt. If the sovereign state does not meet the designated rating requirement, or if there is no short-term debt issued by the sovereign state that meets the designated rating requirement, then the unrated short-term debt issued by such sovereign state could not be used as cash cover.

14. Without the ability to use unrated sovereign debt from highly rated sovereign states as cash cover, the universe of short-term debt that qualifies as cash cover is limited. In order for the Funds to hold the required cash cover, they currently have to purchase additional short-term debt and/or maintain higher cash balances. This leads to a long-term increase in the level of cash and cash equivalents held by the Funds, while reducing the cash available for investment, thereby negatively impacting the return of the Funds.

15. It would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

Decision

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

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

- (a) the sovereign state whose short-term debt is used as cash cover has a credit rating of A (Fitch), A2 (Moody's) and A (S&P) or higher;
- (b) the sovereign state that issues the unrated short-term debt has other evidences of indebtedness that are rated as short-term debt that have a designated rating issued by a designated rating organization or its DRO affiliate; and

(c) the Fund ceases including the unrated short-term debt as cash cover if:

- (i) the credit rating of the government of the sovereign state falls below the rating specified in (a) above;
- (ii) the rated short-term debt of the sovereign state falls below the level of a designated rating issued by a designated rating organization or its DRO affiliate referenced in (b) above; or
- (iii) the unrated short-term debt becomes rated as short-term debt that has a rating that is below the level of a 'designated rating' issued by a designated rating organization or its DRO affiliate.

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

Application File #: 2021/0574
SEDAR #: 3333651 & 3333679

2.1.2 Picton Mahoney Asset Management

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
PICTON MAHONEY ASSET MANAGEMENT
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is

intended to be relied upon by the Filer and its Registered Individuals (as defined below) in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Newfoundland and Labrador and Prince Edward Island (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a general partnership formed under the laws of the Province of Ontario with its head office located in Toronto, Ontario.
2. The Filer is registered as (i) an investment fund manager in Ontario, Québec and Newfoundland and Labrador; (ii) an adviser in the category of portfolio manager in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Prince Edward Island; (iii) a dealer in the category of exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, and Prince Edward Island; and (iv) a commodity trading manager in Ontario.
3. The Filer is not in default of securities legislation in any of the Jurisdictions.
4. As a part of its service offering, the Filer provides various institutional clients with discretionary investment management services, including sub-advisory services, and distributes units of its investment funds, including the provision of marketing and informational materials and services in connection with such distributions. The institutional clients of the Filer include pension plans, mutual funds, fund managers, registered investment advisers, insurance companies, endowments, foundations and other types of non-individual clients.
5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law or equivalent partnership law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately five Registered Individuals.

6. The current titles used by the Registered Individuals include the words “Managing Director”, “Director” and “Vice President”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).
7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.
8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “permitted client”, as defined in subsection 1.1 of NI 31-103 (the **Clients**).
9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.
12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “permitted clients” as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

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

OSC File #: 2021/0685

2.1.3 Capital International Asset Management (Canada) Inc. and Capital Group Global Equity Fund (Canada)

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 have not been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

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

February 1, 2022

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

AND

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

AND

**IN THE MATTER OF
CAPITAL INTERNATIONAL ASSET MANAGEMENT
(CANADA) INC.
(the Filer)**

AND

**IN THE MATTER OF
CAPITAL GROUP GLOBAL EQUITY FUND (CANADA)
(the Existing Fund)**

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 or an affiliate of 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:
 - i. not more than 45 days before the date of the appearance or use of the advertisement in which it is included; and
 - ii. not more than three months before the date of first publication of any other sales communication in which it is included;
3. the Ontario Securities Commission is the principal regulator for this application; and
4. the Filer has provided notice that subsection 4.7(1) of the 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**”).

Defined Terms and Interpretation

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

(a) **Capital Group Companies** means, collectively, the global group of companies that are affiliates of The Capital Group Companies, Inc., a financial services company with its headquarters in Los Angeles, California.

Representations

This decision is based on the following facts represented by the Filer (unless otherwise indicated below):

The Filer and the Funds

1. The Filer is the investment fund manager of the Existing Fund. The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in the Province of Ontario. The Filer is also registered as an exempt market dealer in Alberta, British Columbia, Nova Scotia and Québec, and as an investment fund manager in Newfoundland and Labrador and Québec. The Filer’s head office is located in Toronto, Ontario.
2. Either the Filer or one of the Capital Group Companies, each of which is an affiliate of the Filer, is, or will be, the investment advisor or the sub-advisor to the Funds.
3. Each Fund is, or will be, a mutual fund created either under the laws of the Province of Ontario or under the laws of another Jurisdiction and is, or will

be, subject to the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

4. Each Fund 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 from time to time. Each Fund is, or will be, a reporting issuer under the laws of the Jurisdictions.
5. Each Fund is, or will be, subject to the requirements of NI 81-102, including Part 15 which governs sales communications.
6. Neither the Filer nor the Existing Fund is in default of securities legislation in any Jurisdiction.

FundGrade Ratings and FundGrade A+ Awards

7. 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 Fund has been awarded a FundGrade A+ Award.
8. Fundata Canada Inc. ("**Fundata**") is a "mutual fund rating entity" as that term is defined in NI 81-102. Fundata is a leader in supplying 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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.
14. 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

15. 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.
16. 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 is a global leader in supplying 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.

17. One of Lipper's programs is the Lipper Fund Awards from Refinitiv 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 23 countries.
18. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in a number of 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 the ten year period will be given in the future.
19. 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 the 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.
20. 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.
21. 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.

22. 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 and 60 month periods only) wins a Lipper Award.

Sales communication disclosure

23. 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 Fundata. 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.
24. 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).
25. 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 Fund to use FundGrade Ratings in sales communications.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

General

The Exemption Sought will provide investors with helpful information

36. 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 to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings to be referenced in sales communication relating to a Fund provided that:

1. the sales communication that refers to the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards or Lipper Leader Ratings 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:
 - a. the name of the category for which the Fund has received the award or rating;
 - b. the number of mutual funds in the category for the applicable period;
 - c. the name of the ranking entity, i.e., Fundata or Lipper;
 - d. 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;
 - e. a statement that FundGrade Ratings or Lipper Leader Ratings are subject to change every month;
 - f. in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Award, as applicable;
 - g. 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;

- h. 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;
 - i. 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;
 - j. 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
 - k. reference to Fundata's website for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Fundata or Lipper, as applicable;
2. 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
 3. the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by CIFSC (or a successor to CIFSC).

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

Application File #: 2022/0041
 SEDAR #: 3328764

2.1.4 Sun Life Capital Management (Canada) Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
SUN LIFE CAPITAL MANAGEMENT (CANADA) INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is

intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation established under the federal laws of Canada with its head office in Toronto, Ontario.
2. The Filer is registered as an investment fund manager, an exempt market dealer and a portfolio manager in each of the provinces and territories of Canada, and as a commodity trading manager in Ontario.
3. The Filer is an affiliate of Sun Life Assurance Company of Canada, an operating life insurance company that is regulated by the Office of Superintendent of Financial Institutions. The Filer is an indirect wholly owned subsidiary of Sun Life Financial Inc. (**SLF**), a company the shares of which are listed on the Toronto Stock Exchange, and as such is part of the Sun Life group of companies (**Sun Life**).
4. SLC Management is the brand name for the institutional asset management business of SLF (**SLC Management**) under which Sun Life Capital Management (U.S.) LLC in the United States, and the Filer in Canada operate.
5. The Filer is not in default of securities legislation in any of the Jurisdictions.
6. The Filer provides asset management products and services to institutional third parties through investment funds that invest in various asset classes, and separately managed accounts that may include liability-driven investment strategies. The Filer provides these products and services to Canadian pension plans and other institutional investors. The Filer does not provide products or services to individual investors.
7. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the

Filer changes. As of the date of this decision, the Filer has 33 Registered Individuals.

8. The current titles used by the Registered Individuals include the words "President", "Senior Managing Director", "Managing Director", "Senior Director" and "Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles used by the Registered Individuals are consistent with the titles used within Sun Life.
9. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.
10. The Registered Individuals interact only with institutional clients that are, each, a non-individual "permitted client", as defined in subsection 1.1 of NI 31-103 (the **Clients**).
11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.
14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"

Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0702

2.1.5 Evolve Funds Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An alternative mutual fund that uses leverage to invest in a portfolio consisting of six issuers listed on the NASDAQ, granted relief from the concentration restriction in NI 81-102, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1.1) and 19.1.

December 9, 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
EVOLVE FUNDS GROUP INC.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Evolve Enhanced FANGMA ETF (the **Fund**), for a decision (the **Exemption Sought**) under the securities legislation of the principal regulator (the **Legislation**) relieving the Fund from section 2.1(1.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), in order to permit the Fund to purchase securities of an issuer, enter into a specified derivatives transaction or purchase an index participation unit even though, immediately after the transaction, more than 20% of the net asset value (**NAV**) of the Fund would be invested, directly or indirectly, in securities of any issuer (the **Concentration 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 the application; and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada other

than the Jurisdiction (together with the Jurisdiction, the **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

1. The Filer is a corporation incorporated under the laws of Canada, with its head office located in Toronto, Ontario.
2. The Filer will be the promoter, trustee and manager of the Fund and is registered as: (i) a portfolio manager in Ontario and (ii) an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.
3. The Filer or an affiliate or associate of the Filer is, or will be, the investment fund manager of the Fund.

The Fund

4. The Fund will be an exchange traded mutual fund governed by the laws of a Jurisdiction of Canada and a reporting issuer under the laws of the Jurisdictions.
5. The Fund will also be an “alternative mutual fund”, as such term is defined in NI 81-102.
6. The Filer will file a preliminary long form prospectus on behalf of the Fund with the securities regulatory authority in each of the Jurisdictions.
7. The Fund will be subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.
8. The Fund will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).
9. The Units of the Fund will (subject to satisfying a designated exchange’s (the Designated Exchange) original listing requirements) be listed on the Designated Exchange.
10. The investment objective of the Fund will be to seek to replicate, to the extent reasonably possible and before fees and expenses, a 1.25 times multiple of the performance of the Solactive FANGMA Equal Weight Index Canadian Dollar Hedged, or any successor thereto (the **Index**).

11. The Fund will use leverage in order to seek to achieve its investment objective. Leverage will be created through the use of cash borrowings or as otherwise permitted under applicable securities legislation for alternative mutual funds.
12. The investment objective and investment strategy of the Fund, as well as the risk factors associated therewith, including concentration risk, are and will be disclosed in the prospectus of the Fund, as may be amended from time to time.
13. The constituent securities of the Index are the equity securities (the **Shares**) of Alphabet Inc., Amazon Inc., Apple Inc., Meta Platforms Inc. (formerly Facebook Inc.), Netflix Inc. and Microsoft Corp. (each, a **Company**).
14. The Index will rebalance the portfolio quarterly (an **Index Rebalance Date**). On an Index Rebalance Date, each Company will be assigned an equal weight of the Index.
15. The Fund will seek to achieve its investment objective by borrowing cash to invest in and hold a proportionate share of, or a sampling of the constituent securities of, the Index in order to track approximately 1.25x the performance of the Index. As an alternative to, or in conjunction with investing in and holding the constituent securities, the Fund may also invest in other securities, including other mutual funds or exchange traded funds managed by the Filer to obtain exposure to the constituent securities of the Index in a manner that is consistent with the Fund's investment objective. The Fund may also hold cash and cash equivalents or other money market instruments in order to meet its obligations. It is anticipated that the Fund will obtain its exposure to the Shares primarily by investing in the Evolve FANGMA Index ETF in accordance with Section 2.5 of NI 81-102.
16. The maximum aggregate exposure of the Fund to cash borrowing, short selling and specified derivatives will not exceed approximately 125% of its net asset value (**NAV**).
17. In order to ensure that a unitholder's risk is limited to the capital invested, the Fund's leverage ratio will be rebalanced in certain circumstances and when the leverage ratio breaches certain bands. Specifically, the Fund's leverage will be rebalanced back to 125% of the Fund's NAV within two business days (a **Leverage Rebalance Date** and together with an Index Rebalance Date, a **Rebalance Date**) of the Fund's leverage ratio moving 2% away from its target leverage ratio of 125% (i.e., if the leverage ratio is less than 123% or if the leverage ratio is greater than 127%).
18. Following a Rebalance Date, the Fund will generally acquire and/or dispose of the appropriate number of securities in order to track the portfolio weighting of the Index. As a result: (i) units of the

Fund may be issued, or cash may be paid, in consideration for constituent securities making up the Index and to be acquired by the Fund, as determined by its portfolio adviser; and (ii) units may be exchanged in consideration for those securities that the portfolio adviser determines should be sold by the Fund, or cash may be paid as determined by the portfolio adviser. Generally, such transactions may be implemented by a transfer of constituent securities to the Fund that the portfolio adviser determines should be acquired by the Fund or a transfer of those securities that the portfolio adviser determines should be sold by the Fund.

19. Outside of a Rebalance Date, any investments by the Fund (owing, for example, to subscriptions received in respect of Units of the Fund), if any, will be such that securities are acquired up to the same weights as such securities exist in the Fund's portfolio, based on their relative market values, at the time of such investment.
20. Since the inception of the Index in 2012, the maximum weighting of any single Company in the Index represented 28.07% in the Index. On a leveraged basis of 125%, this maximum weighting would represent up to approximately 35% of the NAV of the Fund.
21. Accordingly, the Fund wishes to be able to invest in the Shares of the Companies, such that immediately after a purchase, more than 20 percent of its net assets may be invested in the Shares of one Company for the purposes of determining compliance with the Concentration Restriction.
22. The Shares are listed on the NASDAQ.
23. The Companies are among the largest public issuers in North America.

Rationale for Investment

24. The Filer notes that, in respect of the Fund, its strategy to acquire securities of an applicable Company will be transparent, passive and fully disclosed to investors. The Fund will not invest in securities other than the Shares (or securities designed to gain exposure to the Shares as described herein). In addition, in respect of the Fund, the names of the Companies to be invested in will be listed in the Fund's prospectus. Consequently, unitholders of the Fund will be fully aware of the risks involved with an investment in the securities of the Fund.
25. Given the composition of the Index and the proposed composition of the Fund's portfolio, it would be impossible for the Fund to achieve its investment objective and pursue its investment strategy without obtaining relief from the Concentration Restriction.

26. The units of the Fund will be highly liquid securities, as designated brokers act as intermediaries between investors and the Fund, standing in the market with bid and ask prices for the units of the Fund to maintain a liquid market for the units of the Fund. The majority of trading in units of the Fund will occur in the secondary market.
27. If required to facilitate distributions or pay expenses of the Fund, the Shares will be sold pro-rata across the Fund's portfolio according to their relative market values at the time of such sale.
28. Future subscriptions proceeds from the sale of units of a Fund, if any, will be used to acquire Shares of each Company up to the same portfolio weights as the exist in the Fund's portfolio, based on their relative market values at the time of such subscription.
29. In view of the Filer, the Fund is also similar to a "fixed portfolio investment fund", as such term is defined in NI 81-102, in that it will: (a) have fundamental investment objectives that include holding and maintaining a fixed (i.e. equal) weighting of publicly traded equity securities of one or more issuers, the names of which are disclosed in its prospectus; and (b) trade the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus. The Fund will not be a "fixed portfolio investment fund" as it is an alternative mutual fund and will be in continuous distribution.
30. The Filer further notes that a "fixed portfolio investment fund" is exempt from the Concentration Restrictions, provided purchases of securities are made in accordance with its investment objectives.
31. The Exemption Sought is sought to permit the Fund to purchase Shares or enter into specified derivatives transactions in connection therewith such that, immediately after the transaction, more than 20 percent of its net assets would be invested in the Shares of one Company for the purposes of determining compliance with the Concentration Restriction (the **Proposed Transactions**).
32. In addition, the Fund has been structured as an "alternative mutual fund" for purposes of NI 81-102, which is associated with investment funds that already permit higher levels of concentration under Section 2.1 of NI 81-102.
33. Neither the Filer or the Fund is in default of any of its obligations under securities legislation in any of the Jurisdictions.

Decision

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

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

- (a) the Proposed Transactions are in accordance with the investment objectives and investment strategies of the Fund to replicate, to the extent reasonably possible and before fees and expenses, a 1.25 multiple of the performance of the Index;
- (b) the Fund's investment strategies disclose that, following a Rebalance Date, the Fund will invest in the Companies in equal weights. Outside of a Rebalance Date, any investments by the Fund, if any, will be such that securities of each Company are acquired up to the same weights as the Shares exist in the Fund's portfolio, based on their relative market values at the time of such investment;
- (c) the Fund's investment strategies disclose the frequency of the rebalancing of the Fund's portfolio; and
- (d) the final prospectus of the Fund includes: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of the Fund's investments in the Companies and the risks associated therewith.

"Darren McCall"

Manager

Investment Funds & Structured Products Branch
Ontario Securities Commission

Application File #: 2021/0571

SEDAR #: 3335163

2.1.6 UBS Securities Canada Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
UBS SECURITIES CANADA INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is

intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Ontario with its head office located in Toronto, Ontario.
2. The Filer is registered as an investment dealer in the Jurisdictions, and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).
3. The Filer is not in default of securities legislation in any of the Jurisdictions.
4. The Filer offers limited financial services to non-individual institutional clients. The Filer does not onboard or interact with retail clients.
5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately three Registered Individuals.
6. The current titles used by the Registered Individuals include the words “Director”, “Executive Director”, and “Managing Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).
7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.
8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “institutional client” as defined in IIROC Rule 1201 (the **Clients**).

9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.
12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “institutional clients” as defined in IIROC Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

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

OSC File #: 2021/0662

2.1.7 Mulvihill Capital Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from requirement in section 59 of the Securities Act (Ontario) to provide an underwriter’s certificate in respect of an ETF prospectus – relief from take-over bid requirements of NI 62-104 in respect of normal-course purchases of securities of an ETF.

Applicable Legislative Provisions

Securities Act (Ontario) – R.S.O. 1990, c. S.5, as am., ss. 59(1) and 147.
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

January 25, 2022

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 MULVIHILL CAPITAL MANAGEMENT INC. (the Filer) AND MULVIHILL ENHANCED YIELD CANADIAN BANK ETF AND MULVIHILL PREMIUM YIELD PLUS ETF (the Proposed ETFs)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed ETFs and any additional exchange-traded mutual funds established and managed by the Filer or an affiliate of the Filer in the future (the **Future ETFs**), and together with the Proposed ETFs, the **ETFs**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that exempts:

- (a) the Filer and each ETF from the requirement to include a certificate of the underwriter(s) in an ETF’s prospectus (the **Underwriter’s Certificate Requirement**) (the **Underwriter’s Certificate Relief**); and

- (b) a person or company purchasing ETF Securities (as defined below) in the normal course through the facilities of the Toronto Stock Exchange (the **TSX**), the Neo Exchange Inc. (**Neo**) or another Marketplace (as defined below) from the Take-Over Bid Requirements (as defined below) (the **Take-Over Bid Relief**)

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

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

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

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* (**NI 14-101**), National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and National Instrument 81-102 *Investment Funds* (**NI 81-102**) have the same meaning if used in this decision unless otherwise defined herein. The following terms used in this decision have the following meanings:

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

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

Basket means, in relation to the ETF Securities, assets or a group of securities representing the constituents of the ETF.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the manager of an ETF to perform certain duties in relation to the ETF, including the posting of a liquid two-way market for the trading of the ETF Securities on the TSX, Neo or another Marketplace.

ETF Security means a listed security of an ETF.

Marketplace means a “marketplace” as defined in National Instrument 21-101 *Marketplace Operations* that is located in Canada.

Other Dealer means a registered dealer that is not an Authorized Dealer, Designated Broker or Affiliate Dealer.

Prescribed Number of ETF Securities means the number of ETF Securities determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

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

Securityholders means beneficial or registered holders of ETF Securities.

Take-Over Bid Requirements means the requirements of National Instrument 62-104 *Take-Over Bids and Issuer Bids* relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each Jurisdiction.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Canada, with its head office located at 121 King Street West, Suite 2600, Toronto, Ontario.
2. The Filer is registered as (a) an adviser in the category of portfolio manager under the securities legislation of each of the Provinces of Canada, (b) a dealer in the category of exempt market dealer and an investment fund manager in the Provinces of Ontario, Québec and Newfoundland and Labrador and (c) a dealer in the category of mutual fund dealer in the Provinces of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Prince Edward Island and Saskatchewan.
3. The Filer, or an affiliate of the Filer, will be the investment fund manager of the ETFs. The Filer will apply to list the ETF Securities on the TSX, Neo or another Marketplace.
4. The Filer and the Proposed ETFs are not in default of securities legislation in any of the Jurisdictions.

The ETFs

5. Each ETF will be an open-ended exchange-traded mutual fund. The Proposed ETFs are, and it is expected that some Future ETFs will be, alternative mutual funds (as defined in NI 81-102). Each Proposed ETF will be structured as a trust that is governed by the laws of the Province of Ontario. The Future ETFs will be either trusts or

- corporations or classes thereof governed by the laws of a Jurisdiction.
6. Subject to any exemptions that may be granted by the applicable securities regulatory authorities, each ETF will be subject to NI 81-102 and Securityholders of each ETF will have the right to vote at a meeting of Securityholders of the ETF in respect of matters prescribed by NI 81-102.
7. Each ETF will be a reporting issuer in the Jurisdictions in which its securities are distributed.
8. ETF Securities will be (subject to satisfying the listing requirements of the applicable exchange) listed on the TSX, Neo or another Marketplace.
9. The Filer has filed or will file a long form prospectus in respect of each of the ETFs which will be prepared and filed in accordance with NI 41-101, subject to any exemptions that may be granted by the applicable securities regulatory authorities.
10. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. ETF Securities may generally only be subscribed for or purchased directly from the ETFs (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX, Neo or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX, Neo or another Marketplace.
11. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.
12. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, cash or a Basket equal to the net asset value (**NAV**) of the ETF Securities subscribed for next determined following the receipt of the subscription order.
13. Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or an ETF may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.
14. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of an ETF for cash in an amount not to exceed a specified percentage of the NAV of the ETF or such other amount established by the Filer.
15. Each ETF will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.
16. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from an ETF. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX, Neo or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
17. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or Neo, as applicable, or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for cash and/or Baskets in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to the lesser of (a) 95% of the closing price for the ETF Securities on the TSX, Neo or other Marketplace on the date of redemption; and (b) the NAV per ETF Security.

Reasons for the Exemption Sought

Underwriter's Certificate Relief

18. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.
19. The Filer will generally conduct its own marketing, advertising and promotion of the ETFs.
20. The Authorized Dealers and Designated Brokers will not be involved in the preparation of an ETF's prospectus, will not perform any review or any independent due diligence as to the content of an

ETF's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.

21. In addition, neither the Filer nor the ETFs will pay any fees or commissions to the Designated Brokers and Authorized Dealers. As the Designated Brokers and Authorized Dealers will not receive any remuneration in connection with distributing ETF Securities and as the Authorized Dealers will change from time to time, it is not practical to provide an underwriters' certificate in the prospectus of the ETFs.

Take-Over Bid Relief

22. As equity securities that will trade on the TSX, Neo or another Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-Over Bid Requirements. However:
 - (a) it will be difficult for one or more Securityholders to exercise control or direction over an ETF, as the constating documents of each ETF will provide that there can be no changes made to such ETF which do not have the support of the Filer;
 - (b) it will be difficult for purchasers of ETF Securities to monitor compliance with the Take-Over Bid Requirements because the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by each ETF; and
 - (c) the way in which the ETF Securities will be priced deters anyone from either seeking to acquire control or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the NAV of the ETF Securities.
23. The application of the Take-Over Bid Requirements to the ETFs would have an adverse impact on the liquidity of the ETF Securities because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Securityholder has reached the prescribed threshold at which the Take-Over Bid Requirements would apply. This, in turn, could

serve to provide conventional mutual funds with a competitive advantage over the ETFs.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator is that the Exemption Sought as to:

The Underwriter's Certificate Relief is granted:

"Frances Kordyback"
Commissioner
Ontario Securities Commission

"Cathy Singer"
Commissioner
Ontario Securities Commission

The Take-Over Bid Relief is granted:

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

Application File #: 2021/0605

2.1.8 Veritas Asset Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from National Instrument 81-101 Mutual Fund Prospectus Disclosure to combine the simplified prospectus of an alternative mutual fund with the simplified prospectus of a conventional mutual fund.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 5.1(4) and 6.1(1).

February 4, 2022

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
VERITAS ASSET MANAGEMENT INC.
(the Filer)

AND

VERITAS ABSOLUTE RETURN FUND
(the Existing Alternative Fund)

AND

THE ALTERNATIVE MUTUAL FUNDS ESTABLISHED IN
THE FUTURE
AND
MANAGED BY THE FILER
(the Future Alternative Funds, and
together with the Existing Alternative Fund, the
Alternative Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Alternative Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that grants relief to the Alternative Funds from the requirement in subsection 5.1(4) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) which states that a simplified prospectus (**SP**) for an alternative mutual fund must not be consolidated with a SP of another mutual fund if the other mutual fund is not an alternative mutual fund in order to permit the SP(s) for one or more of the Alternative

Fund(s) to be consolidated with the SP(s) of one or more mutual fund(s) existing today or created in the future (i) that are reporting issuers to which NI 81-101 and National Instrument 81-102 *Investment Funds* (**NI 81-102**) apply, (ii) that are not alternative mutual funds, and (iii) for which the Filer acts as the investment fund manager (the **Veritas Funds**, and to0066gether with the Alternative Funds, the **Funds**) (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 each of the other provinces of Canada (together with Ontario, the **Canadian Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is registered as (i) an investment fund manager in Ontario, Manitoba, Newfoundland and Labrador and Québec; (ii) an adviser in the category of portfolio manager in Ontario and Manitoba; and (iii) a dealer in the category of exempt market dealer in Ontario and Manitoba under the securities legislation of the applicable Canadian Jurisdictions.
2. The Filer is, or will be, the investment fund manager of each Fund.
3. The Filer is not in default of any of its obligations under the securities legislation in any of the Canadian Jurisdictions.
4. Each Alternative Fund is, or will be, an alternative mutual fund established under the laws of the Province of Ontario and is, or will be, a reporting issuer in one or more of the Canadian Jurisdictions.
5. Each Veritas Fund is, or will be, a conventional mutual fund, and is not, or will not be, an alternative mutual fund.
6. Each Alternative Fund is, or will be, subject to NI 81-101 and NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.

7. The Existing Alternative Fund is not in default of any of its obligations under the securities legislation in any of the Canadian Jurisdictions.
8. The securities of each Fund are, or will be, qualified for distribution in one or more of the Canadian Jurisdictions using a SP, annual information form (AIF) and fund facts document prepared and filed in accordance with the securities legislation of such Canadian Jurisdictions.
9. The Filer wishes to combine the SP(s) of one or more Alternative Funds with the SP(s) of one or more Veritas Funds in order to reduce renewal, printing and related costs. Offering the Alternative Funds under the same SP and AIF (collectively, the **Prospectus Documents**) as the Veritas Funds would facilitate the distribution of the Alternative Funds in the Canadian Jurisdictions under the same prospectus disclosure and enable the Filer to streamline disclosure across the Filer's fund platform.
10. Even though the Alternative Funds are, or will be, alternative mutual funds, they share, or will share, many common operational and administrative features with the Veritas Funds and combining them in the same Prospectus Documents will allow investors to more easily compare the features of the Alternative Funds and the Veritas Funds.
11. The ability to file the same Prospectus Documents for the Alternative Funds and the Veritas Funds will ensure that the Filer can make corresponding changes to the operational and administrative features of the Funds in a consistent manner, if required.
12. Investors will continue to receive the fund facts document(s) when purchasing securities of the Funds as required by the applicable securities legislation. The form and content of the fund facts document(s) of the Alternative Funds and the Veritas Funds will not change as a result of the Exemption Sought.
13. The SP and/or the AIF of the Alternative Funds and Veritas Funds will continue to be provided to investors, upon request, as required by applicable securities legislation.
14. National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) does not contain a provision which is equivalent to subsection 5.1(4) of NI 81-101. Accordingly, an investment fund manager that manages exchange-traded funds (**ETFs**) is permitted to consolidate a prospectus under NI 41-101 for its ETFs that are alternative mutual funds with a prospectus for its ETFs that are conventional mutual funds. The Filer submits that there is no reason why mutual funds filing a SP under NI 81-101 should be treated differently from ETFs filing a prospectus under NI 41-101.

Decision

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

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

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

Application File #: 2022/0037

2.1.9 I.G. Investment Management Inc. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation and replacement of decision granting investment fund managers and mutual funds subject to NI 81-102 relief from the related issuer investment restrictions and management company reporting requirements of the Legislation in respect of the mutual funds' investments in closed-end pooled funds in which a substantial securityholder of the investment fund managers has a significant interest – New decision expands scope of the relief to all investment funds, including non-redeemable investment funds, subject to NI 81-102 that are managed by the investment fund managers – Relief subject to conditions, including independent review committee approval and annual reporting of the particulars of any investments made in reliance on the relief – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(c)(ii), 111(4), 113, 117(1)1, 117(1)4, 117(2), 144.

February 4, 2022

**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
I.G. INVESTMENT MANAGEMENT INC.
MACKENZIE FINANCIAL CORPORATION
COUNSEL PORTFOLIO SERVICES INC.
(the Filers)**

AND

**THE INVESTMENT FUNDS
(as defined below)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) (i) revoking the Original Decision (as defined below) granted to the Filers (the **Revocation**), and (ii) granting an exemption to iProfile U.S. Equity Private Pool (the **Pool**) and any other existing or future mutual funds or non-redeemable investment funds

that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and of which one of the Filers is the manager (collectively with the Pool, the **Investment Funds**), from the following provisions in the Legislation (together with the Revocation, the **Requested Relief**):

- (a) the requirements in the Legislation which prohibit an Investment Fund from knowingly making or holding an investment in an issuer in which a substantial securityholder of the Investment Fund, its management company or its distribution company, has a significant interest (the **Related Issuer Investment Restrictions**);
- (b) the requirements in the Legislation which require a management company to file a report within 30 days after the month end of (i) every transaction of purchase or sale of securities between an Investment Fund and any related person or company and (ii) every transaction in which an Investment Fund is a joint participant with one or more related persons or companies (the **Management Company Reporting Requirements**).

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

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

Representations

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

Original Decision

1. On June 18, 2021, the Filers obtained an exemption on behalf of the Investment Funds other than non-redeemable investment funds (the **Mutual Funds**) from the Related Issuer Investment Restrictions and Management Company Reporting Requirements which enabled the Pool and each Mutual Fund to invest in a Northleaf Fund (as defined below) (the **Original Decision**).

2. The Original Decision did not contemplate at the time obtaining relief for non-redeemable investment funds. The Filers request that the Original Decision be revoked and replaced with this decision such that the Requested Relief may be granted to the Investment funds, which include Mutual Funds and non-redeemable investment funds.

IGIM

3. IGIM is a corporation continued under the laws of Ontario. It is the trustee, portfolio adviser, and manager of certain Investment Funds, including the Pool.
4. IGIM is registered as a portfolio manager and investment fund manager in Manitoba, Ontario, Quebec, and Newfoundland and Labrador and as a portfolio manager in British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon.
5. IGIM and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation in any of the Jurisdictions.
6. IGIM is an indirect, wholly owned subsidiary of IGM Financial Inc. ("IGM"). Power Corporation of Canada ("Power") owns approximately 65% of IGM. Therefore, Power is a substantial securityholder of IGIM for purposes of s.110(2)(b) of the Act.
7. The portfolio management department of IGIM has implemented information barriers between it and the other Filers and between it, Power and Power's subsidiaries.

Mackenzie

8. Mackenzie is a corporation formed under the laws of Ontario. It is the trustee, manager and portfolio adviser of certain Investment Funds.
9. Mackenzie is registered as a portfolio manager, investment fund manager, exempt market dealer and commodity trading manager in Ontario. Mackenzie is registered as a portfolio manager, investment fund manager and exempt market dealer in Quebec and Newfoundland and Labrador. Mackenzie is also registered as a portfolio manager and exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.
10. Mackenzie and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation of any of the Jurisdictions.

11. Mackenzie is an indirect, wholly owned subsidiary of IGM. As such, Power is a substantial securityholder of Mackenzie under the Legislation.

12. While the portfolio management departments of Mackenzie and Counsel operate independently, formal information barriers have not been implemented between them. However, information barriers have been implemented between them and IGIM and between them, Power and Power's subsidiaries.

Counsel

13. Counsel is a corporation formed under the laws of Ontario. It is the trustee, manager and portfolio adviser of certain Investment Funds.
14. Counsel is registered as a commodity trading manager, investment fund manager and portfolio manager in Ontario. Counsel is registered as an investment fund manager in Quebec and Newfoundland and Labrador.
15. Counsel and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation in any of the Jurisdictions.

16. Counsel is an indirect, wholly owned subsidiary of IGM. As such, Power is a substantial securityholder of Counsel under the Legislation.

Lifeco

17. Great-West Lifeco Inc. ("Lifeco") is an indirect subsidiary of Power. As of the date of this Application, Power indirectly owns approximately 70% of Lifeco. Power's direct or indirect ownership interest of its subsidiaries is referred to as the "**Power Ownership Percentage**" of the applicable subsidiary in this Application. As such, Power is deemed to own beneficially an amount equal to the Power Ownership Percentage of any voting securities owned by Lifeco pursuant to the Legislation.

Northleaf

18. Northleaf Capital Group Ltd. (together with its subsidiaries, "**Northleaf**") is a global private markets investment firm with more than US\$16 billion in private credit, private equity and infrastructure commitments under management on behalf of more than 100 institutional investors. Northleaf is led by an experienced group of professionals, who collectively have significant experience in structuring, investing and managing global private markets investments and in evaluating, negotiating, structuring and executing complex financial transactions.
19. On October 28, 2020, affiliates of Power, namely Mackenzie and Lifeco, entered into a strategic relationship with Northleaf whereby Mackenzie and

Lifeco jointly acquired a 49.9% non-controlling voting interest and 70% economic interest in Northleaf.

20. None of the Filers, their respective directors, officers, employees and agents is a “responsible person” of Northleaf or a Northleaf Fund (as defined below) within the meaning of subsection 13.5(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Similarly, none of Northleaf, its respective directors, officers, employees and agents is a “responsible person” of a Filer or an Investment Fund.

The Pool

21. The Pool is a mutual fund subject to NI 81-102.
22. IGIM is the trustee, portfolio adviser, and manager of the Pool.
23. The Pool distributes its securities under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (“**NI 81-101**”).
24. The Pool is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of securities legislation in any of the Jurisdictions.
25. The Pool’s investment objective is to provide long-term capital growth by investing primarily in U.S. equities.
26. The Pool’s investment strategies permit it to invest up to 10% of its net assets in a diversified portfolio of privately-held companies. This limit is consistent with the classification by the Pool of these investments as illiquid assets for purposes of NI 81-102.
27. The Pool’s independent review committee (“**IRC**”) established under National Instrument 81-107 *Independent Review Committee for Investment Funds* (“**NI 81-107**”) has reviewed the investment by the Pool in NCO (as defined below) pursuant to subsection 5.3(1) of NI 81-107 and the IRC has provided a positive recommendation in respect of the investment by the Pool. At the time of the review by the IRC and the investment by the Pool, Power had an indirect beneficial interest less than 10% in NCO as a result of its Power Ownership Percentage of Lifeco and, therefore, approval under clause 5.2(1)(b) of NI 81-107 was not required. If the Requested Relief is granted, approval from the IRC pursuant to clause 5.2(1)(b) of NI 81-107 will be sought if the Pool makes additional investments in NCO, which it anticipates doing. The Filers will proceed on the basis that any proposed investment by the Pool in any Northleaf Fund (as defined below) requires the approval of the IRC prior to the Pool committing to the investment.

The Investment Funds

28. Each Investment Fund is or, once established, will be an investment fund subject to NI 81-102.
29. Each Investment Fund has or will have a Filer as its trustee, portfolio adviser, and manager, as applicable.
30. Each Investment Fund that is a mutual fund distributes or will distribute its securities under a simplified prospectus (the “**SP**”) prepared in accordance with NI 81-101. An Investment Fund that is a non-redeemable investment fund distributes or will distribute its securities under a prospectus (together with the SP, a “**Prospectus**”) in conformity with the Legislation.
31. Each Investment Fund is or will be a reporting issuer in each of the Jurisdictions and is not or will not be in default of any of the requirements of securities legislation in any of the Jurisdictions.
32. Each Investment Fund is or will be permitted by NI 81-102 to invest in illiquid assets, which includes the Northleaf Funds, up to the limit prescribed in NI 81-102 or as may otherwise be permitted through exemptive relief. The Prospectus of each Investment Fund discloses or will disclose in its investment strategies (i) the permitted limit for investment in illiquid assets applicable to that Investment Fund, (ii) that the Investment Fund may invest up to that permitted limit in illiquid assets, measured at the time of investment, which may include securities of a Northleaf Fund, and (iii) describe the Investment Fund’s relationship to the Northleaf Fund.
33. Any proposed investment by an Investment Fund in a Northleaf Fund, including NCO, requires a review by, and the approval of, the IRC of the Investment Fund prior to such Investment Fund committing to the investment.

The Northleaf Funds

34. Northleaf Capital Opportunities (“**NCO**”) is a closed-end pooled fund managed by Northleaf that seeks to provide investors with access to direct investments in mid-market private equity assets with a focus on appropriate risk-adjusted returns. NCO pursues a flexible strategy and targets non-control investments across the capital structure, including (i) structured capital investments consisting of preferred equity and higher returning debt securities and (ii) common equity investments.
35. Northleaf seeks to be an active investor engaged with management of the companies in which NCO invests (“**Portfolio Investments**”) to maintain an active ongoing governance role for the duration of NCO’s investment. This includes, in certain circumstances, Northleaf having representation, as a voting member or observer, on the board of

- directors (or similar) of NCO's Portfolio Investments.
36. Northleaf also expects to often play an active role in determining the timing and manner of Portfolio Investment exits, including through voting or observer roles on portfolio company boards of directors (or similar), and in some cases Northleaf will have contractual rights to force a liquidity event of a Portfolio Investment.
 37. NCO is not an "investment fund" under the Act because, while it does not seek legal control of its Portfolio Investments, it makes investments on the basis that it will be actively involved in the management of the companies in which it invests.
 38. In addition to NCO, Northleaf currently or in future may offer other private markets funds that are not investment funds due to the nature of the investment strategy as an active investor engaged with management of the companies in which the fund invests (the "**Northleaf PE Funds**"). Northleaf also offers private credit funds, that originate loans in the private credit market, and which are also not investment funds ("**Northleaf PC Funds**"). For purposes of this Application, a "**Northleaf Fund**" is a Northleaf PE Fund or a Northleaf PC Fund.
 39. NCO is organized using a series of partnerships resident in and formed under the laws of Ontario. While other Northleaf Funds are also expected to be organized using a series of partnerships and/or trusts resident in and formed under the law of Ontario, they may utilize other structures that are beneficial to investors.
 40. NCO has a term of 10 years from the date of final closing, plus two possible extensions of one year each in Northleaf's discretion and further extensions approved by NCO's third-party investors. The final closing must occur within 18 months of the initial closing, which occurred in Q4 of 2020.
 41. NCO draws capital from its investors up to the amount of their capital commitments.
 42. Any investment in a Northleaf Fund by the Pool or any Investment Fund is or will be an illiquid asset for purposes of NI 81-102.
 43. Lifeco, through a subsidiary, has invested in NCO. As at the time of this Application, Lifeco's capital commitment to NCO is in an amount such that the Power Ownership Percentage of NCO is and will remain less than 10% of NCO's aggregate committed capital, but, if the Requested Relief is granted, Lifeco, through one or more subsidiaries, intends to increase its investment in NCO such that the Power Ownership Percentage of NCO would be greater than 10% of NCO's aggregate committed capital. Such an interest would be deemed to be a significant interest under the Legislation and would also result in NCO being considered a "related person or company" to an Investment Fund under the Legislation.
 44. The Filers have been advised that Lifeco intends to make similar investments in other Northleaf Funds in which the Investment Funds may invest.
 45. The Pool is invested in NCO. The Investment Funds may, if consistent with their Investment objectives and strategies, also seek to invest in NCO and/or other Northleaf Funds.
 46. The existing investment by the Pool in NCO (together with any future investments by the Pool in NCO) will at all times be in an amount that constitutes less than 10% of all capital commitments to NCO and less than 10% of the net assets of the Pool.
 47. The portfolio manager of the Pool has engaged in due diligence on Northleaf and NCO, as it would with any investment made by the Pool, negotiated terms that are at least as favourable to the Pool as market terms and conditions, and determined that an investment in NCO is in the best interests of the Pool. Similarly, each Investment Fund that invests in a Northleaf Fund will engage in due diligence on Northleaf and the Northleaf Fund, negotiate terms that are at least as favourable to the Investment Fund as market terms and conditions, and determine that such an investment is in the best interests of the Investment Fund.
 48. Neither Power nor Lifeco has influence over the portfolio management decisions made by the Filers.
 49. Under section 6.2 of NI 81-107, each Investment Fund is or would be permitted to invest in securities of a Northleaf Fund subject to compliance with two conditions: (i) the IRC of the Investment Fund would have to approve the investment under subsection 5.2(2) of NI 81-107 and (ii) the purchase of the securities would have to be made on an exchange. The first condition is or will be met in the case of an investment by an Investment Fund in a Northleaf Fund, as stated in representation 25 above. The second condition is not met because Northleaf Funds are not and will not be reporting issuers and therefore interests in Northleaf Funds are not and will not be listed or traded on an exchange.
 50. Absent the Requested Relief, the Pool, specifically, and the Investment Funds, generally, would be prohibited by the Related Issuer Investment Restrictions from investing in NCO and other Northleaf Funds if Power, through Lifeco or any other Power subsidiary, obtains a beneficial interest of more than 10% in NCO or any other Northleaf Fund indirectly through the applicable Power Ownership Percentage. This is because Power is deemed to be a substantial security holder of each

- Filer under the Legislation and the management company of each Investment Fund is or will be a Filer.
51. Absent the Requested Relief, the Pool and the Investment Funds would be required by the Related Issuer Investment Restrictions to divest their investments in NCO or any other Northleaf Fund if Power attains, directly or indirectly through the applicable Power Ownership Percentage, a beneficial interest of more than 10% in NCO or a Northleaf Fund since, in such case, Power would be deemed to have a significant interest in NCO or the applicable Northleaf Fund.
52. Absent the Requested Relief, the Filers would be required by the Management Company Reporting Requirements to file a report of (i) every transaction of purchase or sale of securities between an Investment Fund and a Northleaf Fund and (ii) every transaction in which an Investment Fund is a joint participant with one or more Northleaf Funds, within 30 days of the month end in which the transaction occurred.
53. Pursuant to National Instrument 81-106 Investment Fund Continuous Disclosure (**NI 81-106**), each Investment Fund prepares and files interim and annual management reports of fund performance (**MRFPs**) that disclose any transactions involving a related party, including the identity of that related party, the relationship to the Investment Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount, and any ongoing commitments to the related party.
54. It is costly and time consuming for the Filers to also provide the reports required by the Management Company Reporting Requirements, which are substantially similar to the information required by NI 81-106 to be disclosed in the MRFPs, on a monthly and segregated basis for the Investment Fund.
- (c) Each Filer, as the investment fund manager of an Investment Fund, complies with section 5.1 of NI 81-107 and the Filer and the IRC comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the Investment Fund's transactions in securities of a Northleaf Fund;
- (d) No later than the time the Investment Fund files its annual financial statements, and no later than the 90th day after the end of each financial year of the Investment Fund, the Filers file with the securities regulatory authority or regulator the particulars of any investments made in reliance on the Requested Relief.

"Cathy Singer"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

Application File #: 2022/0020

Decision

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

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

- (a) The purchase or holding of securities of a Northleaf Fund is consistent with, or necessary to meet, the investment objectives and strategies of an Investment Fund;
- (b) At the time of entering into any commitment of capital to a Northleaf Fund, the IRC of the Investment Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;

2.1.10 Leith Wheeler Investment Counsel Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Capital accumulation plan sponsors, portfolio manager providing non-discretionary advice to plan sponsors, and mutual funds managed by portfolio manager exempted from the dealer registration and prospectus requirements in the Legislation in respect of trades in securities of mutual funds to tax-assisted and non-tax assisted capital accumulation plans, subject to conditions – Securities Act (Ontario).

Applicable Legislative Provisions

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

February 4, 2022

**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
LEITH WHEELER INVESTMENT COUNSEL LTD.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision, on behalf of the Filer (including its respective directors, officers, representatives and employees acting on its behalf), any Plan Sponsor (as defined herein) and any Fund (as defined herein), under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for a ruling that:

- (a) the dealer registration requirements contained in the Legislation shall not apply to the Filer (including its respective directors, officers, representatives and employees acting on its behalf) or any Plan Sponsor of a CAP (as defined herein) or a Non-Tax Assisted CAP (as defined herein) that uses the services of the Filer in respect of its CAP or Non-Tax Assisted CAP in respect of trades in the securities of the Funds to a CAP or a Non-Tax Assisted CAP sponsored by the Plan Sponsor for which the Filer provides services, subject to

certain terms and conditions (the **Dealer Registration Relief**); and

- (b) the prospectus requirements contained in the Legislation shall not apply in respect of the distribution of securities of Funds to CAPs or Non-Tax Assisted CAPs sponsored by a Plan Sponsor for which the Filer provides services (the **Prospectus Relief**),

(the Dealer Registration Relief and the Prospectus Relief are collectively, the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in the jurisdictions of (i) Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut in respect of the Exemption Sought with respect to CAPs, and (ii) Alberta, British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories in respect of the Exemption Sought with respect to Non-Tax Assisted CAPs.

Interpretation

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

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

- (a) **CAP** has the meaning given to the term “capital accumulation plan” as defined in section 1.1 of the CAP Guidelines (as defined herein), namely, a tax assisted investment or savings plan that permits the members of the CAP to make investment decisions among two or more options offered within the plan. CAPs include a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, a group tax-free savings plan or a deferred profit sharing plan, and in Québec and Manitoba, include a simplified pension plan.
- (b) **CAP Guidelines** means the *Guidelines for Capital Accumulation Plans* published in

May 2004 by the Joint Forum of Financial Market Regulators.

- (c) **Fund** means a mutual fund as defined in section 1 of the Legislation, whether offered by prospectus or pursuant to prospectus exemptions in the Legislation, and which in both cases, comply with Part 2 of National Instrument 81-102 *Investment Funds (NI 81-102)* and are established and managed by the Filer, but does not include an exchange-traded fund.
- (d) **Member** means a current or former employee, or a person who belongs, or did belong, to a trade union or association, or
 - (i) his or her spouse
 - (ii) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse or
 - (iii) his or her holding entity, or a holding entity of his or her spouse
 - (iv) that has assets in a CAP or a Non-Tax Assisted CAP and also includes any person who is eligible to participate in a CAP or Non-Tax Assisted CAP.
- (e) **Non-Tax Assisted CAP** means an investment or savings plan that meets the definition of CAP in the CAP Guidelines and that is administered in accordance with the CAP Guidelines, but for the fact that it is an investment or savings plan that is non-tax assisted.
- (f) **Plan** means, depending on the context in which it is used, a CAP or a Non-Tax Assisted CAP or both of them.
- (g) **Plan Sponsor** means any employer, trustee, trade union or association or a combination of them that establishes a CAP or a Non-Tax Assisted CAP and uses the services of the Filer in respect of such CAP or Non-Tax Assisted CAP, and includes a Service Provider, to the extent that the Plan Sponsor has delegated some or all of its responsibilities to the Service Provider.
- (h) **Service Provider** means a person or company that provides services to a Plan Sponsor to design, establish, or operate a CAP or a Non-Tax Assisted CAP.

Representations

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

1. The Filer is a corporation organized under the laws of Canada with its head office in Vancouver, British Columbia.
2. The Filer is registered in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island and the Yukon as a portfolio manager and an exempt market dealer, in Northwest Territories as a portfolio manager, and in British Columbia, Ontario, Québec and Newfoundland and Labrador as an investment fund manager.
3. The Filer's principal business is to provide investment management services through investment funds and discretionary managed accounts to individuals, families, foundations, endowments, not-for-profit organizations, institutions and multi-employer pension and benefit plans.
4. The Filer serves as the manager and principal portfolio advisor for each of its Funds, and for certain of its Funds has retained arm's length sub-advisors for all or a portion of the assets of the Funds. The Filer expects to establish additional Funds in the future.
5. The Filer may provide non-discretionary advice to Plan Sponsors, including doing research and providing recommendations regarding investments Plan Sponsors might select as investment options within a Plan.
6. The investment options for the Members of Plans will include Funds and may also include other investment options, such as segregated funds managed by insurance companies. Where the investment options include Funds, the Funds will comply with Part 2 of NI 81-102 in respect of its investment restrictions and practices. None of the Funds will be exchange-traded funds.
7. Plan Sponsors may wish to offer Funds or model portfolios comprised of securities of Funds as investment options within their CAPs pursuant to the CAP Blanket Exemption and to retain the Filer to provide certain services in relation to the CAPs. However, it is not practicable for the Filer to provide such services unless the Filer receives the Exemption Sought from the dealer and prospectus requirements to allow it to provide Funds to Members who are located in the provinces of Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut.
8. It is possible that a Plan Sponsor with whom the Filer deals may also establish or have established a Non-Tax Assisted CAP. Accordingly, the Filer wishes to also provide the services that the Filer

- provides to Plan Sponsors in respect of CAPs to Non-Tax Assisted CAPs, should the Plan Sponsor desire it to do so.
9. The Filer will not engage in discretionary decision-making with respect to Plans or Member accounts and will not select investments for the Plans or Member accounts or provide investment advice to Members. The Filer does not provide custodial services in respect of the Plans or the Funds.
10. The Filer intends to only service Plans which, to the extent that they offer investment funds as investment options within the Plans, will only offer the Filer's proprietary funds as investment options within the Plan. As such, the Plans could offer other investment options (e.g. segregated funds), but the only investment funds offered therein would be those established and managed by the Filer.
11. For Plan Sponsors that offer model portfolios comprised of securities of Funds managed by the Filer, the Filer will be responsible to the applicable Plan Sponsor or Service Provider to maintain the specified targeted percentage investment in each Fund within the agreed tolerance range for each model portfolio subject to any adjustments agreed to or recommended by the Filer from time to time, and to provide such other services in connection with the model portfolios as agreed by the Plan Sponsor or Service Provider.
12. Members and in some cases, the Plan Sponsor, will make initial investment decisions to invest in Funds chosen by the Plan Sponsor, although the Plan Sponsor may establish a default option if the Member fails to make an investment choice, and subsequent changes to those investment decisions, with or without the assistance of an advisor selected by the Member (which will not be the Filer). Plan Sponsors may facilitate access to a registrant for advice to Members. The applicable investment instructions of Members will be transmitted by the Plan Sponsor to the Filer. The interest in the securities of Funds will be registered in the name of the applicable Plan Sponsor or the Filer for the account of the relevant Plan. The Filer will process the trades in the Funds as instructed and will establish and maintain the records reflecting the interest of each Plan in each Fund, and the Filer or a Service Provider will maintain records reflecting the interest of each Member or Plan Sponsor, as the case may be, in each Fund.
13. The Filer, the Plan Sponsors and the Funds will trade within the Plans or to Members of the Plans in accordance with the conditions set out in proposed amendments to National Instrument 45-106 *Prospectus Exemptions* related to CAPs, which were published by the Canadian Securities Administrators (the **CSA**) on October 21, 2005 (the **Proposed CAP Exemption**) and adopted in the form of a blanket exemption in all jurisdictions, other than in Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut (the **CAP Blanket Exemption**). The Proposed CAP Exemption and the CAP Blanket Exemption contemplate both dealer registration and prospectus exemptions, where required.
14. Although no equivalent to the CAP Blanket Exemption has been adopted in the jurisdictions of Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut, CSA Notice 81-405 *Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans* published (the **CAP Staff Notice**) states that, in Ontario, the conditions described in the Proposed CAP Exemption will form the basis of the circumstances in which staff of the Ontario Securities Commission expects that they could recommend that the Ontario Securities Commission grant discretionary relief to an applicant. The jurisdictions in which no equivalent to the CAP Blanket Exemption was adopted made it clear that they would be prepared to grant discretionary relief on terms similar to those contained in the Proposed CAP Exemption. The CAP Staff Notice stated that the purpose of the Proposed CAP Exemption was to remove existing barriers to trading mutual fund securities with members of CAPs where there is no valid regulatory reason for having such barriers.
15. As Plan Sponsors will typically approach consultants and other parties, such as the Filer, for assistance with respect to securities regulatory issues (when the investment choices are Funds), the Filer is seeking an exemption on behalf of the Filer, Plan Sponsors and Funds, as applicable, from the dealer registration and prospectus requirements, including the obligation to deliver a prospectus, where required, provided the conditions as described in this decision are adhered to.
16. The Filer is not in default of securities legislation in any jurisdiction.
17. The Filer may be requested by a Plan Sponsor to provide services to a Non-Tax Assisted CAP established by the Plan Sponsor for the benefit of individual Members. These Non-Tax Assisted CAPs would not constitute CAPs, as defined in the CAP Guidelines, the Proposed CAP Exemption or the CAP Blanket Exemption, since they are not "tax-assisted" under applicable legislation. Non-Tax Assisted CAPs are intended as non-registered employee savings plans to which excess contributions of Members that cannot be invested in a CAP because of legislative limits for such CAP investments will be invested on behalf of the Members.
18. Non-Tax Assisted CAPs are established in conjunction with CAPs because Canadian tax legislation imposes a limit on the amounts that may be contributed to a CAP. The benefit formula under a Plan Sponsor's benefit program sometimes

results in contributions that exceed that tax limit. A Plan Sponsor may establish a Non-Tax Assisted CAP to allow for those excess contributions to be invested in the same manner as the tax assisted contributions. These excess contributions to Non-Tax Assisted CAPs are not expected to be significant and in any event will be limited by the calculation set out in the conditions to this decision and subject to the remaining conditions set out in this decision.

19. Non-Tax Assisted CAPs will operate in the same manner as CAPs in terms of the relationship between Members and Plan Sponsors, and the duties, rights and responsibilities of Members and Plan Sponsors and the services that the Filer will provide. The only significant difference between the two types of Plans is the tax assisted nature of one and not the other.
20. Each Member of a Non-Tax Assisted CAP of a Plan Sponsor that the Filer provides services to will also be a member of the Plan Sponsor's CAP.
21. The Filer will provide services in respect of the Non-Tax Assisted CAPs in accordance with the CAP Guidelines and, in the case of the Non-Tax Assisted CAPs, in a similar fashion to the related CAPs for the applicable Members. The Filer will only provide services in respect of Non-Tax Assisted CAPs which originate out of CAPs of a Plan Sponsor also serviced by the Filer.

Decision

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

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

1. For the Dealer Registration Relief:
 - (a) the Plan Sponsor selects the Funds that Members will be able to invest in under the Plans;
 - (b) the Plan Sponsor establishes a policy, and provides Members with a copy of the policy and any amendments to it, describing what happens if a Member does not make an investment decision;
 - (c) in addition to any other information that the Plan Sponsor believes is reasonably necessary for a Member to make an investment decision within the Plan, and unless that information has previously been provided, the Plan Sponsor provides the Member with the following information about each Fund the Member may invest in:
 - (i) the name of the Fund;
 - (ii) the name of the manager of the Fund and its portfolio adviser;

- (iii) the fundamental investment objective of the Fund;
 - (iv) the investment strategies of the Fund or the types of investments the Fund may hold;
 - (v) a description of the risks associated with investing in the Fund;
 - (vi) where a Member can obtain more information about each Fund's portfolio holdings; and
 - (vii) where a Member can obtain more information generally about each Fund, including any continuous disclosure;
- (d) the Plan Sponsor provides Members with a description and amount of any fees, expenses and penalties relating to the Plan, as the case may be, that are borne by Members, including:
 - (i) any costs that must be paid when a Fund is bought or sold;
 - (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the Plan Sponsor;
 - (iii) the management fees paid by the Funds;
 - (iv) the operating expenses paid by the Funds;
 - (v) record keeping fees;
 - (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences;
 - (vii) account fees; and
 - (viii) fees for services provided by the Filer,

provided that the Plan Sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the Plan Sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular Member;

- (e) the Plan Sponsor has, within the past year, provided the Members with performance information about each Fund the Members may invest in, including:
 - (i) the name of the Fund for which the performance is being reported;
 - (ii) the performance of the Fund, including historical performance for one, three, five and ten years if available;

- (iii) a performance calculation that is net of investment management fees and mutual fund expenses;
- (iv) the method used to calculate the Fund's performance return calculation, and information about where a Member could obtain a more detailed explanation of that method;
- (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the Fund, and corresponding performance information for that index; and
- (vi) a statement that past performance of the Fund is not necessarily an indication of future performance;
- (f) the Plan Sponsor has, within the past year, informed Members if there were any changes in the choice of Funds that Members could invest in and where there was a change, provided information about what Members needed to do to change their investment decision, or make a new investment;
- (g) the Plan Sponsor provides Members with investment decision-making tools that the Plan Sponsor reasonably believes are sufficient to assist them in making an investment decision within the Plan;
- (h) the Plan Sponsor must provide the information required by paragraphs (b), (c), (d) and (g) prior to the Member making an investment decision under the Plan;
- (i) if the Plan Sponsor makes investment advice from a registrant available to Members, the Plan Sponsor must provide Members with information about how they can contact the registrant;
- (j) the maximum amount that may be contributed in respect of a Member to a Non-Tax Assisted CAP in a given year is limited to any positive difference between:
 - (i) the maximum amount that the Member and the Plan Sponsor would have been able to contribute for that year to the applicable CAP under the terms of the applicable CAP if contributions to the applicable CAP were not restricted to the maximum dollar limit provided in the *Income Tax Act* (Canada) (the *ITA*); and
 - (ii) the maximum dollar limit provided in the *ITA* for the applicable CAP,

provided that this maximum amount that may be contributed in respect of a Member to the Non-Tax Assisted CAP in a given year shall not exceed an amount equal to the "money

purchase limit", as defined in the *ITA*, for the year.

In this paragraph (j), the amount determined under (i) shall be no more than 18% of the Member's "earned income" as defined in the *ITA* and the "maximum dollar limit" means the "RRSP dollar limit" as defined in the *ITA* (in the case where the applicable CAP is an RRSP), the "money purchase limit" as defined in the *ITA* (in the case where the applicable CAP is a DCPP), one-half of the "money purchase limit" (in the case where the applicable CAP is a DPSP) or any applicable maximum fixed dollar contribution prescribed under the *ITA* (in the case of any other type of CAP).

2. For the Prospectus Relief:

- (a) the conditions set forth in paragraph 1 above are met;
- (b) the Funds comply with Part 2 of NI 81-102; and
- (c) where a Member chooses to invest in a publicly available Fund selected by the Plan Sponsor as an investment option for a Non-Tax Assisted Plan, the current prospectus of the Fund and/or Fund Facts as permitted by the Legislation, will be made available, upon demand, to the Member;
- 3. before the first time a Fund relies on this Decision, the Fund files a notice in the form found in Appendix C of the Proposed CAP Exemption in each jurisdiction in which the Fund expects to distribute its securities;
- 4. this Decision, as it relates to the jurisdiction of a Decision Maker with respect to the Dealer Registration Relief will terminate upon the coming into force in securities rules of a registration exemption for trades in a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule;
- 5. this Decision, as it relates to the jurisdiction of a Decision Maker with respect to the Prospectus Relief will terminate upon the coming into force in securities rules of a prospectus exemption for the distribution of a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule.

"Cathy Singer"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

Application File #: 2021/0776

2.1.11 MarketAxess Canada Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards – relief subject to updated management reviews of systems and controls similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, ss. 12.2 and 15.1.

February 9, 2022

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

AND

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

AND

IN THE MATTER OF
MARKETAXESS CANADA COMPANY
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices (collectively, an **ISR**) for each year from 2021 through 2023, inclusive (the **Exemptive Relief Sought**).

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

- (a) the Ontario Securities Commission (**OSC**) is the principal regulator for this application, and

- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) have the same meaning if used in this Decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of the Province of Nova Scotia and is an indirect wholly owned subsidiary of MarketAxess Holdings Inc., a corporation formed under the laws of the State of Delaware, listed and publicly traded on NASDAQ;
2. The head office of the Filer is located in New York, New York;
3. The Filer is an alternative trading system (**ATS**), as that term is defined in NI 21-101, that is registered as an investment dealer (or equivalent) in Ontario, Quebec, British Columbia, and Alberta and is a member of the Investment Industry Regulatory Organization of Canada;
4. The Filer has chosen the OSC as its principal regulator pursuant to the guidance set out in subsection 3.6(10) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* because the OSC is the regulator of the jurisdiction with which the Filer has the most significant connection and where it has carried on business as an ATS under NI 21-101 for the longest period of time;
5. The Filer is an affiliate of MarketAxess Corporation. MarketAxess Corporation operates a platform for the trading of fixed income securities in the United States, is registered as a broker-dealer under the United States Securities Exchange Act of 1934 and is a member of the Financial Industry Regulatory Authority. The Filer is also an affiliate of MarketAxess Europe Limited (together with MarketAxess Corporation, the **Affiliate Platforms**), which has received regulatory approval from the Financial Conduct Authority in the United Kingdom to operate as a multilateral trading facility. The Filer and the Affiliate Platforms are all wholly owned subsidiaries of MarketAxess Holdings Inc.;
6. The Filer, as an ATS, facilitates the execution of orders on the Affiliate Platforms by its subscribers, as defined in NI 21-101 and described in its Form 21-101F2 *Information Statement Alternative Trading System* (**Form F2**), as amended from time to time, (**Subscribers**), through the use of routing

- and execution agreements between the Filer and the Affiliate Platforms;
7. The Filer, as an ATS, offers access to its Subscribers based in Ontario, Quebec, British Columbia, and Alberta to a fixed income system (the **Fixed Income System**) operated by the Affiliate Platforms that facilitates trading in the fixed income securities described in the Filer's Form F2, as amended from time to time;
 8. The Affiliate Platforms are subject to robust regulation in their respective home jurisdictions;
 9. For each of its systems that support order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance, and trade clearing, the Filer has developed and maintains:
 - reasonable business continuity and disaster recovery plans;
 - adequate internal controls over those systems; and
 - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support, and system software support;
 10. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, the Filer:
 - makes reasonable current and future capacity estimates;
 - conducts capacity stress tests to determine the processing capability of those systems to perform in an accurate, timely, and efficient manner;
 - tests its business continuity and disaster recovery plans; and
 - reviews the vulnerability of the Fixed Income System and data centre operations to internal and external threats including physical hazards and natural disasters;
 11. The Filer's current trading and order entry volumes in the Fixed Income System are less than 55 percent of the current design and peak capacity of the Fixed Income System and the Filer has not experienced any failure of the Fixed Income System;
 12. The estimated cost to the Filer of an annual independent systems review by a qualified external auditor would represent a material impairment to the Filer's business on an annual basis;

13. The Filer's Fixed Income System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;
14. There are no auxiliary systems on shared networks with the Fixed Income System;
15. The Filer must promptly notify the OSC of any failure to comply with the representations set out herein;
16. The cost of an ISR is prejudicial to the Filer and represents a disproportionate impact on the Filer's revenue; and
17. The Filer is not in default of the Legislation.

Decision

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

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

1. The Filer must promptly notify the OSC of any material changes to the representations set out herein, including any material changes to the Filer's annual net income or to the market share or daily transaction volume of the Fixed Income System; and
2. The Filer must, in each year from 2021 through 2023, inclusive, require the MarketAxess Independent Audit and Risk Department to complete a review of the Fixed Income System and of its controls, similar in scope to that which would have applied had the Filer undergone an independent systems review, for ensuring it continues to comply with the representations set out herein and must prepare written reports of the MarketAxess Independent Audit and Risk Department's reviews which must be submitted to staff of the OSC no later than (i) 30 days after such reports are provided to the Filer's board of directors or audit committee, or (ii) the 60th day after reports' completion.

"Susan Greenglass"
 Director, Market Regulation
 Ontario Securities Commission

2.2 Orders

2.2.1 Stableview Asset Management Inc. and Colin Fisher

File No. 2020-40

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

Timothy Moseley, Vice-Chair and Chair of the Panel

February 4, 2022

ORDER

WHEREAS on February 4, 2022, the Ontario Securities Commission held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Commission and for Colin Fisher, no one appearing for Stableview Asset Management Inc.;

IT IS ORDERED THAT:

1. the deadlines set out in paragraph 3(b) of the previous Order of the Commission dated November 3, 2021, are varied as follows:
 - a. by 4:30 p.m. on March 25, 2022, Staff shall serve affidavits containing the merits hearing evidence of its witnesses Sherry Brown, Catherine Muhindi and Trevor Walz; and
 - b. by 4:30 p.m. on April 8, 2022, Staff shall file those affidavits.

“Timothy Moseley”

2.2.2 Sol Cuisine Ltd. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Applicable Legislative Provisions

Business Corporations Act (Ontario), R.S.O., c. B.16 as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
SOL CUISINE LTD.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an “offering corporation” as defined in subsection 1(1) of the OBCA;
2. The Applicant has no intention to seek public financing by way of an offering of securities;
3. On January 27, 2022, the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer of the equivalent in any jurisdiction of Canada in accordance with the procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and
4. The representations set out in the Reporting Issuer Order to continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public.

DATED at Toronto this 7th day of February, 2022.

“Mary Anne De Monte-Whelan”
Commissioner
Ontario Securities Commission

“Cathy Singer”
Commissioner
Ontario Securities Commission

OSC File #: 2022/0051

2.2.3 Corvus Gold ULC

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

February 4, 2022

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

AND

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

AND

**IN THE MATTER OF
CORVUS GOLD ULC
(the Filer)**

ORDER

Background

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

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

- ¶ 3 This order is based on the following facts represented by the Filer:
1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
 2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 security holders in total worldwide;
 3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
 4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
 5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0019

2.2.4 Apollo Healthcare Corp. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

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

AND

**IN THE MATTER OF
APOLLO HEALTHCARE CORP.
(the Applicant)**

**ORDER
(Subsection 1(6) of the OBCA)**

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an “offering corporation” as defined in subsection 1(1) of the OBCA;
2. The Applicant’s head office is located in Ontario;
3. The Applicant has no intention to seek public financing by way of an offering of securities;
4. On January 28, 2022, the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or equivalent in any other jurisdiction in Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and
5. The representations set out in the Reporting Issuer Order continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to subsection 1(6) of the OBCA, that the Applicant be deemed to have ceased to be offering its securities to the public.

DATED at Toronto this 4th day of February, 2022.

“Lawrence Haber”
Commissioner
Ontario Securities Commission

“Frances Kordyback”
Commissioner
Ontario Securities Commission

OSC File #: 2022/0031

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.2 Director's Decisions

3.2.1 Chicago Mercantile Exchange Inc. – s. 42 of OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – Applicant seeking extension of relief from requirements to publicly disseminate transaction level data 48 hours from the execution time stamp – relief granted, subject to conditions.

DIRECTOR'S EXEMPTION

IN THE MATTER OF CHICAGO MERCANTILE EXCHANGE INC.

DECISION

(Section 42 of Ontario Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting)

WHEREAS Chicago Mercantile Exchange Inc. (the "**Applicant**") is a designated trade repository pursuant to an order under section 21.2.2 of the *Securities Act* (Ontario) (the "**Act**") dated September 19, 2014 (the "**Designation Order**") and therefore the Applicant, as a designated trade repository, is subject to obligations under Ontario Securities Commission ("**OSC**" or the "**Commission**") Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ("**OSC Rule 91-507**");

AND WHEREAS the Applicant previously applied to the Director (as such term is defined in section 1 of the Act) for an order pursuant to Section 42 of OSC Rule 91-507 exempting the Applicant from the requirements under subsection 39(3) and item 7 of Appendix C of OSC Rule 91-507 for a designated trade repository to publicly disseminate prescribed transaction-level data for certain derivatives, 48 hours after the time and date represented by the execution timestamp field of the transaction (the "**48-Hour Dissemination Requirement**") and was granted an exemption from the 48 Hour Dissemination Requirement on February 9, 2017, expiring on February 9, 2022 (the "**2017 Exemption**");

AND WHEREAS the Applicant has filed an application to the Director to issue a decision to extend the expiry date for the 48-Hour Dissemination Requirement relief;

AND UPON the Applicant having represented to the Director that:

1. the Applicant is a corporation organized under the laws of the State of Delaware in the United States and is a wholly owned subsidiary of CME Group Inc. ("**CMEG**");
2. CMEG is a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ Global Select Market and is the ultimate parent company of the Applicant;
3. the Applicant provides trade repository services in Ontario pursuant to the Designation Order and is subject to requirements and obligations applicable to designated trade repositories under OSC Rule 91-507 and to the terms and conditions that are set out in Schedule "A" of the Designation Order;
4. the Applicant accepts derivatives transaction data required to be reported under the OSC Rule 91-507 for credit, interest rate, commodity, equity and foreign exchange asset classes;
5. as prescribed in Appendix C to OSC Rule 91-507, the Applicant is required to publicly disseminate transaction-level data for certain derivatives (the "**Disseminated Transactions**") in compliance with the 48-Hour Dissemination Requirement;
6. in order to publicly disseminate the Disseminated Transactions and comply with the 48-Hour Dissemination Requirement, the Applicant relies on technology infrastructure and resources that are shared across the whole of its organization (the "**Applicant's Systems**");
7. the Applicant's Systems, including the technology infrastructure and resources used to publicly disseminate the Disseminated Transactions, require certain periods of non-operation or downtime ("**System Downtime**") to comply with system and operational risk control requirements including the requirements set out in section 21 of OSC Rule 91-507 as well as

8. to allow for regular maintenance, major system upgrades, database patches and emergency fixes, all which are critical for the safe, secure and efficient operation of the Applicant's trade repository services;
9. there are twenty-four consecutive hours of System Downtime scheduled each week, starting at 1:00 am ET on Saturday until 1:00 am ET on Sunday, affecting the Applicant's Systems;
10. System Downtime can also occur on an *ad hoc* basis; and
11. as a consequence of both scheduled and *ad hoc* System Downtime, the Applicant is from time to time unable to comply with the 48-Hour Dissemination Requirement for certain Disseminated Transactions;

AND UPON the Director being satisfied that exempting the Applicant from the 48-Hour Dissemination Requirement would not be prejudicial to the public interest;

IT IS THE DECISION of the Director that pursuant to section 42 of OSC Rule 91-507, the Applicant is exempted from the 48-Hour Dissemination Requirement when the Applicant is prevented from publicly disseminating a Disseminated Transaction in accordance with the 48-Hour Dissemination Requirement as a direct consequence of System Downtime upon expiry of the 2017 Exemption (the "**2022 Exemption**");

PROVIDED THAT:

1. the Applicant publicly disseminates each Disseminated Transaction that was not publicly disseminated in accordance with the 48-Hour Dissemination Requirement as a direct consequence of System Downtime as soon as practicable following the conclusion of the period of System Downtime that prevented public dissemination of the Disseminated Transaction in accordance with the 48-Hour Dissemination Requirement; and
2. the 2022 Exemption expires on the coming into force of subsequent amendments to OSC Rule 91-507, which will permit trade repositories to exceed the 48-Hour Dissemination Requirement due to periods of routine and *ad hoc* downtime required for maintenance, system upgrades, database patches or emergency fixes.

DATED: January 28, 2022

"Kevin Fine"
Director, Derivatives Branch
Ontario Securities Commission

3.2.2 DTCC Data Repository (U.S.) LLC – s. 42 of OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – Applicant seeking extension of relief from requirements to publicly disseminate transaction level data 48 hours from the execution time stamp – relief granted, subject to conditions.

DIRECTOR'S EXEMPTION

**IN THE MATTER OF
DTCC DATA REPOSITORY (U.S.) LLC**

DECISION

**(Section 42 of Ontario Securities Commission Rule 91-507
Trade Repositories and Derivatives Data Reporting)**

WHEREAS DTCC Data Repository (U.S.) LLC (the "**Applicant**") is a designated trade repository pursuant to an order under section 21.2.2 of the *Securities Act* (Ontario) (the "**Act**") dated September 19, 2014 (the "**Designation Order**") and therefore the Applicant, as a designated trade repository, is subject to obligations under Ontario Securities Commission ("**OSC**" or the "**Commission**") Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ("**OSC Rule 91-507**");

AND WHEREAS the Applicant previously applied to the Director (as such term is defined in section 1 of the Act) for an order pursuant to section 42 of OSC Rule 91-507 exempting the Applicant from the requirements under subsection 39(3) and item 7 of Appendix C of OSC Rule 91-507 for a designated trade repository to publicly disseminate prescribed transaction-level data for certain derivatives 48 hours after the time and date represented by the execution timestamp field of the transaction (the "**48-Hour Dissemination Requirement**") and was granted an exemption from the 48 Hour Dissemination Requirement on February 9, 2017, expiring on February 9, 2022 (the "**2017 Exemption**");

AND WHEREAS the Applicant has filed an application to the Director to issue a decision to extend the expiry date for the 48-Hour Dissemination relief;

AND UPON the Applicant having represented to the Director that:

1. the Applicant is a limited liability company organized under the laws of New York;
2. the Applicant provides trade repository services in Ontario pursuant to the Designation Order and is subject to requirements and obligations applicable to designated trade repositories under OSC Rule 91-507 and to the terms and conditions that are set out in Schedule "A" of the Designation Order;
3. the Applicant accepts derivatives transaction data required to be reported under the OSC Rule 91-507 for credit, equity, interest rate, commodity and foreign exchange asset classes;
4. as prescribed in Appendix C to OSC Rule 91-507, the Applicant is required to publicly disseminate transaction-level data for certain derivatives (the "**Disseminated Transactions**") in compliance with the 48-Hour Dissemination Requirement;
5. in order to publicly disseminate the Disseminated Transactions and comply with the 48-Hour Dissemination Requirement, the Applicant relies on technology infrastructure and resources (the "**Applicant's Systems**");
6. the Applicant's Systems, including the technology infrastructure and resources used to publicly disseminate the Disseminated Transactions, require certain periods of non-operation or downtime ("**System Downtime**") to comply with system and operational risk control requirements as well as to allow for regular operational maintenance, major system upgrades and system repairs, disaster recovery exercises and exercises related to regulatory obligations all of which are necessary for operating the Applicant's trade repository services in accordance with safe industry standard practices meant to reduce risk to its operations;
7. there are eight consecutive hours of System Downtime scheduled each week, starting at 10:00 pm ET on Saturday until 6:00 am ET on Sunday affecting the Applicant's Systems;
8. System Downtime can also occur on an ad hoc basis; and
9. as a consequence of both scheduled and ad hoc System Downtime, the Applicant is from time to time unable to comply with the 48-Hour Dissemination Requirement for certain Disseminated Transactions;

AND UPON the Director being satisfied that exempting the Applicant from the 48-Hour Dissemination Requirement would not be prejudicial to the public interest;

IT IS THE DECISION of the Director that pursuant to section 42 of OSC Rule 91-507, the Applicant is exempted from the 48-Hour Dissemination Requirement when the Applicant is prevented from publicly disseminating a Disseminated Transaction in accordance with the 48-Hour Dissemination Requirement as a direct consequence of System Downtime upon expiry of the 2017 Exemption (the "**2022 Exemption**");

PROVIDED THAT:

1. the Applicant publicly disseminates each Disseminated Transaction that was not publicly disseminated in accordance with the 48-Hour Dissemination Requirement as a direct consequence of System Downtime as soon as practicable following the conclusion of the period of System Downtime that prevented public dissemination of the Disseminated Transaction in accordance with the 48-Hour Dissemination Requirement; and
2. the 2022 Exemption expires on the coming into force of subsequent amendments to OSC Rule 91-507, which will permit trade repositories to exceed the 48-Hour Dissemination Requirement due to periods of routine and ad hoc downtime required for operational maintenance, system upgrades, system repairs or disaster recovery exercises.

DATED: January 28, 2022

"Kevin Fine"
Director, Derivatives Branch
Ontario Securities Commission

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
XRApplied Technologies Inc.	December 3, 2021	February 1, 2022
BC Craft Supply Co. Ltd.	February 3, 2022	
Esrey Resources Ltd.	February 3, 2022	
Pepcap Resources, Inc.	February 3, 2022	
Darkhorse Technologies Ltd.	February 4, 2022	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Edison Lithium Corp.	February 1, 2022	
GreenBank Capital Inc.	November 30, 2021	February 2, 2022

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
Agrios Global Holdings Ltd.	September 17, 2020	
Reservoir Capital Corp.	May 5, 2021	
Cronos Group Inc.	November 16, 2021	
GreenBank Capital Inc.	November 30, 2021	February 2, 2022
Edison Lithium Corp.	February 1, 2022	

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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:

Waypoint Alternative Yield Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Jan 31, 2022
NP 11-202 Final Receipt dated Feb 2, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3315745

Issuer Name:

Ninepoint Carbon Credit ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Feb 4, 2022
NP 11-202 Final Receipt dated Feb 7, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3328870

Issuer Name:

EHP Global ESG Leaders Alternative Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Feb 1, 2022
NP 11-202 Final Receipt dated Feb 1, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3321813

Issuer Name:

SmartBe Canadian Quantitative Momentum Index ETF
SmartBe Canadian Quantitative Value Index ETF
SmartBe U.S. Quantitative Momentum Index ETF
SmartBe U.S. Quantitative Value Index ETF
Principal Regulator – Alberta (ASC)

Type and Date:

Final Long Form Prospectus dated Feb 4, 2022
NP 11-202 Final Receipt dated Feb 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3322110

Issuer Name:

Manulife U.S. Dollar U.S. Mid-Cap Equity Fund
Manulife U.S. Mid-Cap Equity Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Feb 4, 2022
NP 11-202 Preliminary Receipt dated Feb 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3335473

Issuer Name:

Horizons Carbon Credits ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Feb 7, 2022
NP 11-202 Final Receipt dated Feb 7, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3326315

Issuer Name:

Dynamic Active Canadian Dividend ETF
 Dynamic Active Crossover Bond ETF
 Dynamic Active Emerging Markets ETF
 Dynamic Active Energy Evolution ETF
 Dynamic Active Global Dividend ETF
 Dynamic Active Global Financial Services ETF
 Dynamic Active Global Infrastructure ETF
 Dynamic Active International Dividend ETF
 Dynamic Active International ETF
 Dynamic Active Investment Grade Floating Rate ETF
 Dynamic Active Preferred Shares ETF
 Dynamic Active Retirement Income+ ETF
 Dynamic Active Tactical Bond ETF
 Dynamic Active U.S. Dividend ETF
 Dynamic Active U.S. Mid-Cap ETF
 Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Feb 3, 2022
 NP 11-202 Final Receipt dated Feb 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3320882

Issuer Name:

Scotia Wealth Credit Absolute Return Pool
 Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Feb 3, 2022
 NP 11-202 Preliminary Receipt dated Feb 3, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3335255

Issuer Name:

RGP Global Sector Fund
 RGP Global Sector Class
 GreenWise Conservative Portfolio
 GreenWise Balanced Portfolio
 GreenWise Growth Portfolio
 Principal Regulator - Quebec

Type and Date:

Amendment #1 to Final Simplified Prospectus and
 Amendment #2 to AIF dated January 24, 2022
 NP 11-202 Final Receipt dated Feb 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3179508

Issuer Name:

NEI Environmental Leaders Fund
 Principal Regulator - Ontario

Type and Date:

Amendment #3 to Final Simplified Prospectus and
 Amendment #3 to AIF dated February 1, 2022
 NP 11-202 Final Receipt dated Feb 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3226925

Issuer Name:

Canadian Life Companies Split Corp.
 Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus (NI 44-102) dated February 3, 2022
 NP 11-202 Preliminary Receipt dated February 7, 2022

Offering Price and Description:

Maximum Offerings: \$125,000,000 Preferred Shares and
 Class A Shares

Price: \$10.23 per Preferred Shares and \$5.24 per Class A
 Shares

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3335590

Issuer Name:

Family Single Student Education Savings Plan
 Flex First Plan
 Principal Regulator - Ontario

Type and Date:

Amended and Restated to Final Long Form Prospectus
 dated January 27, 2022
 NP 11-202 Receipt dated February 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3207649

Issuer Name:

Flex First Plan
Family Single Student Education Savings Plan
Principal Regulator - Ontario

Type and Date:

Amended and Restated to Final Long Form Prospectus
dated January 27, 2022
NP 11-202 Receipt dated February 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #3207655

NON-INVESTMENT FUNDS

Issuer Name:

A2ZCryptocap Inc.
Principal Regulator - Alberta

Type and Date:

Preliminary CPC Prospectus dated February 2, 2022
NP 11-202 Preliminary Receipt dated February 2, 2022

Offering Price and Description:

\$400,000.00 - 4,000,000 Common Shares
PRICE: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

LEEDE JONES GABLE INC.

Promoter(s):

Christopher Gulka
Project #3334886

Issuer Name:

Billy Goat Brands Ltd. (formerly 1266663 B.C. Ltd.)
Principal Regulator - British Columbia

Type and Date:

Amendment dated January 31, 2022 to Preliminary Shelf
Prospectus dated November 3, 2021
NP 11-202 Preliminary Receipt dated February 3, 2022

Offering Price and Description:

\$25,000,000.00 - Common Shares Debt Securities
Subscription Receipts Warrants Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3294727

Issuer Name:

Canadian Life Companies Split Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated February 3, 2022
NP 11-202 Preliminary Receipt dated February 7, 2022

Offering Price and Description:

Maximum Offerings: \$125,000,000 Preferred Shares and
Class A Shares
Price: \$10.23 per Preferred Shares and \$5.24 per Class A
Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3335590

Issuer Name:

Canadian Net Real Estate Investment Trust
Principal Regulator - Quebec

Type and Date:

Preliminary Shelf Prospectus dated February 2, 2022
NP 11-202 Preliminary Receipt dated February 2, 2022

Offering Price and Description:

\$125,000,000.00 - Trust Units, Subscription Receipts,
Warrants, Debt Securities (unsecured), Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3334856

Issuer Name:

CarbonTech Capital Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary CPC Prospectus dated January 31, 2022
NP 11-202 Preliminary Receipt dated February 1, 2022

Offering Price and Description:

\$500,000.00 - 5,000,000 Common Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3333990

Issuer Name:

General Assembly Holdings Limited
Principal Regulator - Ontario

Type and Date:

Amendment dated January 31, 2022 to Preliminary Shelf
Prospectus dated November 2, 2021
NP 11-202 Preliminary Receipt dated February 1, 2022

Offering Price and Description:

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

Underwriter(s) or Distributor(s):

-

Promoter(s):

ALI KHAN LALANI

Project #3295347

Issuer Name:

Great Republic Mining Corp.
Principal Regulator - British Columbia

Type and Date:

Amendment dated February 3, 2022 to Preliminary Long
Form Prospectus dated November 8, 2021
NP 11-202 Preliminary Receipt dated February 7, 2022

Offering Price and Description:

7,500,000.00 - Common Shares
Price: \$0.10

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

Frederick Davidson and Jerry Huang

Project #3298417

Issuer Name:

High Tide Resources Corp.

Type and Date:

Preliminary Long Form Prospectus dated February 1, 2022
(Preliminary) Receipted on February 1, 2022

Offering Price and Description:

Distribution of 9,360,852 ROC Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3333942

Issuer Name:

ICWHY Capital Ventures Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary CPC Prospectus dated February 1, 2022
NP 11-202 Preliminary Receipt dated February 2, 2022

Offering Price and Description:

Minimum Offering: \$250,000.00 - 2,500,000 Common
Shares
Maximum Offering: \$300,000.00 - 3,000,000 Common
Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

Research Capital Corporation

Promoter(s):

-

Project #3334658

Issuer Name:

Recipe Unlimited Corporation (formerly Cara Operations
Limited)

Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated February 2, 2022
NP 11-202 Preliminary Receipt dated February 2, 2022

Offering Price and Description:

\$2,000,000,000.00 - Subordinate Voting Shares Preference
Shares Subscription Receipts Debt Securities Warrants
Share Purchase Contracts Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3334685

Issuer Name:

Source Rock Royalties Ltd.
Principal Regulator - Alberta

Type and Date:

Amendment dated February 3, 2022 to Preliminary Long
Form Prospectus dated January 10, 2022
NP 11-202 Preliminary Receipt dated February 3, 2022

Offering Price and Description:

\$12,000,600.00 - 13,334,000 Units
Price: \$0.90 per Unit

Underwriter(s) or Distributor(s):

PI FINANCIAL CORP.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
HAYWOOD SECURITIES INC.
CANACCORD GENUITY CORP.
ATB CAPITAL MARKETS INC.

Promoter(s):

-

Project #3325328

Issuer Name:

True North Commercial Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated February 7, 2022
NP 11-202 Preliminary Receipt dated February 7, 2022

Offering Price and Description:

\$500,000,000.00 - Trust Units, Preferred Trust Units, Debt
Securities, Subscription Receipts, Warrants, Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3335867

Issuer Name:

Cullinan Metals Corp.
Principal Regulator - British Columbia

Type and Date:

Amendment dated January 31, 2022 to Final Long Form
Prospectus dated January 21, 2022
NP 11-202 Receipt dated February 2, 2022

Offering Price and Description:

Minimum: \$275,000.00 - 2,750,000 Common Shares
Maximum: \$460,000.00 - 4,600,000 Common Shares
\$0.10 per Common Share

Underwriter(s) or Distributor(s):

HAYWOOD SECURITIES INC.

Promoter(s):

Mark Ferguson
Project #3291769

Issuer Name:

Family Single Student Education Savings Plan
Flex First Plan
Principal Regulator - Ontario

Type and Date:

Amendment dated January 27, 2022 to Final Long Form
Prospectus dated May 27, 2021
NP 11-202 Receipt dated February 4, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3207649

Issuer Name:

Cypress Development Corp.
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

\$16,000,000.00 - 8,000,000 Units
Price: \$2.00 per Unit

Underwriter(s) or Distributor(s):

PI FINANCIAL CORP.

Promoter(s):

-

Project #3326445

Issuer Name:

Frontenac Mortgage Investment Corporation
Principal Regulator - Ontario

Type and Date:

Amendment #8 dated January 31, 2022 to Final Long Form
Prospectus dated June 7, 2021
NP 11-202 Receipt dated February 3, 2022

Offering Price and Description:

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:

Evocati Capital Resources Inc.
Principal Regulator - Ontario

Type and Date:

Final CPC Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 3, 2022

Offering Price and Description:

\$500,000.00 - 5,000,000 Common Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

IA PRIVATE WEALTH INC.

Promoter(s):

JAMES LILL
Project #3316855

Issuer Name:

Goodfood Market Corp.
Principal Regulator - Quebec

Type and Date:

Final Short Form Prospectus dated February 4, 2022
NP 11-202 Receipt dated February 4, 2022

Offering Price and Description:

\$30,000,000.00 - 5.75% Convertible Unsecured
Subordinated Debentures Due March 31, 2027
Price: \$1,000.00 per Debenture

Underwriter(s) or Distributor(s):

DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
RAYMOND JAMES LTD.
STIFEL NICOLAUS CANADA INC.
CANACCORD GENUITY CORP.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED

-

Project #3329504

Issuer Name:

LDB Capital Corp.
Principal Regulator - British Columbia

Type and Date:

Final CPC Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

\$200,000.00 - 2,000,000 Common Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

David Eaton

Project #3298559

Issuer Name:

Nanalysis Scientific Corp.(formerly Canvass Ventures Ltd.)
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated February 7, 2022
NP 11-202 Receipt dated February 7, 2022

Offering Price and Description:

Up to \$10,725,000.00 - Up to 9,750,000 Common Shares
Price: \$1.10 per Common Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3328402

Issuer Name:

Mandeville Ventures Inc.
Principal Regulator - Ontario

Type and Date:

Final CPC Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 3, 2022

Offering Price and Description:

Minimum Offering: \$200,000 or 2,000,000 Common Shares
Maximum Offering: \$1,000,000 or 10,000,000 Common Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

Gravitas Securities Inc.

Promoter(s):

Dean Hanisch

Project #3321395

Issuer Name:

Skyscape Capital Inc.
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

Up to \$4,700,000.00 Up to 4,700,000 Units
Price: \$1.00 per Unit

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.

Promoter(s):

Rahim Bhaloo

Project #3282778

Issuer Name:

Mydecine Innovations Group Inc.
Principal Regulator - British Columbia

Type and Date:

Amendment dated January 28, 2022 to Final Shelf Prospectus dated November 15, 2021
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

\$100,000,000.00 - COMMON SHARES WARRANTS
SUBSCRIPTION RECEIPTS UNITS DEBT SECURITIES

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3287917

Issuer Name:

SmartCentres Real Estate Investment Trust (formerly, Smart Real Estate Investment Trust)
Principal Regulator - Ontario

Type and Date:

Final Shelf Prospectus dated February 2, 2022
NP 11-202 Receipt dated February 3, 2022

Offering Price and Description:

\$3,000,000,000.00 - Variable Voting Units, Subscription Receipts, Warrants, Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3328726

Issuer Name:

Vegano Foods Inc.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated January 28, 2022
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

0.00

Underwriter(s) or Distributor(s):

-

Promoter(s):

Conor Power
Project #3262286

Issuer Name:

Xybion Digital Inc. (formerly Gravitas One Capital Corp.)
Principal Regulator - British Columbia

Type and Date:

Final Shelf Prospectus dated January 31, 2022
NP 11-202 Receipt dated February 1, 2022

Offering Price and Description:

CDN\$50,000,000.00 - SUBORDINATE VOTING SHARES
WARRANTS UNITS SUBSCRIPTION RECEIPTS DEBT
SECURITIES

Underwriter(s) or Distributor(s):

-

Promoter(s):

Pradip Banerjee
Project #3322768

Issuer Name:

Sintana Energy Inc.
Principal Jurisdiction - Ontario

Type and Date:

Preliminary Shelf Prospectus dated November 3, 2021
Withdrawn on February 1, 2022

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #3295800

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspended (Regulatory Action)	3L Capital Inc.	Exempt Market Dealer	February 1, 2022
New Registration	Schneider & Pollock Wealth Management Inc.	Portfolio Manager	February 1, 2022
Suspended (Regulatory Action)	Genesis Wealth Management Corporation	Exempt Market Dealer	February 1, 2022
New Registration	Rosen Group Private Wealth Management Ltd.	Portfolio Manager	February 1, 2022
Voluntary Surrender	Y.I.S. Financial Inc.	Mutual Fund Dealer	February 3, 2022
New Registration	Moskowitz Capital Management Inc.	Exempt Market Dealer	February 3, 2022
New Registration	Hush Securities Inc.	Exempt Market Dealer	February 7, 2022
New Registration	NDG Capital Inc. / Investissements NDG Inc.	Portfolio Manager	February 8, 2022

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Neo Exchange Inc. – Proposed Public Interest Rule Amendments to the Neo Exchange Trading Policies – Request for Comments

NEO EXCHANGE INC.

PROPOSED PUBLIC INTEREST RULE AMENDMENTS TO THE NEO EXCHANGE TRADING POLICIES

REQUEST FOR COMMENTS

Introduction

Neo Exchange Inc. (“**NEO Exchange**” or the “**Exchange**”) is publishing proposed public interest rule amendments to the NEO Exchange Trading Policies in accordance with Schedule 4 to its recognition order, as amended. The public interest rule amendments were filed with the Ontario Securities Commission (“**OSC**”) and are being published for comment. A description of the public interest rule amendments is set out below and the text of the public interest rule amendments are set out in Appendix A. Subject to any changes resulting from comments received, the public interest rule amendments will be effective upon publication of the notice of approval on the OSC’s website.

Description of the Public Interest Rule Amendment

We are proposing to introduce a new volatility parameter, Closing Price Threshold (“**CPT**”), which will determine the allowable price range for where an auction can occur during a delayed closing for a Closing Call Eligible Security. In the event the Calculated Closing Price (“**CCP**”) is outside of the CPT %, the system will calculate the closing price within the range at a price which maximizes the tradable volume. Following the execution of the Closing Call where the CPT has come into effect, if there are any remaining orders that would lock or cross the market, the security will get automatically paused in NEO-L and not transition to the Extended Trading Session. The automatic pause does not impact the trading of the security in any of the other books.

Example

Last Sale Price	Closing volatility %	Closing volatility Low Range	Closing volatility High Range	CPT* %	CPT* Low Range	CPT* High Range
10.00	3	9.70	10.30	10	9.00	11.00

*Closing Price Threshold parameter

The security has gone into a delayed auction as the CCP is outside of the closing volatility range (9.70-10.30)

B1	Buy 3000 @ MOC	Sell 1500 @ 10.50	S1
		Sell 500 @ 11.10	S2

At the end of the delayed auction, the CCP (11.10) is outside of the CPT range (9.00-11.00)

System chooses \$10.50 as new CCP price and auction executes:

Trade: S1 and B1: 1500 @ \$10.50

Order S2 is not eligible to trade as its price is outside of CPT range

The remainder of B1 is cancelled after auction as it is a MOC order

	Sell 500 @11.10	S2
--	-----------------	----

Expected Date of Implementation of the Public Interest Rule Amendments

We are seeking to implement the Public Interest Rule Amendments in April 2022.

Rationale for the Public Interest Rule Amendments and Supporting Analysis

The current behavior for the Closing Call is that if the CCP is outside the closing call volatility parameter (currently 3% for securities priced over \$1 and 10% for securities priced below \$1) the security will go into a delayed closing phase. The system will attempt to run the auction again after five minutes if the CCP has moved inside the closing call volatility parameter. The second and final attempt will occur after 10 minutes from the start of auction, but this time the volatility parameter will no longer apply and the auction will execute at the CCP. The intent of the delayed closing is to give market participants time to react and adjust to new prices and information, but ultimately the market will dictate where the security should close.

Our approach to the Closing Call is novel in the Canadian context but is identical to the London Stock Exchange's auction model. With the inclusion of NEO Listed Securities in global benchmark indices, we have seen a significant uptick in the utilization of our Closing Call. At the same time, the awareness amongst our market participants on how our auction differs from TSX and how to best utilize it is not yet at a level where it needs to be. This has led to instances where our Closing Call executed at prices that were detrimental to market integrity.

In order to remedy this, we are proposing to introduce an additional safeguard which will limit the price at which the auction can run in the circumstances where the market is not reacting properly during the delayed closing.

At the same time, we are also removing the functionality that would prevent the Closing Call to run where minimum volume cannot be met. This functionality has never been utilized and will become redundant with the introduction of the new closing price volatility parameter, as both functions attempt to address unexpected execution outcomes.

Expected Impact on Market Structure, Members, Investors, Issuers and Capital Markets

The changes will not have any impact on market structure as the features are not novel concepts and similar functionality is already available for TSX closing auction. Members, investors and issuers with securities eligible for our Closing Call will experience a positive impact from the change, as pricing deviations and poor quality execution prices are mitigated by the proposed feature.

Impact on Exchange's Compliance with Ontario Securities Law and on Requirements for Fair Access and Maintenance of Fair and Orderly Markets

The Amendments will not impact NEO's compliance with Ontario securities law and are intended to further enhance NEO's compliance with the requirements for fair access and maintenance of fair and orderly markets through mitigating poor quality execution outcomes in the Closing Call.

Impact on the Systems of Members or Service Vendors

The proposed change is internal to the Exchange and will not require any changes to systems for Members or Service Vendors. As the core functionalities of the auction remains unimpacted (matching priorities, dissemination of information etc.) and there are no changes to technical specifications or sequencing of technical messages which would require Members or Service Vendors to make changes to their systems.

Alternatives Considered

The alternative would be to maintain status quo and continue our educational efforts on the differences between our Closing Call and the TSX closing auction. This will take time and in the meantime the market may experience additional scenarios of poor quality executions at the Closing Call.

New Feature or Rule

The proposed functionality is similar to the safeguards in place for the TSX closing auction.

Comments

Comments should be provided, in writing, no later than March 14, 2022 to:

Joacim Wiklander
Chief Operating Officer
Neo Exchange Inc.
65 Queen Street West
Suite 1900
Toronto, ON, M5H 2M5
joacim@neostockexchange.com

with a copy to:

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

Please note that, unless confidentiality is requested, all comments will be publicly available.

APPENDIX A

TEXT OF THE TRADING POLICIES AMENDMENTS

	Trading Policies Section Reference	Amendment
1.	Part I. Definitions and Interpretations <i>1.01</i> "Closing Call Volume Threshold"	Definition repealed.
2.	Part VI. Trading in NEO-L <i>Section 6.11 Closing Call (Closing Call Eligible Securities only)</i> <i>Section 6.12 Delayed Closing (Closing Call Eligible Securities only)</i> <i>(5)</i>	Delete the second and third sentence of subsection (1). Replace the text under subsection (5) with "At the end of the delayed closing, if the CCP for the security still exceeds the price band parameters the CCP will be subject to a closing price threshold. The Closing Call will complete at the price which maximizes the tradable volume inside the closing price threshold. The closing price threshold will be specified by Notice to Members."

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