

The Ontario Securities Commission

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

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

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# B. Ontario Securities Commission

## B.2 Orders

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### B.2.1 Pershimex Resources Corporation

#### 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).

[Original text in French]

June 21, 2023

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

AND

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

AND

IN THE MATTER OF  
PERSHIMEX RESOURCES CORPORATION  
(the Filer)

ORDER

#### Background

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

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

- a) the Autorité des marchés financiers is the principal regulator for this application,
- b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 (*Regulation 11-102*) is intended to be relied upon in Alberta and British Columbia, 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

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, *Regulation 11-102* and, in Québec, in *Regulation 14-501Q respecting Definitions*, CQLR, V-1.1, r. 4, have the same meaning if used in this order, unless otherwise defined.

## **Representations**

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

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR, c. V-1.1, r. 24.1;
2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;
3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation*, CQLR, c. V-1.1, r. 5, 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**

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.

“Marie-Claude Brunet-Ladrie”  
Directrice de la surveillance des émetteurs et initiés  
Autorité des marchés financiers

OSC File #: 2023/0250

## B.3

# Reasons and Decisions

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### B.3.1 Greg Ryan Smith

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus requirement for trades by a control person of an issuer under automatic securities disposition plans – Applicant intends to annually establish an automatic securities disposition plan (ASDP) in accordance with the guidance provided under OSC Staff Notice 55-701 Automatic Securities Disposition Plans and Automatic Securities Purchase Plan or any successor notice relating to ASDPs in effective at the time of establishing an ASDP and make orderly sales of securities of the issuer under the ASDP – Trades by the applicant as a control person under the ASDP deemed to be a distribution attracting the prospectus requirement – Applicant cannot rely on the prospectus exemption for a trade by a control person in s. 2.8 of NI 45-102 because the seven-day waiting period requirement in paragraph 2.8(3)(b) and the 30-day expiry provision in paragraph 2.8(4)(a) of NI 45-102 would prevent continued or successive dispositions under the ASDP by requiring the applicant to refile a Form 45-102F1 every 30 days and wait at least seven days before making the first trade after each filing of a Form 45-102F1 – Compliance with all conditions of s. 2.8 of NI 45-102 would impede applicant's ability to establish, and effect orderly trades under, an ASDP – Relief granted from the prospectus requirement for trades effected by the control person under the ASDP subject to conditions consistent with the policy rationale underlying section 2.8 of NI 45-102 – Relief granted to maintain confidentiality of application and decision for a period of up to 90 days – Relief expires 12 months after the effective date of the ASDP.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53(1), 74(1) and 147.  
National Instrument 45-102 Resale of Securities, s. 2.8.

June 8, 2023

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

AND

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

AND

IN THE MATTER OF  
GREG RYAN SMITH  
(the Filer)

DECISION

#### Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus requirement under the Legislation in connection with the sale of Subordinate Voting Shares (as defined below) of Thinkific Labs Inc. (the Issuer) by the Filer under the Filer ASDP (as defined below) (the Exemption Sought).

Furthermore, the Decision Makers have also received a request from the Filer for a decision that the Application, this decision and all supporting materials or other information submitted in connection with the Application remain confidential

until the earlier of (i) the public disclosure by the Filer of the establishment of the Filer ASDP by way of news release and (ii) 90 days from the date of this decision (the Confidentiality Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (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 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 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**

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

#### *The Issuer*

- 1. the Issuer is a corporation governed by the Business Corporations Act (British Columbia);
- 2. the Issuer's head office is located in British Columbia;
- 3. the Issuer's authorized share capital consists of: (i) an unlimited number of subordinate voting shares (Subordinate Voting Shares), (ii) an unlimited number of multiple voting shares (Multiple Voting Shares and together with the Subordinate Voting Shares, the Shares), and (iii) an unlimited number of preferred shares, issuable in series (Preferred Shares);
- 4. holders of Subordinate Voting Shares have one vote for each Subordinate Voting Share. Holders of Multiple Voting Shares have 10 votes for each Multiple Voting Share; the Multiple Voting Shares are convertible into Subordinate Voting Shares on a one-for-one basis at any time at the option of the holders and automatically in certain other circumstances;
- 5. as of May 17, 2023, 23,595,010 Subordinate Voting Shares, 56,963,752 Multiple Voting Shares and no Preferred Shares were issued and outstanding; the Subordinate Voting Shares represented 3.98% of the aggregate voting rights attached to all of the Issuer's outstanding Shares and the Multiple Voting Shares represented 96.02% of the aggregate voting rights attached to all of the Issuer's outstanding Shares;
- 6. the Subordinate Voting Shares are listed on the Toronto Stock Exchange under the symbol THNC;
- 7. the Issuer is a reporting issuer in each of the provinces and territories in Canada and is not in default of the securities legislation in any jurisdictions in Canada;

#### *The Filer*

- 8. the Filer is the Chief Executive Officer and a director of the Issuer;
- 9. the Filer resides in British Columbia;
- 10. as of May 17, 2023, the Filer directly or indirectly owned, in the aggregate, 25,970,000 Multiple Voting Shares (the Filer Multiple Voting Shares) and 6,100 Subordinate Voting Shares (the Filer Subordinate Voting Shares); the Filer Multiple Voting Shares represent (i) 45.59% of the outstanding Multiple Voting Shares, (ii) approximately 32.24% of the outstanding Shares, and (iii) approximately 43.78% of the votes attaching to all of the Issuer's outstanding Shares; the Filer Subordinate Voting Shares represent (i) 0.03% of the outstanding Subordinate Voting Shares, (ii) 0.01% of the outstanding Shares, and (iii) 0.001% of the votes attaching to all of the Issuer's outstanding Shares; together, the Filer Multiple Voting Shares and Filer Subordinate Voting Shares represent, in the aggregate, approximately 43.78% of the votes attaching to all of the outstanding Shares;

11. the Filer is deemed to be a control person of the Issuer under the Legislation and the securities legislation of the other jurisdictions in which the Issuer is a reporting issuer;
12. the Filer is not in default of the securities legislation;

*Automatic Securities Disposition Plan*

13. the Filer intends to enter into an automatic securities disposition plan (the Filer ASDP) following the date on which the Issuer files interim financial statements for the quarter ended March 31, 2023 (the date on which the Filer enters into the Filer ASDP will be referred to as the Effective Date) in order to be able to make orderly sales of Subordinate Voting Shares, all or a substantial part of which will be Subordinate Voting Shares issued to the Filer upon the conversion of Filer Multiple Voting Shares;
14. the Filer ASDP will be established in accordance with applicable securities legislation and staff guidance, including Canadian Securities Administrators Staff Notice 55-317 *Automatic Securities Disposition Plans* (Staff Notice 55-317), including the following:
  - (a) at the time the Filer enters into the Filer ASDP, the Filer will not possess any knowledge of privileged information or of a material fact or material change with respect to the Issuer that has not been generally disclosed and the Filer ASDP will be entered into in accordance with the Issuer's insider trading policy;
  - (b) the Filer ASDP will be entered into in good faith and not as part of a plan or scheme to evade the prohibitions of securities legislation in any jurisdiction of Canada or any other applicable securities laws;
  - (c) the establishment of the Filer ASDP will be disclosed by way of a news release of all relevant information on the System for Electronic Document Analysis and Retrieval (SEDAR);
  - (d) the Filer ASDP will include provisions prohibiting the commencement of sales under the Filer ASDP until after the filing of the Issuer's interim financial report or annual financial statements which follows the Effective Date and is currently anticipated to be on or after August 16, 2023;
  - (e) the Filer ASDP will include clear written trading parameters and other instructions to the securities dealer appointed in connection with the Filer ASDP; such trading parameters and other instructions will either include a formula or specify the number of securities to be sold, and set out any minimum trade price, if any, and any date or frequency of sales;
  - (f) the Filer ASDP will provide for a term equal to the Sales Period (as defined below);
  - (g) the Filer ASDP will include meaningful restrictions on the ability of the Filer to amend, suspend or terminate the Filer ASDP;
  - (h) the Filer ASDP will include provisions prohibiting the securities dealer under the Filer ASDP from consulting with the Filer regarding any sales under the Filer ASDP and the Filer from disclosing information to the dealer concerning the Issuer that might influence the execution of the Filer ASDP;
  - (i) the Issuer will oversee the establishment and use of the Filer ASDP;
  - (j) the Filer will file an insider report on the System for Electronic Disclosure by Insiders (SEDI) evidencing the change in control of the Subordinate Voting Shares from the Filer to the securities dealer under the Filer ASDP as well as each time a trade is made under the Filer ASDP, specifying that such trade was made under the Filer ASDP;
  - (k) all sales of Subordinate Voting Shares will be conducted by the securities dealer under the Filer ASDP on behalf of the Filer, with no participation by or direction or advice from the Filer;
  - (l) the total number of Subordinate Voting Shares sold in the Sales Period (as defined below) under the Filer ASDP in reliance on the Exemption Sought will not exceed 2% of the total number of Subordinate Voting Shares outstanding, as of the Effective Date; and
  - (m) all sales of Subordinate Voting Shares will be conducted over a period of 12 months (the Sales Period) as specified in the corresponding Form 45-102F1 *Notice of Intention to Distribute Securities* (a Form 45-102F1) under Section 2.8 of National Instrument 45-102 *Resale of Securities* (NI 45-102) to be filed when the Filer ASDP is entered into;

15. it is the intention of the Filer and the Issuer to rely on the exemption from the insider trading restrictions available to trades conducted under automatic plans in the Legislation and corresponding law and regulation in the Jurisdictions for all sales under the Filer ASDP;
16. it is currently the intention of the Filer to sell up to approximately 400,000 Subordinate Voting Shares under the Filer ASDP;
17. as the Filer is deemed to be a control person of the Issuer, any sale of the Filer Subordinate Voting Shares would be considered a control distribution, and the Filer would either have to comply with the prospectus requirement or satisfy the conditions of the exemption from the prospectus requirement for trades by a control person in section 2.8 of NI 45-102 (the Exemption for Trades by a Control Person);
18. the Filer's compliance with each of the conditions of the Exemption for Trades by a Control Person would impede, and ultimately prevent, the implementation and operation of the Filer ASDP because (i) the seven-day waiting period requirement in paragraph 2.8(3)(b), (ii) the 30-day expiry provision in paragraph 2.8(4)(a) of NI 45-102, and (iii) the prohibition in subsection 2.8(5) of NI 45-102 on filing a new Form 45-102F1 prior to the expiry of a previously filed Form 45-102F1 would prevent continued or successive dispositions under the Filer ASDP by requiring that the Filer refile a Form 45-102F1 respecting the proposed sales of Subordinate Voting Shares every 30 days over the course of the duration of the Filer ASDP and that the Filer wait at least seven days before making the first trade after each filing of a Form 45-102F1; compliance with these requirements would effectively limit the Filer's ability to conduct sales of Subordinate Voting Shares to intermittent 23-day windows, separated by seven-day waiting periods, which would have a material detrimental impact on the Filer's ability to implement the Filer ASDP; and
19. in absence of the Filer's compliance with each of the conditions of the Exemption for Trades by a Control Person, the Filer requests the Exemption Sought in order to relieve the Filer from the prospectus requirement in connection with each disposition of Filer Subordinate Voting Shares under the Filer ASDP and enable the establishment of the Filer ASDP in accordance with Staff Notice 55-317, while still providing timely and meaningful public disclosure of the intended and completed sales by the Filer of Subordinate Voting Shares consistent with the policy rationale underlying section 2.8 of NI 45-102.

**Decision**

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

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

- (a) the Filer ASDP is established and administered in accordance with paragraph 14 above;
- (b) the total number of Subordinate Voting Shares sold under the Filer ASDP does not exceed 2% of the total number of outstanding Subordinate Voting Shares, as of the Effective Date;
- (c) the Filer files a completed and signed notice in the form of Form 45-102F1 (a Notice) in accordance with NI 45-102 at least seven days prior to the first trade of Subordinate Voting Shares under the Filer ASDP that discloses the aggregate number of Subordinate Voting Shares intended to be sold under the Filer ASDP and the Sales Period for the sale of Subordinate Voting Shares under the Filer ASDP;
- (d) the Filer files insider reports within three days of the completion of each sale under the Filer ASDP in accordance with the insider reporting obligation applicable to trades by a control person in paragraph 2.8(3)(c) of NI 45-102;
- (e) the Sales Period under the Filer ASDP is equal to 12 months;
- (f) the Notice for the Filer ASDP is signed no earlier than one business day before it is filed;
- (g) the Notice filed in connection with trades under the Filer ASDP expires on the earlier of (i) the end of the Sales Period and (ii) the date that the Filer files the last of the insider reports reflecting the sale of all Subordinate Voting Shares referred to in the Notice;
- (h) the Filer does not conduct further sales of Subordinate Voting Shares under the Filer ASDP following the expiry of the Notice;
- (i) the Issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding each trade under the Filer ASDP;

### B.3: Reasons and Decisions

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- (j) the Filer has held any Subordinate Voting Shares, or securities or related financial instruments that were converted into or exercised or settled for such Subordinate Voting Shares, sold under the Filer ASDP for at least four months prior to the trade of such Subordinate Voting Shares;
- (k) no unusual effort is made to prepare the market or to create a demand for the Subordinate Voting Shares;
- (l) no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- (m) the Issuer is not in default of securities legislation; and
- (n) the Exemption Sought shall terminate on the date that is 12 months following the Effective Date.

Furthermore, the decision of the Decision Makers under the Legislation is that the Confidentiality Relief is granted.

“John Hinze”  
Director, Corporate Finance  
British Columbia Securities Commission

OSC File #: 2023/0120

### B.3.2 Integra Resources Corp. and Millennial Precious Metals Corp.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – General – A reporting issuer wants relief from all the requirements of NI 51-102 – A reporting issuer is a wholly owned subsidiary of a parent reporting issuer; the subsidiary's only outstanding securities entitle the holder to acquire share consideration; the outstanding securities do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102; the requested relief is on terms substantially similar to section 13.3 of NI 51-102. This headnote was revised as indicated under the section "Key Elements" above.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6 – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates – The issuer has applied for and received an exemption from filing interim and annual financial statements.

National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), ss. 2.1 and 6.1 – An issuer wants relief from the requirement to file an insider profile for its insiders – The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements.

National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1 – insider reporting obligations – An issuer wants relief from the requirement to file insider reports for its insiders – The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements.

#### Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – all continuous disclosure requirements.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6 – certification requirements.

National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1 – insider reporting obligations.

National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), ss. 2.1 and 6.1 – obligation to file insider profile.

June 30, 2023

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

AND

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

AND

IN THE MATTER OF  
INTEGRA RESOURCES CORP.  
(Integra)

AND

MILLENNIAL PRECIOUS METALS CORP.  
(Millennial, and together with Integra, the Filers)

DECISION

#### Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the continuous disclosure requirements under the Legislation and the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (together, the Continuous Disclosure Requirements) do not apply to Millennial;
- (b) the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Millennial; and
- (c) the insider reporting requirements under the Legislation, the requirements of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (together, the Insider Reporting Requirements) do not apply to any insider of Millennial.

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences 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 decision, unless otherwise defined.

#### **Representations**

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

##### *Millennial*

1. Millennial is a corporation existing under the *Business Corporations Act* (British Columbia) (the BCBCA) and its head office is located at 2200 HSBC Building, 885 West Georgia Street, Vancouver, British Columbia, V6C 3E8;
2. Millennial is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
3. the authorized capital of Millennial consists of an unlimited number of common shares in the capital of Millennial (the Millennial Shares);
4. as of May 10, 2023, there were: (i) 183,391,925 Millennial Shares issued and outstanding, all of which were registered in the name of Integra, and (ii) 21,903,504 Millennial warrants to purchase Millennial Shares (the Millennial Warrants) issued and outstanding, providing for the issuance of common shares in the capital of Integra (the Integra Shares) upon the exercise thereof;
5. as of May 10, 2023, there were: (i) Millennial Warrants listed on the TSX Venture Exchange (the TSXV) under the trading symbol MPM.WT (the Listed Warrants), and (ii) Millennial Warrants previously issued to certain underwriters for a financing (the Unlisted Warrants);
6. in connection with the closing of the Arrangement (as defined below), effective as of the close of business on May 5, 2023, the Millennial Shares were de-listed from the TSXV; and
7. the Listed Warrants will continue to trade on the TSXV as Millennial Warrants under their existing trading symbol and will remain listed on the TSXV as securities of Millennial, until the earliest of their exercise, June 16, 2024 or their delisting;

##### *Integra*

8. Integra is a corporation existing under the BCBCA and its head office is located at 1050 - 400 Burrard Street, Vancouver, British Columbia, V6C 3A6;
9. Integra is a reporting issuer in all of the provinces and territories of Canada;

10. the authorized capital of Integra consists of an unlimited number of Integra Shares and an unlimited number of special shares;
11. as of May 10, 2023, there were: (i) 171,943,828 Integra Shares issued and outstanding, (ii) 5,898,453 Integra options outstanding, (iii) 1,008,097 Integra restricted share units outstanding, and (iv) 790,425 deferred share units outstanding; and
12. the Integra Shares are listed on the TSXV under the trading symbol ITR and under NYSE American under the symbol ITRG;

*The Plan of Arrangement*

13. Integra and Millennial entered into an arrangement agreement on February 26, 2023 (the Arrangement Agreement) and issued a joint news release on February 27, 2023, publicly announcing the Arrangement;
14. in connection with the Arrangement, Millennial mailed to its shareholders (the Millennial Shareholders) the management information circular of Millennial dated as of March 27, 2023 (the Millennial Circular), which included prospectus-level disclosure of the business and affairs of each of Millennial and Integra and information regarding the Arrangement;
15. Millennial provided the former holders of Millennial restricted share units (each, a Millennial RSU) and Millennial options (each, a Millennial Option) and the holders of Millennial Warrants with notice of the Arrangement and enclosed a copy of the Millennial Circular;
16. the Arrangement was approved by the Millennial Shareholders at a special meeting of Millennial Shareholders held on April 26, 2023;
17. on May 1, 2023, Integra received the final order of the Supreme Court of British Columbia pursuant to Section 288 of the BCBCA, approving the Arrangement;
18. pursuant to the Arrangement, Millennial Shareholders received 0.23 (the Exchange Ratio) Integra Share for each Millennial Share held;
19. on May 4, 2023 (the Effective Date), the court-approved plan of arrangement under the provisions of the BCBCA (the Arrangement) became effective and Millennial became a wholly-owned subsidiary of Integra;
20. in addition, pursuant to the Arrangement;
  - (a) each Millennial RSU that was outstanding immediately prior to the effective time of the Arrangement (the Effective Time), whether vested or unvested, vested in accordance with the terms of the restricted share unit plan of Millennial and settled into Millennial Shares, with such Millennial Shares having then been exchanged for Integra Shares in accordance with the Exchange Ratio;
  - (b) each Millennial Option that was outstanding immediately prior to the Effective Time, whether vested or unvested, was transferred to Integra, with the holder thereof receiving as consideration an option to purchase Integra Shares from Integra in accordance with the Exchange Ratio, exercisable until the original expiry date of such Millennial Option and otherwise governed by the terms of the Millennial stock option plan; and
  - (c) each Millennial Warrant that was outstanding immediately prior to the Effective Time will, upon the exercise of such rights after the Effective Time, entitle the holder thereof to be issued and receive for the same aggregate consideration, in lieu of Millennial Shares, Integra Shares that such holder would have been entitled to be issued and receive, with all other terms governing the Millennial Warrants, including, but not limited to, the expiry date, exercise price and the conditions to and the manner of exercise, being the same as the terms that were in effect immediately prior to the Effective Time, and governed by the terms of the applicable warrant instruments;
21. Millennial continues to have the Listed Warrants listed on the TSXV;
22. as required by the warrant indenture dated as of June 16, 2022 between TSX Trust Company, as warrant agent (the Warrant Agent), and Millennial (the Warrant Indenture), on the Effective Date, Integra entered into a supplemental warrant indenture with TSX Trust Company and Millennial (the Supplemental Warrant Indenture), evidencing, among other things, that, from and after the Effective Time, the Listed Warrants will entitle the holder thereof to receive, upon exercise in accordance with the terms thereof, in lieu of the number of Millennial Shares otherwise issuable upon exercise under the Warrant Indenture, 0.23 of an Integra Share;

23. following completion of the Arrangement, Millennial became a wholly-owned subsidiary of Integra, and Integra will consolidate Millennial with Integra for the purposes of financial statement reporting commencing with Integra's interim unaudited condensed consolidated financial statements for the three and six months ended June 30, 2023 and 2022; and
24. as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements applicable to Millennial would not be meaningful or of any significant benefit to the holders of the Millennial Warrants and would impose a significant cost on Millennial;

*Listing Matters*

25. Integra obtained approval from the TSXV for, and has made the necessary filings with NYSE American in connection with, the listing of the Integra Shares that were issued and issuable as of the Effective Date pursuant to the Arrangement;
26. the Listed Warrants are the only securities of Millennial which are traded on a marketplace, as such term is defined in National Instrument 21-101 – *Marketplace Operation*;
27. Millennial has provided notice to the Warrant Agent and to the holders of the Listed Warrants and the Unlisted Warrants with respect to their post-Effective Time entitlements under such securities;
28. Millennial cannot rely on the exemption available in Section 13.3 of NI 51-102 for issuers of exchangeable securities because the Millennial Warrants are not designated exchangeable securities as defined in NI 51-102, because none of the Millennial Warrants provide their holders with voting rights in respect of Millennial or Integra;
29. neither the Warrant Indenture nor the Supplemental Warrant Indenture requires Millennial to deliver any continuous disclosure materials of Millennial to the holders of Listed Warrants, and none of the instruments evidencing the Unlisted Warrants require Millennial to deliver any continuous disclosure materials of Millennial to the holders of the Unlisted Warrants;
30. neither of the Filers are in default of any of their respective obligations under securities legislation in the jurisdictions in which it is a reporting issuer; and
31. Millennial has no intention of accessing the capital markets in the future by issuing any securities to the public.

**Decision**

- ¶ 4 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 Continuous Disclosure Requirements do not apply to Millennial, provided that:

1. Integra is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Millennial;
2. Integra is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
3. Millennial will not issue any securities other than to Integra, and will not have any securities outstanding other than:
  - (a) the Millennial Warrants;
  - (b) securities issued to and held by Integra or an affiliate of Integra;
  - (c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
  - (d) securities issued under exemptions from the prospectus requirement in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106);

4. Millennial files in electronic format:
  - (a) if Integra is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by Integra and setting out where those documents can be found in electronic format; or
  - (b) copies of all documents Integra is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Integra of those documents with a securities regulatory authority or regulator;
5. Integra concurrently sends to all holders of any Millennial Warrants all disclosure materials that would be required to be sent to holders of similar warrants of Integra in the manner and at the time required by securities legislation;
6. Integra complies with securities legislation in respect of making public disclosure of material information on a timely basis;
7. Integra immediately issues in Canada and files any news release that discloses a material change in its affairs; and
8. Millennial issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Millennial that are not also material changes in the affairs of Integra.

The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not apply to Millennial, provided that:

- (a) Millennial is not required to, and does not, file its own interim filings and annual filings, as those terms are defined under NI 52-109;
- (b) Millennial files in electronic format under its SEDAR profile either:
  - (i) copies of Integra's annual certificates and interim certificates at the same time as Integra is required under NI 52-109 to file such documents; or
  - (ii) a notice indicating that it is relying on Integra's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
- (c) Millennial is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Millennial and Integra are in compliance with the conditions set out in paragraphs 1 to 8 above.

The further decision of the Decision Makers under the Legislation is that the Insider Reporting Requirements do not apply to any insider of Millennial in respect of securities of Millennial, provided that:

- (a) if the insider is not Integra:
  - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Millennial or Integra before the material facts or material changes are generally disclosed; and
  - (ii) the insider is not an insider of Integra in any capacity other than by virtue of being an insider of Millennial;
- (b) Integra is the beneficial owner of all of the issued and outstanding voting securities of Millennial;
- (c) if the insider is Integra, the insider does not beneficially own any Millennial Warrants other than securities acquired through the exercise of the Millennial Warrants and not subsequently traded by the insider;
- (d) Integra is a reporting issuer in a designated Canadian jurisdiction;
- (e) Millennial has not issued any securities, and does not have any securities outstanding, other than:
  - (i) the Millennial Warrants;
  - (ii) securities issued to and held by Integra or an affiliate of Integra;

### B.3: Reasons and Decisions

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- (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
- (iv) securities issued under exemptions from the registration requirement and prospectus requirement under NI 45-106; and
- (f) Millennial is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Millennial and Integra are in compliance with the conditions set out in paragraphs 1 to 8 above.

“Joel Hill”

Acting Director, Corporate Finance  
British Columbia Securities Commission

OSC File #: 2023/0208

**B.3.3 1832 Asset Management L.P. and Dynamic Premium Yield Plus Fund**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – alternative mutual funds granted relief from paragraph 2.6(2)(c) and section 2.6.2 of NI 81-102 to borrow cash up to 100% of NAV – relief subject to conditions.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.6(2)(c), 2.6.2 and 19.1.

July 6, 2023

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

**AND**

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

**AND**

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

**AND**

**DYNAMIC PREMIUM YIELD PLUS FUND  
(the Alternative Fund)**

**DECISION**

**Background**

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

- (a) subparagraph 2.6(2)(c) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which restricts the Alternative Fund from borrowing cash if the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the Alternative Fund, exceeds 50% of the Alternative Fund's NAV (together with (b) below, the **Cash Borrowing Limit**); and
- (b) section 2.6.2 of NI 81-102, which restricts the Alternative Fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Alternative Fund (the **Combined Aggregate Value**) would exceed 50% of the Alternative Fund's NAV and which requires the Alternative Fund, if the Combined Aggregate Value exceeds 50% of the Alternative Fund's NAV, as quickly as commercially reasonable, to take all necessary steps to reduce the Combined Aggregate Value to 50% or less of the Alternative Fund's NAV (together, the **Exemption Sought**).

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

- (i) the Ontario Securities Commission is the principal regulator for the Application;
- (ii) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-202 Passport System (**MI 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (collectively, together with the Jurisdiction, the **Canadian Jurisdictions**).

**Defined Terms**

Unless expressly defined herein, terms in this Application have the respective meanings given to them in National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, NI 81-102, National Instrument 14-101 *Definitions* or MI 11-102.

**NAV** means net asset value;

**Prime Broker** means any entity that acts as a lender or borrowing agent to investment funds; and

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

**Representations**

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

*The Filer*

1. The Filer is a limited partnership formed and organized under the laws of the province of Ontario. The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by the Bank of Nova Scotia, with its head office in Toronto, Ontario.
2. The Filer is registered as: (i) a portfolio manager in all the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces in Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, Newfoundland and Labrador and the Northwest Territories; (iv) a commodity trading manager in Ontario; (v) an adviser in Manitoba; and (vi) a derivatives portfolio manager in Quebec.
3. The Filer is the manager of the Alternative Fund.
4. The Filer is not in default of applicable securities legislation in any of the Canadian Jurisdictions.

*The Alternative Fund*

5. The Alternative Fund is established under the laws of Ontario or Canada as an investment fund that is a trust and is a reporting issuer in the Canadian Jurisdictions.
6. The Alternative Fund is an alternative mutual fund governed by NI 81-102, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.
7. The securities of the Alternative Fund are qualified for distribution in the Canadian Jurisdictions under a Prospectus prepared and filed in accordance with the securities legislation of such Canadian Jurisdictions.
8. The Alternative Fund is not in default of securities legislation of any Canadian Jurisdiction except possibly in relation to the subject matter of the application filed by the Filer along with other investment fund managers on December 21, 2022 seeking an exemption from subsection 4.1(1) of NI 81-102.

**Reasons for the Exemption Sought**

9. Key investment strategies which may be utilized by the Alternative Fund may include the use of cash borrowing to provide additional investment exposure in connection with the investment strategies of the Alternative Fund in excess of the Cash Borrowing Limit.
10. The ability to engage in additional cash borrowing in connection with the investment strategies of the Alternative Fund may provide material cost savings to the Alternative Fund compared to obtaining the same level of investment exposure through the use of specified derivatives while, at the same time, not increasing the overall level of risk to the Alternative Fund.
11. The costs to the Alternative Fund of engaging in cash borrowing are typically less when compared to the equivalent derivative transactions due to a number of factors which may include:
  - (a) Prime Brokers typically have greater flexibility to offer more favourable financing terms to the Alternative Fund in relation to the aggregate amount of the Alternative Fund's assets held in the prime brokerage margin account in relation to cash borrowing;
  - (b) Margin requirements for derivative instruments are primarily based on the underlying investment exposure and, as a result, can be high; and

- (c) Certain derivative instruments (such as futures contracts) require cash or near cash securities (such as government treasuries) to be deposited with the counterparty as collateral. This would require the Alternative Fund to use these portfolio assets to satisfy collateral requirements rather than utilizing them in connection with the Alternative Fund's investment strategy.
- 12. The Alternative Fund may use cash borrowing as a more flexible and cost-efficient means of providing additional leverage for investment strategies such as merger arbitrage strategies where the use of derivative instruments to provide the same level of exposure may not be practical. In connection with such strategies, the Filer is typically required to respond in a timely manner to public disclosure relating to a transaction and market movements in the share price of the target and/or acquiror company. The use of cash borrowing in such circumstances provides an easily accessible tool which enables the Filer to implement the investment decision more quickly compared to the use of derivative instruments which provide the same level of exposure on a synthetic basis.
- 13. Cash borrowing is more efficient to utilize on a day-to-day basis compared to derivative instruments which generally require a higher degree of negotiation and ongoing administration on the part of the Filer. The Exemption Sought would provide the Filer with access to a more functional source of additional leverage to utilize on behalf of the Alternative Fund at a lower cost which, in turn, would benefit investors.
- 14. The investment strategies of the Alternative Fund permit, or will permit, it to:
  - (a) borrow cash, provided that, at the time, the value of cash borrowed when aggregated with the value of all outstanding borrowing by the Alternative Fund does not exceed 100% of the Alternative Fund's NAV;
  - (b) borrow cash or sell securities short, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Alternative Fund does not exceed 100% of the Alternative Fund's NAV (the **Total Borrowing and Short Selling Limit**). If the Total Borrowing and Short Selling Limit is exceeded, the Alternative Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to be within the Total Borrowing and Short Selling Limit; and
  - (c) borrow cash, sell securities short or enter into specified derivatives transactions, provided that, immediately after entering into a cash borrowing, short selling or specified derivative transaction, the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Alternative Fund's specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed 300% of the Alternative Fund's NAV as set out in section 2.9.1 of NI 81-102 (the **Leverage Limit**). If the Leverage Limit is exceeded, the Alternative Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and the aggregate notional amount of the Alternative Fund's specified derivatives positions (other than positions held for hedging purposes) to be within the Leverage Limit.
- 15. NI 81-102 contemplates that alternative mutual funds may obtain additional investment exposure using a combination of cash borrowing (subject to the Cash Borrowing Limit) and specified derivative positions subject, in all cases, to the Leverage Limit. Accordingly, the Exemption Sought would simply allow the Alternative Fund to do directly what it could otherwise do indirectly through the use of specified derivatives.
- 16. The Alternative Fund requires the flexibility to borrow cash when doing so is, in the opinion of the Filer, in the best interests of the Alternative Fund and to not be obligated to utilize an equivalent amount of leverage synthetically through the use of specified derivatives as a result of regulatory restrictions in NI 81-102 that the Filer believes do not provide any material additional benefit or protection to investors.
- 17. The Filer believes that the Exemption Sought would allow the Filer to manage the Alternative Fund's investment exposure more effectively by providing it with the ability to respond to market developments in a timely manner and enabling the Filer to reduce the related expenses incurred by the Alternative Fund. In addition, specified derivative options may not be readily available for certain securities, may be relatively illiquid or may require large capital commitments on the part of the Alternative Fund.
- 18. The Filer, as a registrant and a fiduciary, is in the best position to determine, depending on the surrounding circumstances, whether the Alternative Fund should obtain additional investment exposure via cash borrowing versus achieving the same result through the use of specified derivatives. The Exemption Sought would provide the Filer with the required flexibility to obtain additional investment exposure through cash borrowing or synthetic transactions. Accordingly, the Exemption Sought would permit the Filer to implement more effective portfolio management activities on behalf of the Alternative Fund and its investors. Investors would benefit by obtaining access to a more diversified set of investment opportunities than are currently available, while remaining within the overall investment limits set out in NI 81-102.

19. Any cash borrowing transaction entered into by the Alternative Fund will be consistent with the investment objectives and strategies of the Alternative Fund.
20. The investment strategies of the Alternative Fund will clearly disclose that the cash borrowing strategies and abilities of the Alternative Fund are outside the scope of NI 81-102, including that the aggregate amount of cash borrowed may exceed 50% of the Alternative Fund's NAV. The Prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.
21. The Filer does not consider that granting the Exemption Sought would constitute either a fundamental or material change for the Alternative Fund under NI 81-102 or National Instrument 81-106 *Investment Fund Continuous Disclosure*.
22. The Filer will determine the risk rating for the Alternative Fund using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102. The Filer does not anticipate that the current risk ratings of the Alternative Fund would change if the Exemption Sought were granted.
23. The Filer has comprehensive risk management policies and/or procedures that address the risks associated with cash borrowing in connection with the implementation of the investment strategy of the Alternative Fund.
24. The Filer believes that it is in the best interests of the Alternative Fund to be permitted to obtain additional investment exposure through the use of cash borrowing in excess of the current limits set out in NI 81-102.

**Decision**

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

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

1. The Alternative Fund may borrow cash only if, immediately after the cash borrowing transaction:
  - (a) the aggregate value of all cash borrowing by the Alternative Fund does not exceed 100% of the Alternative Fund's NAV;
  - (b) the aggregate market value of securities sold short by the Alternative Fund combined with the aggregate value of cash borrowing by the Alternative Fund does not exceed 100% of the Alternative Fund's NAV; and
  - (c) the Alternative Fund's aggregate exposure to short selling, cash borrowing and specified derivatives does not exceed the Leverage Limit.
2. The cash borrowing transaction:
  - (a) otherwise complies with all of the cash borrowing requirements applicable to alternative mutual funds under sections 2.6 and 2.6.2 of NI 81-102; and
  - (b) is consistent with the Alternative Fund's investment objectives and strategies.
3. The Prospectus discloses in the investment strategies that the Alternative Fund can sell securities short or borrow cash up to, and subject to, the limits described in condition 1 above.

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

Application File #: 2023/0280  
SEDAR File #: 3552392

### B.3.4 Canaccord Genuity Corp.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) – A registered firm is required to designate an individual as chief compliance officer (CCO) – The Filer is an investment dealer and, due to its scale and operations carried out by distinct operating divisions, the type of firm that is contemplated in section 5.2 of the Companion Policy to NI 31-103. Exemptive relief is granted to permit the Filer to designate two individuals as CCOs. Each CCO will be responsible for one or more distinct lines of business carried on by the Filer and each CCO will fulfill the CCO functions in respect of the division for which the individual is designated.

#### Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 11.3 and 15.1.

July 6, 2023

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

AND

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

AND

IN THE MATTER OF  
CANACCORD GENUITY CORP.  
(the Filer)

DECISION

#### Background

¶ 1 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**) exempting the Filer from the requirement in section 11.3(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit the Filer to designate two individuals as chief compliance officer (**CCO**), with the result that each CCO will be responsible for one or more distinct lines of business carried on by the Filer (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (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 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 British Columbia and Ontario; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

#### Interpretation

¶ 2 Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

### Representations

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

#### *The Filer*

1. The Filer is a corporation organized under the laws of Ontario.
2. The Filer's head office is located in Vancouver, British Columbia.
3. The Filer is an investment dealer member of the Canadian Investment Regulatory Organization and is registered as an investment dealer in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon; an investment dealer and futures commission merchant in Manitoba and Ontario; and an investment dealer and derivatives dealer in Québec.
4. The Filer is not in default of securities legislation in any jurisdiction of Canada.

#### *The lines of business*

5. The Filer currently has three distinct operating lines of business that engage in registrable activities and require a CCO (each, a **Division**):
  - (a) The Wealth Management Division currently provides full service wealth management and retail brokerage services to retail clients through approximately 500 employees including 140 investment advisory teams, and has ten branch offices across Canada. The Wealth Management Division provides to its retail clients securities trading (both new issue and secondary trading), suitability-based investment advice, portfolio management, and custody services in a wide variety of equity, fixed income, options and other securities. The Filer holds customer securities in cash and margin accounts and extends margin to its retail clients.
  - (b) The Capital Markets Division currently provides sales and trading services to institutional clients, including providing direct electronic access to Canadian Markets, investment banking services, including conducting prospectus and exempt offerings of equity and fixed income securities, publication of equity research, mergers and acquisitions advisory services, and securities lending services. The Filer's Capital Markets Division (including CG Direct) is currently comprised of approximately 280 employees, located in four offices across Canada.
  - (c) The CG Direct Division conducts order execution only services, primarily for employees of the Filer, as well as for a small number of proprietary trading entities through direct electronic access.
6. The Divisions share certain services, primarily relating to securities custody and settlement, back-office operations and account management. Other shared services include marketing, HR, building facilities, IT and other similar business services unrelated to supervision or compliance.

#### *The CCOs*

7. The Filer desires to designate one individual as CCO of the Wealth Management Division and a different individual as CCO of both the Capital Markets Division and the CG Direct Division. Each of the CCOs will meet the proficiency requirements to act in the role. The Filer will appoint one of the CCOs to be responsible for any future operating lines of business that engage in registrable activities.
8. Each Division has a well-established and distinct supervisory and compliance structure, with individual compliance personnel clearly assigned to each Division. A prior CCO of the Filer, following his appointment on April 1, 2021, immediately appointed an individual as Head of Wealth Compliance and another individual as Head of Capital Markets Compliance. This structure has been in place since April 1, 2021, and the Filer continues to develop this structure by adding compliance personnel in each area. The Head of Wealth Compliance is currently serving as the Filer's sole CCO. If the Exemption Sought is granted, it is the Head of Wealth Compliance and the Head of Capital Markets Compliance who were appointed on April 1, 2021, who are intended to be the initial appointment as the two CCOs.

#### *The CCO Requirement*

9. Under section 11.3 of NI 31-103, a registered firm is required to designate an individual to be the CCO (the **CCO Requirement**).

*Reasons for exemption sought*

10. As noted in paragraph 5, there are material differences in the functions and operations of each of the Filer's Divisions as well as in the regulation of registrable activities for each of the Divisions. Given the size, diversity and increasing complexity of each of the Filer's Divisions, it is difficult (i) for one individual to effectively carry out all the responsibilities of the CCO for both the Wealth Management Division and the Capital Markets Division (including the CG Direct Division), and (ii) for one CCO to effectively identify and stay abreast of the different issues and risks applicable to clients and the capital markets stemming from both of these Divisions.
11. Given the large scope, complexity and diversified business operations of each Division, the Filer believes that having a separate CCO for the Wealth Management Division and for both the Capital Markets Division and the CG Direct Division will allow it to more effectively manage its compliance program by enabling it to focus resources on the specific requirements of each Division. Each of the Wealth Management Division and the Capital Markets Division and CG Direct Division requires different subject matter expertise and different experience to be effective in the CCO role.
12. If the Exemption Sought is granted,
  - (a) the CCO of the Wealth Management Division will oversee compliance systems that are reasonably designed to ensure that each investment advisor and each portfolio manager and their respective teams, and each person acting on their behalf, comply with securities legislation. The CCO of the Wealth Management Division will focus on the applicable laws, regulations, rules, policies and codes of conduct which govern the wealth management activities of the Filer in the jurisdictions in which it operates. To this end, the CCO of the Wealth Management Division will maintain a compliance process and infrastructure throughout the wealth management business to enable the Filer's management to fulfill their supervisory responsibilities. This includes maintaining appropriate policies and procedures and overseeing a supervisory structure that monitors the retail sales and trading practices (including suitability, know your client and know your product), retail communications, the registration department, customer complaints and investigations, and the training of branch managers; and
  - (b) the CCO of the Capital Markets Division and CG Direct Division will oversee compliance systems that are reasonably designed to ensure that the activities carried out by the Capital Markets Division and the CG Direct Division, and each person acting on their behalf, comply with securities legislation. The CCO of the Capital Markets Division and CG Direct Division will maintain appropriate policies and procedures for trading surveillance (including compliance with the Uniform Market Integrity Rules (UMIR)), securities offering procedures, conflicts of interest, control room activities such as maintenance of Grey and Restricted Lists, employee trading, institutional account opening, and will oversee a supervisory structure that monitors compliance with applicable securities legislation. This will include overseeing compliance with the requirements governing: (i) public and private offerings of corporate issuers; (ii) institutional sales practices and sales communications; (iii) maintenance of applicable research report disclosures, and review of research reports for UMIR compliance and potential material non-public information; (iv) conflict identification and management. The Capital Markets Division functions within the overall global operations of the corporate group of which the Filer is one subsidiary (the **Filer Corporate Group**), which have extensive Capital Markets presences in the United States, the United Kingdom and Europe and Australia. Having a separate CCO will enable this Division to more effectively address cross border issues as they arise in the larger global business. Like the CCO for the Wealth Management Division, the Filer believes the CCO of the Capital Markets Division and CG Direct Division will better be able to maintain a compliance process and infrastructure throughout the capital markets and CG Direct business to enable the Filer's management to fulfill their supervisory responsibilities.
13. Within the Filer Corporate Group, the two CCOs will report day-to-day to the Group Chief Legal Officer (the Filer Corporate Group executive responsible for the compliance function at the global level) who, in turn reports day-to-day to the Group Chief Executive Officer (who is also the Chief Executive Officer and Ultimate Designated Person (UDP) of the Filer). The UDP of the Filer currently conducts monthly meetings with the Group Chief Legal Officer and the current CCO to review all outstanding compliance matters, key initiatives and regulatory developments. If the Exemption Sought is granted, such meetings will continue and will include both CCOs, and each CCO will have direct access to the Filer's UDP at such times as each CCO may consider necessary or advisable in view of their responsibilities; each CCO will have direct access to the board of directors at such times as each CCO may consider necessary or advisable in view of their responsibilities; each CCO will provide reports to the board of directors of the Filer at each of their regularly scheduled quarterly meetings; each CCO will provide an annual report to the board of directors of the Filer as required by subsection 5.2(d) of NI 31-103; and each CCO will comply in all other respects with applicable securities requirements, including the requirements set out in NI 31-103. In addition, the two CCOs will have regular meetings with each other and

with the Group Chief Legal Officer to discuss the overall governance of the Filer, key initiatives and regulatory matters that may impact each line of business and to leverage the knowledge and experience of their equivalent officers in the other jurisdictions in which the Filer Corporate Group operates.

14. With the granting of the Exemption Sought, the Filer would continue its operations with enhanced compliance effectiveness, since one individual would no longer continue to divide their time between the compliance oversight of the Wealth Management Division and the Capital Markets Division (including the CG Direct Division). Under the Filer's proposed structure, the CCOs would have the capacity to respond more effectively to compliance issues, provide a higher level of senior participation on the Filer's compliance initiatives, and undertake more detailed reviews of the Filer's compliance monitoring programs to assist in reducing the risks of non-compliance.
15. In section 5.2 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, the Canadian Securities Administrators (**CSA**) state that:

Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.
16. In accordance with the CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments*, the CSA may allow registered firms to implement their CCO responsibilities in a manner that better aligns with their operational needs and business models, and acknowledge that larger firms may benefit from implementing a multiple CCO model where they have distinct business lines or registration categories.
17. Allowing the Filer to designate and have registered a CCO for each of the Wealth Management Division and the Capital Markets Division (including the CG Direct Division) is consistent with the policy objectives the CCO Requirement is intended to achieve as the Filer has grown rapidly over the past five years in both scale and complexity, and the Filer believes dual CCOs for its Divisions will enable it to most effectively address its compliance and supervisory needs.

#### Decision

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

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

- (a) each CCO fulfils the functions described in section 5.2 of NI 31-103 [*Responsibilities of the Chief Compliance Officer*], or any successor provision thereto, in respect of the Division(s) for which the individual is the designated CCO; and
- (b) each CCO has direct access to the UDP and direct access to the board of directors of the Filer.

"Mark Wang"  
Director, Capital Markets Regulation  
British Columbia Securities Commission

OSC File #: 2022/0275

### B.3.5 TD Prime Services LLC

#### Headnote

U.S. registered broker-dealer exempted from the dealer registration requirement in subsection 25(1) of the Act to permit its provision of certain prime brokerage services (which do not include the execution of trades) – Exemption limited to trades in “Canadian securities” (which the decision defines as a security that is not a “foreign security” as that term is defined in subsection 8.18(1) of NI 31-103) for certain (institutional) permitted clients – Exemption is subject to a 5-year sunset clause.

#### Applicable Legislative Provisions

##### Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 19, 19(1), 19(2), 25(1), 74 (1).

##### Instruments Cited

Multilateral Instrument 11-102 Passport System, ss. 4.4(c), 4.7, 4.7(1).

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.5, 8.18, 8.18, 8.21, Form 31-103F1 Calculation of Excess Working Capital.

National Instrument 81-102 Investment Funds, Part 6.

Ontario Securities Commission Rule 13-502 Fees.

July 6, 2023

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

AND

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

AND

IN THE MATTER OF  
TD PRIME SERVICES LLC  
(the “Filer”)

DECISION

#### Background

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

The principal regulator granted similar relief to the Filer in a decision dated July 6, 2018, subject to a five-year sunset clause (the “**Previous Decision**”). The Previous Decision will expire on July 6, 2023 (the “**Termination Date**”).

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

- (a) the Ontario Securities Commission (“**OSC**”) is the principal regulator for this Application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in each of the other provinces and territories of Canada in which the Filer relies on the exemption found in section 8.18 [*International dealer*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) other than the province of Alberta (the “**Passport Jurisdictions**” and together with the Jurisdiction, the “**Jurisdictions**”).

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. For the purposes of this decision, the following terms have the following meanings:

**“Canadian security”** means a security that is not a foreign security;

**“foreign security”** has the meaning ascribed to that term in subsection 8.18(1) of NI 31-103;

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

**“Prime Services”** means any of the following: (a) settlement, clearing and custody of trades; (b) financing of long inventory; (c) lending and delivering securities on behalf of a client pursuant to a margin agreement to facilitate client short sales; (d) rehypothecation of securities to finance cash and securities loans made to prime brokerage clients; (e) securities borrowing pursuant to a securities lending agreement; and (f) reporting of positions, margin and other balances and activity. For greater clarity, Prime Services do not include execution of trades in securities.

**“Prime Services Clients”** means an Institutional Permitted Client to whom the Filer provides Prime Services in the Jurisdictions in respect of Canadian securities in addition to foreign securities.

**Representations**

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

1. The Filer is a limited liability company formed under the laws of the State of Delaware. Its head office is located at 1 Vanderbilt Avenue, New York, NY 10017, United States (“**U.S.**”). It is a wholly owned subsidiary of Toronto Dominion Holdings (U.S.A.), Inc., which is a wholly owned subsidiary of TD Group US Holdings LLC. TD Group US Holdings LLC is a wholly owned subsidiary of The Toronto-Dominion Bank.
2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (“**SEC**”) and is a member of the U.S. Financial Industry Regulatory Authority (“**FINRA**”). This registration and membership permits the Filer to provide Prime Services (as set out below) in the U.S.
3. The Filer is a member of the New York Stock Exchange (“**NYSE**”), the Nasdaq Stock Market and certain other securities exchanges in the U.S.
4. The Filer is engaged in the business of holding and financing customer accounts and clearing and settling transactions. The Filer lends money, extends credit and provides margin to clients. The Filer does not make proprietary investments.
5. The Filer provides Prime Services in accordance with the Previous Decision.
6. The Filer has applied for the Exemption Sought in order to continue to provide Prime Services in Canada with respect to Canadian securities to Prime Services Clients that are Institutional Permitted Clients after the Termination Date.
7. The Filer does not provide trade execution services.
8. The “Prime Services” provided by the Filer to its Prime Services Clients principally consist of the following: (a) settlement, clearing and custody of trades; (b) financing of long inventory; (c) lending and delivering securities on behalf of a client pursuant to a margin agreement to facilitate client short sales; (d) securities borrowing pursuant to a securities lending agreement; (e) rehypothecation of securities to finance cash and securities loans made to prime brokerage clients; and (f) reporting of positions, margin and other balances and activity. For greater clarity, Prime Services do not include execution of trades in securities.
9. The Filer offers Prime Services to Institutional Permitted Clients in the Jurisdictions in respect of Canadian securities and securities of non-Canadian issuers.
10. In the case of a Prime Services Client that is an investment fund subject to Part 6 of National Instrument 81-102 *Investment Funds* (“**NI 81-102**”), the custodianship requirements in Part 6 of NI 81-102 would only permit the Filer to provide the Prime Services to the investment fund as a sub-custodian of the investment fund in respect of portfolio assets held outside Canada, and the Filer would provide Prime Services to an investment fund in compliance with applicable securities laws, including Part 6 of NI 81-102 and the custody requirements set out in NI 31-103.

11. Prime Services Clients seek Prime Services from the Filer in order to separate the execution of a trade from the clearing, settlement, custody and financing of a trade. This allows the Prime Services Client to use many executing brokers, without maintaining an active, ongoing custody account with each executing broker. It also allows the Prime Services Client to consolidate settlement, clearing, custody and financing of securities in an account with the Filer.
12. The Filer's Prime Services Clients directly select their executing brokers. The Filer does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades. Prime Services Clients send trade orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from the dealer registration requirement that permits such executing broker to execute the trade for Prime Services Clients.
13. The Filer provides the Prime Services after the execution of the trade, but any commitment to provide financing or to lend or borrow securities in relation to a trade may be made prior to the execution of the trade. The executing broker will communicate the trade details to a Prime Services Client and the Filer or the Filer's clearing agent, as applicable. A Prime Services Client will also communicate the trade details to the Filer. For trades executed on a Canadian marketplace, the Filer will typically need to clear and settle the trades through a participant of the Canadian depository, clearing and settlement hub, CDS Clearing and Depository Services Inc.
14. The Filer exchanges money or securities and holds the money or securities in an account for each Prime Services Client. If the Filer is clearing and settling the trade through a clearing agent, the Filer's clearing agent exchanges money or securities and holds the money or securities in an omnibus account for the Filer, who in turn maintains a record of the position held for the Prime Services Client on its books and records.
15. On or following settlement, the Filer provides the other Prime Services as set out in paragraph 8.
16. The Filer enters into written agreements with each of its Prime Services Clients for the provision of Prime Services.
17. The Filer currently relies on the "international dealer exemption" under section 8.18 [*International dealer*] of NI 31-103 in all Canadian jurisdictions to provide Prime Services in respect of "foreign securities" as defined in section 8.18 of NI 31-103.
18. The Filer is not registered under the securities legislation of any of the jurisdictions of Canada. The Filer, among other things is in the business of trading, and, in the absence of the Exemption Sought, cannot provide the full range of Prime Services in the Jurisdictions in respect of Canadian securities without registration, except as permitted under section 8.5 [*Trades through or to a registered dealer*], under the exemptions found in paragraphs (a), (b) and (f) of subsection 8.18(2) [*International dealer*], and under section 8.21 [*Specified debt*] of NI 31-103.
19. The Filer is subject to regulatory capital requirements under the *Securities Exchange Act of 1934* (the "**1934 Act**"), specifically SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* ("**SEC Rule 15c3-1**") and SEC Rule 17a-5 Reports to be *Made by Certain Brokers and Dealers* ("**SEC Rule 17a-5**").
20. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital when a loss is probable and the amount can be reasonably estimated. Accordingly, the Filer will, in the event that it provides a guarantee of any debt of a third party, take a deduction from net capital when both of the preceding conditions exist. The Filer does not guarantee the debt of any third party.
21. SEC Rule 15c3-1 is designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which investment dealers that are dealer members of the Canadian Investment Regulatory Organization ("**CIRO**") are subject. The Filer is in compliance with SEC Rule 15c3-1 and is in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* ("**SEC Rule 17a-11**"). The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.
22. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 (the "**FOCUS Report**") which is the financial and operational report containing a net capital calculation, and a compliance report annually with the SEC and FINRA pursuant to SEC Rule 17a-5(d). The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* ("**Form 31-103F1**") under NI 31-103. The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filer is up-to-date in its submissions of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

23. The Filer is subject to regulations of the Board of Governors of the U.S.. Federal Reserve Board ("**FRB**"), the SEC, and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the "**U.S. Margin Regulations**") that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which investment dealers that are dealer members of CRO are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T, and under applicable SEC rules and under FINRA Rule 4210. The Filer is in compliance in all material respects with applicable U.S. Margin Regulations.
24. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended ("**SEC Rule 15c3-3**"). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of the Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements to which investment dealers that are dealer members of CRO are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.
25. The Filer is a member of the Securities Investors Protection Corporation ("**SIPC**") and, subject to the eligibility criteria of SIPC, Prime Services Clients' assets held by the Filer are insured by SIPC against loss due to insolvency.
26. The Filer is not in default of any requirements of securities legislation in any jurisdiction in Canada.
27. The Filer is in compliance in all material respects with U.S. securities laws.
28. The Filer submits that the Exemption Sought would not be prejudicial to the public interest because:
- (a) the Filer is regulated as a broker-dealer under the securities legislation of the U.S., and is subject to the requirements referred to in paragraphs 19 to 25;
  - (b) the availability of and access to Prime Services in respect of Canadian securities is important to Canadian institutional investors who are active participants in the international marketplace;
  - (c) the Filer will provide Prime Services in the Jurisdictions in respect of Canadian securities only to Institutional Permitted Clients;
  - (d) the OSC has entered into a memorandum of understanding with the SEC regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the U.S. and Canada; and
  - (e) the OSC has entered into a memorandum of understanding with FINRA to provide a formal basis for the exchange of regulatory information and investigative assistance.
29. The Filer is a "market participant" as defined under subsection 1(1) of the Act. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the Act, which include the requirement to keep such books, records and other documents as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, and to deliver such records to the OSC if required.
30. The Filer will not rely on subsection 4.7(1) of MI 11-102 to passport this decision into Alberta.

**Decision**

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

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

- (a) has its head office or principal place of business in the U.S.;
- (b) is registered as a broker-dealer under the securities legislation of the U.S., which permits the Filer to provide the Prime Services in the U.S.;
- (c) is a member of FINRA;

- (d) is a member of SIPC;
- (e) is subject to requirements over regulatory capital, lending of money, extension of credit, provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which investment dealers that are dealer members of CISO are subject (the Investment Dealer and Partially Consolidated Rules);
- (f) limits its provision of Prime Services in the Jurisdictions in respect of Canadian securities to Institutional Permitted Clients;
- (g) does not execute trades in Canadian securities with or for Prime Services Clients, except as permitted under applicable Canadian securities laws;
- (h) does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades;
- (i) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;
- (j) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;
- (k) submits to the OSC immediately a copy of any notice it files under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;
- (l) complies with the filing and fee payment requirements that would be applicable to the Filer if it were a registrant under OSC Rule 13-502 Fees;
- (m) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time; and
- (n) pays the increased compliance and case assessment costs of the principal regulator due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the principal regulator.

This decision shall expire five years after the date hereof.

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

"Elizabeth King"  
Deputy Director, Compliance and Registrant Regulation  
Ontario Securities Commission

OSC File #: 2023/0246

**B.3.6 Marco Tulio Pagoada Vallecillo – s. 31**

**IN THE MATTER OF  
STAFF'S RECOMMENDATION TO REFUSE  
THE APPLICATION FOR REGISTRATION OF  
MARCO TULIO PAGOADA VALLECILLO**

**OPPORTUNITY TO BE HEARD  
BY THE DIRECTOR  
UNDER SECTION 31 OF  
THE SECURITIES ACT (ONTARIO),  
R.S.O. 1990, C. S.5,  
AS AMENDED**

**Decision**

1. For the reasons set out below, following an opportunity to be heard (the **OTBH**) under section 31 of the *Securities Act* (Ontario) (the **Act**), it is my decision that the application for registration of Marco Tulio Pagoada Vallecillo (**Mr. Pagoada Vallecillo** or the **Applicant**) in the category of dealing representative of a mutual fund dealer under the sponsorship of TD Investment Services, Inc. (**TDIS**) be refused.
2. My decision is based on the evidence tendered by both parties. Written submissions were provided by Goksu Gok, Legal Counsel of the Compliance and Registrant Regulation Branch (**CRR**), counsel for staff of the Ontario Securities Commission (**OSC or Commission**) and by Mr. Pagoada Vallecillo who represented himself. The oral submissions from both parties were heard on June 15, 2023 by video conference.

**Background**

3. Staff of the OSC (**Staff**) has recommended that I refuse the application of Mr. Pagoada Vallecillo on the basis that the Applicant lacks the integrity and proficiency required for registration under the Act and that the Applicant's registration would be otherwise objectionable.
4. On April 16, 2021, the Applicant submitted an initial application for registration under the Act in the category of dealing representative of a mutual fund dealer. In his application, the Applicant responded that he had no outstanding criminal charges in Item 14.1 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**) nor any prior criminal conviction in Item 14.2 of Form F4.
5. On April 21, 2021, a Registration Officer in CRR issued a letter to Mr. Pagoada Vallecillo informing him that staff had information that suggested there may be outstanding warrants or criminal charges against him that were not disclosed in his initial application. Staff requested he provide a police information check, if he had no outstanding charges, or contact TDIS to correct the omission through filing a Criminal Disclosure Change notice in the National Registration Database (**NRD**).
6. On November 10, 2022, TDIS submitted an update to Item 14 of Form F4.
7. On February 7, 2023, Mr. Pagoada Vallecillo attended a voluntary interview with Staff.
8. Staff provided the Applicant with a letter setting out the basis for the recommendation to refuse registration on April 11, 2023.

**Law and Arguments of the Parties**

9. Subsection 27(1) of the Act provides that the Director shall register a person unless it appears to the Director that the person is not suitable for registration under the Act or that the Registration is otherwise objectionable. Subsection 27(2) sets out the test of suitability for registration, by requiring the Director to consider the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and such other factors as the Director considers relevant.
10. Applications for registration are made in a prescribed form, Form F4, that requires the applicant to disclose various items of information that are used to assess the applicant's suitability for registration. Item 14 of Form F4 deals with criminal disclosure. Specifically, Items 14.1 and 14.2 of Form F4 ask the following questions:

**Item 14 Criminal disclosure**

The questions below apply to offences committed in any jurisdiction of Canada and any foreign jurisdiction. You must disclose all offences, including:

- a criminal offence under federal statutes such as the *Criminal Code* (Canada), *Income Tax Act* (Canada), the *Competition Act* (Canada), *Immigration and Refugee Protection Act* (Canada) and the *Controlled Drugs and Substances Act* (Canada), even if
  - a record suspension has been ordered under the *Criminal Records Act* (Canada), or
  - you have been granted an absolute or conditional discharge under the *Criminal Code* (Canada), and
- a criminal offence, with respect to questions 14.2 and 14.4, of which you or your firm has been found guilty or for which you or your firm have participated in the alternative measures program within the previous three years, even if a record suspension has been ordered under the *Criminal Records Act* (Canada)

...

1. Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

Yes \_\_\_\_\_ No \_\_\_\_\_

If "Yes", complete Schedule K, Item 14.1.

2. Have you ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from any criminal offence that was committed?

Yes \_\_\_\_\_ No \_\_\_\_\_

If "Yes", complete Schedule K, Item 14.2.

...

11. Additionally, Item 21 of Form F4 sets out a warning to the Applicant that "It is an offence under securities legislation and derivatives legislation, including commodity futures legislation, to give false or misleading information on this form" and Item 22.1 of Form F4 requires the Applicant to make the following certification:

**1. Certification – NRD format**

I confirm I have discussed the questions in this form with an officer, branch manager or supervisor of my sponsoring firm. To the best of my knowledge, the officer, branch manager or supervisor was satisfied that I fully understood the questions. I will limit my activities to those permitted by my category of registration. If the business location specified in this form is a residence, I hereby give my consent for the regulator or, in Québec, the securities regulatory authority to enter that residence for the administration of securities legislation and derivatives legislation, including commodity futures legislation.

***Staff's Recommendation to Refuse Registration***

12. Staff contends that the Applicant failed to provide true and complete disclosures on multiple instances and provided a series of inaccurate and unreasonable explanations for failing to provide true and complete disclosures.
13. Specifically, the Applicant failed to disclose outstanding criminal charges as required by Form F4. Mr. Pagoada Vallecillo was charged with two offences of the Criminal Code on February 21, 2020. He was released on a number of conditions. The charges were not resolved until Mr. Pagoada Vallecillo entered into a peace bond in June 2022 that was approved by the court in July 2022. The initial registration application was submitted while the charges remained outstanding; therefore, these charges were required to be disclosed when the initial application was submitted in April 2021.
14. Staff contends that there was also a failure to disclose a criminal conviction as required by Form F4. On March 2, 2015, Mr. Pagoada Vallecillo was found guilty of Driving under the Influence – Driving with more than 80 mgs of alcohol in blood. This conviction was required to be disclosed when the initial application was submitted in April 2021.
15. On November 10, 2022, TDIS submitted an update to Item 14.2 to disclose the March 2, 2015 criminal conviction that was not previously disclosed when the Form F4 was initially submitted. During the voluntary interview, Mr. Pagoada Vallecillo stated that he was aware of the criminal conviction but failed to disclose it on the initial application.
16. Staff further contends that the Applicant failed to respond to the CRR Branch's correspondence regarding his outstanding criminal charges. Mr. Pagoada Vallecillo responded to the Registration Officer that he would provide more information

by June 2021, but failed to provide the OSC with information on his criminal record until November 10, 2022, when TDIS submitted an update to Item 14 of Form F4.

17. Finally, the Applicant made inaccurate and unreasonable statements to Staff during a voluntary interview to consider his suitability for registration. Staff contends that Mr. Pagoada Vallecillo was not truthful with certain details surrounding the events that resulted in the outstanding criminal charges.

#### *Applicant's Position*

18. Mr. Pagoada Vallecillo contends that as an employee of TD Canada Trust for more than 12 years, his actions with his clients and colleagues stem from suitability, honesty, integrity and with his constant efforts of keeping clients' best interest at the forefront. Also, he has stated that he has grown and has received distinctions within the company which would not have been possible if there was any indication of his lack of integrity or honest business dealings. The Applicant noted that his TD Canada Trust managers have shown support for Mr. Pagoada Vallecillo's continued employment and this registration. Mr. Pagoada Vallecillo also submitted reference letters to substantiate his character.
19. Mr. Pagoada Vallecillo acknowledged that it was his responsibility to have properly understood the questions on the application, but stated that there was a clear misunderstanding and at no point in the registration process did TDIS, his sponsoring firm, provide him with anyone to assist or designate anyone to aid him in the application process as outlined in Subsection 5.1(1) of National Instrument 33-109 *Registration Information*. He contends that he lacked the understanding of the questions on the registration application and had his sponsoring firm provided support, he would have likely avoided any misstatements. Further, his lack of understanding is not a reflection of a lack of care. Also, he contended that everyone makes mistakes. Therefore, his failure to provide true and complete disclosures was a simple mistake.
20. Mr. Pagoada Vallecillo stated that at the time of submitting the initial registration application he was not aware of any outstanding criminal charges. Mr. Pagoada Vallecillo stated that his court date was cancelled due to the COVID pandemic restrictions which prevented him from attending court on his assigned court date. Also, he stated that the court told him that the court would contact him if follow-up was required. He understood that he would be notified but he did not receive any notifications. As a result, he thought the charges were not outstanding or pending.
21. However, prior to applying for registration, Mr. Pagoada Vallecillo stated that he contacted the court to determine if there were any outstanding charges. He contacted the court again after receiving correspondence from the Registration Officer stating that there may be outstanding charges. Each time the court was not able to locate any charges. The court was only able to locate the charges when Mr. Pagoada Vallecillo provided his full legal name.
22. The Applicant stated that he did not disclose the March 2015 criminal conviction because it occurred long ago and he did not believe it was still on his record. He mistakenly believed that after four or five years, convictions would be automatically removed from his record.
23. At the OTBH, Mr. Pagoada Vallecillo explained why the statements he made at the voluntary interview about details surrounding the outstanding criminal charges were not truthful. He indicated that he did not feel comfortable talking about the outstanding charges because it was extremely sensitive, the outstanding charges had been withdrawn by that time, and he wanted to protect another person.

#### **Findings and Reasons**

24. As codified in subsection 27(2) of the Act, the three pillars of registration (i.e., integrity, proficiency and solvency) are considered when determining if an applicant is suitable for registration. The question before me is whether the Applicant lacks the integrity and proficiency required for registration under the Act and whether the Applicant's registration would be otherwise objectionable.
25. CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration* (**CSA Staff Notice 33-320**) identifies the application process, including the Form F4, as an integral part of the registration regime. As such, CSA Staff Notice 33-320 alerts stakeholders to the serious problem of false or misleading applications for registration. It references an earlier case of the OSC that said:

The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.<sup>1</sup>

26. The Commission has stated in *Re John Doe* (2010), 33 OSCB 1371, a case which also involved the non-disclosure of a criminal record in an application for registration, at 1377:

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<sup>1</sup> Re Thomas, (1972) OSCB 118 at p. 120

In my view, one false statement is enough to discredit the Applicant's credibility and raise an issue as to his integrity. In other words, one false statement is sufficient to result in the Applicant's application for registration being denied on the basis that the Applicant lacks the requisite integrity required of a securities industry professional and is, therefore, not suitable for registration.

and later:

Moreover, even if the Applicant somehow was honestly mistaken in the chain of inaccurate disclosure he provided to OSC staff (which I doubt) I agree with the statement in *Re Doe* [(2007), ABASC 296] that integrity is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his registration, including his initial application for registration. In my view, he did not meet this duty.

27. In *Re Couto* (2012), 35 OSCB 4105 at 4107, the Commission stated:

The *John Doe* standard calls for due diligence, not perfection. Minor inaccuracies may be excused, but significant errors that reflect a failure to exercise a reasonable degree of care in the completion of the application will not be.

28. At the voluntary interview, Mr. Pagoada Vallecillo stated that he was not aware of the February 21, 2020 outstanding charges at the time he submitted his initial registration application. I do not find this statement credible. Mr. Pagoada Vallecillo signed a Release Order on February 22, 2020 that provided conditions that he was to comply with after his release while the charges remain outstanding. Section 7 of the Release Order specifically provides that the conditions remain in effect until the conditions are cancelled or changed or until he is discharged, sentenced, or otherwise detained by the court. The plain reading of the section in the Release Order means that Mr. Pagoada Vallecillo was required to take, or participate in, some action before the conditions of the Release Order cease to be in effect and the outstanding charges would be resolved. Mr. Pagoada Vallecillo's lack of care in reading and referring to the continuing conditions of the Release Order created a mistaken belief that the outstanding charges would be resolved without him taking any action.

29. In further support, Mr. Pagoada Vallecillo stated that his court date was cancelled due to the COVID pandemic restrictions which prevented him from attending court on his original assigned court date. Prior to submitting his initial application, he stated that he contacted the court to determine the status of the outstanding charges, but since he did not provide his full legal name, the court was not able to find any charges. Based on incomplete information, he surmised that there were no outstanding charges against him. Mr. Pagoada Vallecillo is aware that he uses a name other than his full legal name and the Release Order clearly stated the full legal name of the Applicant. Had Mr. Pagoada Vallecillo exercised due care and provided his full legal name which is the name that was on the Release Order, he would have received accurate information regarding the outstanding charges. Mr. Pagoada Vallecillo responded to Item 14.1 of Form F4 and submitted his application based on unreasonable assumptions. The Applicant's lack of care and due diligence is inconsistent with the duty expected of an applicant for registration and the duty set out in *Re John Doe*.

30. As for the failure to disclose the March 2015 criminal conviction, Mr. Pagoada Vallecillo thought it was not relevant given the date of the conviction. Additionally, he was under the misconception that criminal charges are automatically removed after four or five years. However, Mr. Pagoada Vallecillo did not take any steps to verify either presumption. Regardless of his beliefs, the fact remains that the Applicant failed to disclose the required information. The language set out in Item 14.2 of Form F4 is very clear. It states "Have you ever been found guilty... from any criminal offence that was committed." [emphasis added]

31. The Applicant's failure to answer Items 14.1 and 14.2 of Form F4 truthfully and completely either through intentional misstatements or a lack of care and due diligence leads me to find that the Applicant lacks integrity.

32. At various stages of the registration and OTBH processes, Mr. Pagoada Vallecillo was informed that he was permitted to have a lawyer present and may seek legal advice at any time. He reaffirmed that he was attending on his own. Also, he was informed that it was an offence of section 122 of the Act to make misleading and untrue statement to the Staff of the OSC and that the answers must be truthful and complete, to best of his knowledge, to which he acknowledged his understanding. Form F4, which Mr. Pagoada Vallecillo completed, also contained a similar warning.

33. Prior to the OTBH, Staff learned information that contradicted a statement Mr. Pagoada Vallecillo made at the voluntary interview. At the OTBH, Mr. Pagoada Vallecillo explained why the statement he made at the voluntary interview was not truthful. I understand that disclosure of criminal charges and the circumstances giving rise to those charges may be personal or embarrassing, but the regulators require this information to determine an applicant's suitability for registration and the Applicant was required to answer truthfully and completely. Since Mr. Pagoada Vallecillo was informed that it would be an offence to make untrue statements to Staff and he proceeded to do so, I find that Mr. Pagoada Vallecillo's statement was intentionally misleading which impugns his integrity.

34. While Mr. Pagoada Vallecillo acknowledged that it was his responsibility to properly understand the questions on the application, he failed to exhibit remorse by indicating that his misstatements or lack of care were simple mistakes that everyone makes. However, Mr. Pagoada Vallecillo's misstatements and lack of care pertained to his criminal conviction and outstanding charges, and reflect a failure to meet the duty of care expected of applicants such that they were not minor inaccuracies but significant errors as set out in *Re Couto*.
35. Mr. Pagoada Vallecillo also redirected some of the responsibility for his misstatements to his sponsoring firm. The Applicant stated that he did not receive any support from TDIS, his sponsoring firm, when completing his initial registration application (despite the certification to Form F4 in which Mr. Pagoada Vallecillo confirmed that he had discussed the questions in the form with an officer, branch manager or supervisor of TDIS) or throughout the remainder of this OTBH. There is evidence that the TDIS Registration Department, as early as May 18, 2021, was aware that corrections to Mr. Pagoada Vallecillo's application needed to be submitted. Those corrections were submitted in November 2022. Also, the chief compliance officer for TDIS was notified by Staff on November 7, 2022 that it appeared that Mr. Pagoada Vallecillo's application did not fully disclose the criminal conviction nor the outstanding criminal charges.
36. While I do not know the extent to which TDIS did or did not support the Applicant through the registration process, ultimately, it is the Applicant's responsibility to provide true and complete answers to the questions. The importance of truth and candour in the application process is emphasized by the inclusion of the warning in Item 21 of Form F4. The information being solicited in Items 14.1 and 14.2 of Form F4 is clear by plain reading and the response required is either "yes" or "no". If the Applicant had questions or was unsure of how to respond, he should have sought further clarification from his sponsoring firm or the regulator. The fact that he did neither further demonstrates his lack of care.
37. Based on the foregoing, I find that Mr. Pagoada Vallecillo lacks the integrity required for a securities industry professional. Any one of these instances would be sufficient to refuse registration; therefore, his repeated failures to provide true and complete disclosures, along with providing false statements to Staff means that he is not suitable for registration and his registration would be otherwise objectionable.

**Conclusion**

38. Based on the foregoing, I accept Staff's recommendation to refuse Mr. Pagoada Vallecillo registration in the category of dealing representative of a mutual fund dealer and I direct Staff to take the necessary steps to implement this decision.
39. While I have decided that Mr. Pagoada Vallecillo's application should be refused, I do not think he should be barred from re-applying for registration in the future. If Mr. Pagoada Vallecillo applies for registration at some point in the future, he will need to demonstrate through his actions that he has rehabilitated his integrity and is suitable for registration. In the Director's decision *Re Sawh* (2016), 39 OSCB 2477, there are six factors that must be considered in making a determination on the applicant's suitability for registration after a finding by the Director or the Commission that the applicant was not suitable for registration. If Mr. Pagoada Vallecillo can provide evidence to support these factors, then his suitability for registration can be reassessed at that time.
40. Last, I note that in this particular case, it is the Applicant's lack of disclosure and misstatements relating to the outstanding charges and convictions, and not the nature and circumstances of the outstanding charges and convictions, that impugned his integrity. The Form F4 questions relating to criminal disclosure are clear in that criminal charges and convictions must be reported, no matter how long ago it was and even if a record suspension has been ordered or an absolute or conditional discharge has been granted with respect to the offence.

"Debar Foubert", J.D.

Director, Compliance and Registrant Regulation Branch  
Ontario Securities Commission

July 7, 2023

**B.3.7 Coveo Solutions Inc.**

**Headnote**

Dual application – Issuer bid – Modified Dutch auction – Application for relief from the requirement that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the issuer first takes up all Shares deposited under the Offer and not withdrawn (Section 2.32 of R62-104).

[Original text in French]

**July 6, 2023**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
QUÉBEC  
AND  
ONTARIO  
(the “Jurisdictions”)**

**AND**

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

**AND**

**COVEO SOLUTIONS INC.  
(the “Filer”)**

**DECISION**

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, in connection with the proposed purchase by the Filer of a portion of its outstanding subordinate voting shares (the **Subordinate Voting Shares**) pursuant to an issuer bid (the **Offer**), an exemption (the **Exemption Sought**), subject to the conditions set forth herein, from the requirements in Section 2.32 of *Regulation 62-104 respecting Take-over Bids and Issuer Bids*, CQLR, c. V-1.1 r. 35 (**Regulation 62-104**) that an issuer bid not be extended if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all securities deposited under the issuer bid and not withdrawn (collectively, the **Extension Take Up Requirement**).

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

- (a) the *Autorité des marchés financiers* is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Yukon and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

**Interpretation**

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3 and *Regulation 11-102* have the same meaning if used in this decision, unless otherwise defined herein.

**Representations**

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

- 1. The Filer is a corporation validly existing under the *Canada Business Corporations Act* and is in good standing.
- 2. The head office and registered office of the Filer is located at 3175 des Quatre-Bourgeois, Suite 200, Quebec, Quebec G1W 2K7.

3. The Filer is a reporting issuer in each of the jurisdictions of Canada and the Subordinate Voting Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "CVO". The Filer is not in default of any requirement of the securities legislation in any jurisdiction in which it is a reporting issuer.
4. The Filer's authorized share capital consists of (i) an unlimited number of Subordinate Voting Shares, (ii) an unlimited number of multiple voting shares (the **Multiple Voting Shares**), and (iii) an unlimited number of preferred shares, issuable in series. As of May 29, 2023, 54,163,351 Subordinate Voting Shares, 51,522,578 Multiple Voting Shares and no preferred shares were issued and outstanding.
5. Each Multiple Voting Share may at any time, at the option of the holder, be converted into one Subordinate Voting Share. The Multiple Voting Shares are not listed for trading on any stock exchange.
6. On May 29, 2023, the closing price of the Subordinate Voting Shares on the TSX was C\$6.69. On the basis of this closing price, on such date the Subordinate Voting Shares had an aggregate market value of approximately C\$351.4 million (on a non-diluted basis).
7. The Filer commenced the Offer on June 2, 2023. Pursuant to the Offer, the Filer offers to purchase that number of Subordinate Voting Shares having an aggregate maximum purchase price of C\$40,000,000 (the **Specified Maximum Dollar Amount**).
8. The board of directors of the Filer has determined that the Offer is in the best interests of the Filer and its Shareholders given, among other things, its significant level of cash on hand, expectations around achieving positive operating cash flow, and the current market price of the Subordinate Voting Shares, which the board of directors of the Filer believes does not currently reflect the fundamental value of the Filer. The Offer allows the Filer to return up to C\$40,000,000 of capital to Shareholders who elect to tender their Subordinate Voting Shares or Multiple Voting Shares, while at the same time increasing the proportionate equity ownership of Shareholders who elect not to tender.
9. Holders of Multiple Voting Shares will be entitled to participate in the Offer by depositing their Multiple Voting Shares to the Offer. Multiple Voting Shares deposited under the Offer will be considered as Subordinate Voting Shares (i.e. on an as-converted basis) for purposes of all calculations under the Offer. Only those Multiple Voting Shares proposed to be taken up by the Filer will be converted into Subordinate Voting Shares immediately prior to take up.
10. The purchase price per Subordinate Voting Share will be determined by the Filer through a modified "Dutch auction" procedure in the manner described below, but will not be less than C\$7.00 and not more than C\$8.50 per Subordinate Voting Share (the **Price Range**).
11. The Offer is made only for Subordinate Voting Shares and is not made for any convertible securities. Pursuant to Section 2.8(b) of Regulation 62-104, the Filer also made the Offer to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into or exchangeable for Subordinate Voting Shares. Such convertible securities may, at the option of the holder, be converted for Subordinate Voting Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Subordinate Voting Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.
12. Both the Specified Maximum Dollar Amount and the Price Range are specified in the issuer bid circular dated May 30, 2023 (the **Circular**).
13. The Filer will fund the purchase of Subordinate Voting Shares pursuant to the Offer, together with the fees and expenses of the Offer, using available cash on hand. The Offer will not be conditional upon the receipt of financing.
14. A holder of Subordinate Voting Shares or Multiple Voting Shares (each, a **Shareholder**, and collectively, the **Shareholders**) wishing to tender to the Offer will be able to do so in one of two ways:
  - (a) by making an auction tender pursuant to which it agrees to tender a specified number of Subordinate Voting Shares to the Filer at a specified price per Subordinate Voting Share (an **Auction Price**) within the Price Range in increments of C\$0.10 per Subordinate Voting Share (an **Auction Tender**); or
  - (b) by making a Purchase Price Tender pursuant to which it agrees to sell a number of Subordinate Voting Shares to the Filer at the Purchase Price.
15. Shareholders may deposit some of their Subordinate Voting Shares and Multiple Voting Shares pursuant to an Auction Tender and deposit different Subordinate Voting Shares or Multiple Voting Shares pursuant to a Purchase Price Tender. Shareholders may not deposit the same Subordinate Voting Shares or Multiple Voting Shares pursuant to more than one method of tender or pursuant to an Auction Tender at more than one price.

16. Any Shareholder who owns fewer than 100 Subordinate Voting Shares or Multiple Voting Shares and tenders all of such Shareholder's Subordinate Voting Shares or Multiple Voting Shares pursuant to an Auction Tender at or below the Purchase Price or pursuant to a Purchase Price Tender will be considered to have made an **Odd Lot Tender**.
17. The Filer will determine the purchase price payable per Subordinate Voting Share (the **Purchase Price**) promptly after the expiry of the Offer based on the Auction Prices and the number of Subordinate Voting Shares and Multiple Voting Shares specified in valid Auction Tenders and Purchase Price Tenders (considered for purposes of determining the Purchase Price to have been tendered at the minimum price per Subordinate Voting Share offered). The Purchase Price will be the lowest price that enables the Filer to purchase that number of Subordinate Voting Shares tendered pursuant to valid Auction Tenders and Purchase Price Tenders having an aggregate purchase price not to exceed the Specified Maximum Dollar Amount.
18. If the aggregate purchase price for Subordinate Voting Shares and Multiple Voting Shares validly tendered and not properly withdrawn pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is less than or equal to the Specified Maximum Dollar Amount, the Filer will purchase, at the Purchase Price, all Subordinate Voting Shares (including Subordinate Voting Shares underlying Multiple Voting Shares) so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.
19. If the aggregate purchase price for Subordinate Voting Shares and Multiple Voting Shares validly tendered and not properly withdrawn pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is greater than the Specified Maximum Dollar Amount, the Filer will purchase a portion of the Subordinate Voting Shares (including Subordinate Voting Shares underlying Multiple Voting Shares) so deposited pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders, determined as follows: (i) the Filer will purchase all such Subordinate Voting Shares tendered by Shareholders pursuant to Odd Lot Tenders; and (ii) the Filer will purchase on a *pro rata* basis that portion of such Subordinate Voting Shares having an aggregate purchase price, based on the Purchase Price, equal to (A) the Specified Maximum Dollar Amount, less (B) the aggregate amount paid by the Filer for Subordinate Voting Shares tendered pursuant to Odd Lot Tenders, in each of the cases set forth in clauses (i) and (ii) of this paragraph, at the Purchase Price.
20. The number of Subordinate Voting Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the aggregate purchase price payable in respect of Subordinate Voting Shares required to be purchased pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders (the **Aggregate Tender Purchase Amount**) is equal to or less than the Specified Maximum Dollar Amount. If the Aggregate Tender Purchase Amount is equal to the Specified Maximum Dollar Amount, the Filer will purchase Subordinate Voting Shares pursuant to the Offer for an aggregate purchase price equal to the Specified Maximum Dollar Amount; if the Aggregate Tender Purchase Amount is less than the Specified Maximum Dollar Amount, the Filer will purchase proportionately fewer Subordinate Voting Shares in the aggregate, with a proportionately lower aggregate purchase price.
21. All Subordinate Voting Shares purchased by the Filer pursuant to the Offer (including Subordinate Voting Shares and Multiple Voting Shares tendered at Auction Prices at or below the Purchase Price) will be purchased at the Purchase Price. Shareholders will receive the Purchase Price in cash. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Subordinate Voting Shares (rounding down to the nearest whole number of Subordinate Voting Shares). All payments to Shareholders will be subject to deduction of applicable withholding taxes.
22. Subordinate Voting Shares validly deposited by a Shareholder pursuant to an Auction Tender will not be purchased by the Filer pursuant to the Offer if the Auction Price per Subordinate Voting Share or Multiple Voting Shares specified by the Shareholder is greater than the Purchase Price. After the expiry of the deposit period of the Offer, the Filer will not extend the Offer if all terms and conditions of the Offer have been complied with or waived by the Filer and the aggregate Purchase Price is equal to or greater than the Specified Maximum Dollar Amount.
23. All Subordinate Voting Shares and Multiple Voting Shares tendered to the Offer and not taken up will be returned to the appropriate Shareholders.
24. All deposited Subordinate Voting Shares and Multiple Voting Shares not purchased under the Offer (including shares deposited pursuant to Auction Tenders at prices in excess of the Purchase Price, shares not purchased because of proration and shares not accepted for purchase), or properly withdrawn before the Expiration Date (as defined below), will be returned or replaced (in the case of tenders where only a partial number of the tendered Subordinate Voting Shares or Multiple Voting Shares are purchased) promptly after the Expiration Date or termination of the Offer or the date of proper withdrawal of the shares, without expense to the Shareholder. In the case of Subordinate Voting Shares or Multiple Voting Shares tendered through book-entry transfer, such shares will be credited to the appropriate account, without expense to the Shareholder.

25. Until expiry of the Offer, all information about the number of Subordinate Voting Shares and Multiple Voting Shares tendered and the prices at which the Subordinate Voting Shares and Multiple Voting Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.
26. Shareholders who do not accept the Offer will continue to hold the number of Subordinate Voting Shares or Multiple Voting Shares owned before the Offer and their proportionate Subordinate Voting Share and Subordinate Share and Multiple Voting Share ownership will increase following completion of the Offer.
27. Fonds de solidarité des travailleurs du Québec (F.T.Q.) (**FSTQ**) beneficially owns, controls or exercises control or direction over 903,333 Subordinate Voting Shares and 13,646,624 Multiple Voting Shares (representing approximately 24.13% of the total voting power with respect to all Subordinate Voting Shares and Multiple Voting Shares, as a single class, as of May 29, 2023). If the Purchase Price is determined to be C\$7.00 (being the minimum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, FSTQ will exercise control or direction over 903,333 Subordinate Voting Shares and 13,646,624 Multiple Voting Shares, representing approximately 24.37% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer. If the Purchase Price is determined to be C\$8.50 (being the maximum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, FSTQ will exercise control or direction over 903,333 Subordinate Voting Shares and 13,646,624 Multiple Voting Shares, representing approximately 24.33% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer.
28. Investissement Québec (**IQ**) beneficially owns, controls or exercises control or direction over 1,280,000 Subordinate Voting Shares and 10,944,254 Multiple Voting Shares (representing approximately 19.45% of the total voting power with respect to all Subordinate Voting Shares and Multiple Voting Shares, as a single class, as of May 29, 2023). If the Purchase Price is determined to be C\$7.00 (being the minimum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, IQ will exercise control or direction over 1,280,000 Subordinate Voting Shares and 10,944,254 Multiple Voting Shares, representing approximately 19.64% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer. If the Purchase Price is determined to be C\$8.50 (being the maximum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, IQ will exercise control or direction over 1,280,000 Subordinate Voting Shares and 10,944,254 Multiple Voting Shares, representing approximately 19.61% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer.
29. Al-Rayyan Holding LLC (**Al-Rayyan**) beneficially owns, controls or exercises control or direction over nil Subordinate Voting Shares and 7,415,859 Multiple Voting Shares (representing approximately 13.02% of the total voting power with respect to all Subordinate Voting Shares and Multiple Voting Shares, as a single class, as of May 29, 2023). If the Purchase Price is determined to be C\$7.00 (being the minimum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, Al-Rayyan will exercise control or direction over nil Subordinate Voting Shares and 7,415,859 Multiple Voting Shares, representing approximately 13.16% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer. If the Purchase Price is determined to be C\$8.50 (being the maximum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, Al-Rayyan will exercise control or direction over nil Subordinate Voting Shares and 7,415,859 Multiple Voting Shares, representing approximately 13.13% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer.
30. OGE Holdings Inc. (**OGE**) beneficially owns, controls or exercises control or direction over nil Subordinate Voting Shares and 7,203,916 Multiple Voting Shares (representing approximately 12.65% of the total voting power with respect to all Subordinate Voting Shares and Multiple Voting Shares, as a single class, as of May 29, 2023). If the Purchase Price is determined to be C\$7.00 (being the minimum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, OGE will exercise control or direction over nil Subordinate Voting Shares and 7,203,916 Multiple Voting Shares, representing approximately 12.78% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer. If the Purchase Price is determined to be C\$8.50 (being the maximum Purchase Price under the Offer) and the maximum number of Subordinate Voting Shares are repurchased, OGE will exercise control or direction over nil Subordinate Voting Shares and 7,203,916 Multiple Voting Shares, representing approximately 12.76% of the total voting power with respect to the then outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, immediately following the Offer.
31. To the knowledge of the Filer, after reasonable inquiry, no person or company other than FSTQ, IQ, Al-Rayyan and OGE beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class.

32. As of May 29, 2023, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, no person or company that beneficially owns, controls or exercises control or direction over more than 10% of the voting rights attached to all of the issuer's outstanding Subordinate Voting Shares and Multiple Voting Shares, as a single class, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Subordinate Voting Shares or Multiple Voting Shares pursuant to the Offer, with the exception of FSTQ, which has informed Coveo that it intends to tender Subordinate Voting Shares (but no Multiple Voting Shares) owned by it at a price and for a number of Subordinate Voting Shares to be determined prior to the Expiration Date.
33. The Offer is scheduled to expire at 5:00 p.m. (Montreal time) on July 10, 2023 (the Expiration Date).
34. The Filer may elect to extend the bid without first taking up all the Subordinate Voting Shares (including Subordinate Voting Shares underlying the Multiple Voting Shares) deposited and not withdrawn under the Offer if the aggregate purchase price for Subordinate Voting Shares and Multiple Voting Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than the Specified Maximum Dollar Amount. Under the Extension Take Up Requirement, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid.
35. As the determination of the Purchase Price requires that all Auction Prices and the number of Subordinate Voting Shares and Multiple Voting Shares deposited pursuant to both Auction Tenders and Purchase Price Tenders be known and taken into account, the Filer will be unable to take up the Subordinate Voting Shares (including Subordinate Voting Shares underlying Multiple Voting Shares) deposited and not withdrawn under the Offer as of the Expiration Date prior to extending the Offer because the Purchase Price will not and cannot be known as additional Auction Tenders and Purchase Price Tenders may be made during the extension period that will impact the calculation of the Purchase Price. Accordingly, the Exemption Sought is required in connection with an extension of the Offer to enable the Filer to make a final determination regarding the Purchase Price, taking into account all Subordinate Voting Shares and Multiple Voting Shares tendered prior to the Expiration Date and those tendered during any extension period.
36. Subordinate Voting Shares and Multiple Voting Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Date, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.
37. The Filer intends to rely on the exemption from the formal valuation requirements applicable to issuer bids under Regulation 61-101 *respecting Protection of Minority Security Holders in Special Transactions* CQLR c V-1.1, r 33 (**Regulation 61-101**) set out in subsection 3.4(b) of Regulation 61-101 (the **Liquid Market Exemption**).
38. There was a "liquid market" for the Subordinate Voting Shares, as such term is defined in Regulation 61-101, as of the date of the Circular because the test in paragraph 1.2(1)(a) of Regulation 61-101 was satisfied. In addition, an opinion was voluntarily sought by the Filer and obtained from BMO Nesbitt Burns Inc. confirming that a liquid market exists for the Subordinate Voting Shares as of the date of the Circular and such opinion is included in the Circular (the **Liquidity Opinion**).
39. Based on the maximum number of Subordinate Voting Shares that may be purchased under the Offer, as of the date of the Circular, it is reasonable to conclude (and the Liquidity Opinion provides that it is reasonable to conclude) that, following the completion of the Offer in accordance with its terms, there will be a market for holders of the Subordinate Voting Shares who do not tender to the Offer that is not materially less "liquid", as such term is defined in Regulation 61-101, than the market that existed on the date of the Circular.
40. The Circular:
- (a) discloses the mechanics for the take up of and payment for Subordinate Voting Shares;
  - (b) explains that, by tendering Subordinate Voting Shares at the lowest price in the Price Range under an Auction Tender or by tendering Subordinate Voting Shares under a Purchase Price Tender, a Shareholder can reasonably expect that the Subordinate Voting Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified herein;
  - (c) discloses that the Filer has applied for the Exemption Sought;
  - (d) sets out the manner in which an extension of the Offer will be communicated to Shareholders;
  - (e) discloses that Subordinate Voting Shares or Multiple Voting Shares deposited pursuant to the Offer may be withdrawn at any time prior to the expiry of the Offer;

### B.3: Reasons and Decisions

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- (f) discloses, if known after reasonable inquiry, the name of every person named in Item 11 of Form 62-104F2 to Regulation 62-104 who has accepted or intends to accept the Offer and the number of Subordinate Voting Shares or Multiple Voting Shares in respect of which the person has accepted or intends to accept the Offer;
- (g) discloses the facts supporting the Filer's reliance on the Liquid Market Exemption, including the Liquidity Opinion; and
- (h) contains the disclosure prescribed by applicable securities laws for issuer bids.

#### 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 relief from the Exemption Sought is granted, provided that:

- (a) the Filer takes up Subordinate Voting Shares (including Subordinate Voting Shares underlying Multiple Voting Shares) deposited pursuant to the Offer and not withdrawn and pays for such Subordinate Voting Shares, in each case, in the manner described herein; and
- (b) the Filer is eligible to rely on the Liquid Market Exemption.

“Benoît Gascon”

Directeur principal du financement des sociétés  
Autorité des marchés financiers

### B.3.8 Forstrong Global Asset Management Inc.

#### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-101 Mutual Fund Prospectus Disclosure.

National Instrument 41-101 General Prospectus Requirements, Part 19 – An investment fund wants relief from the requirement in s. 3.1(2) to use the prescribed form of prospectus – A fund structure is offering both ETF and non-ETF mutual fund securities, any disclosure required in a standard ETF prospectus form that is not contemplated by a mutual fund's simplified prospectus will be included, an ETF facts document will be filed for the ETF securities, ETF securities investors will receive an ETF Facts document.

National Instrument 41-101 General Prospectus Requirements, Part 19 – Underwriter's Certificate Relief – Requirement under section 5.9 of NI 41-101 to include an underwriter's certificate in the ETF's prospectus – The designated brokers and authorized dealers do not provide the same services in connection with a distribution of the ETF's securities as would typically be provided by an underwriter in a conventional underwriting, will not be involved in the preparation of the fund prospectus, will not perform any review or independent due diligence as to the content of the fund 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.

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 6 Take-Over Bids – Exemption from the formal take-over bid requirements – Take-over bid relief – NI 62-104 for the purchases of listed securities of the ETFs in the normal course through the facilities of the NEO Exchange or another marketplace in Canada – It is not possible for one of more securityholders to exercise control or direction over the ETF, the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of listed securities by each ETF, and there is no incentive to acquire control or offer to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect its net asset value.

National Instrument 81-102 Investment Funds, s. 19.1 – An investment fund wants relief from the borrowing requirement in s. 2.6(1)(a)(i) – The fund may only borrow from its custodian, the borrowing in respect of a distribution cannot exceed the portion of the distribution that represents amounts that are payable to the fund but have not been received by the fund from issuers of securities in the fund's portfolio and also cannot exceed five percent of the net assets of the fund, the borrowing is limited to a 45-day period, security interests granted in respect of the borrowing are consistent with industry practices and is only in respect of amounts owed as a result of the borrowing, the fund's final prospectus will disclose potential borrowing by the fund as well its purpose and risks.

National Instrument 81-102 Investment Funds, s. 19.1 – A fund structure that offers series of both ETF securities and non-ETF mutual fund securities wants technical relief from the requirements in Parts 9, 10 and 14 – The fund will comply with Parts 9, 10 and 14 of NI 81-102 with regards to both its ETF securities and non-ETF mutual fund securities.

#### Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 3.1(2), 5.9 and 19.1.

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

National Instrument 81-102 Investment Funds, s. 2.6(1)(a), Parts 9, 10 and 14, and s. 19.1.

July 6, 2023

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

AND

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

AND

IN THE MATTER OF  
FORSTRONG GLOBAL ASSET MANAGEMENT INC.  
(the Filer)

DECISION

## Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each, a Decision Maker) has received an application from the Filer on behalf of each proposed mutual fund (the Proposed Funds) and such other mutual funds (Mutual Funds) or alternative mutual funds (Alternative Mutual Funds) as are managed or may be managed by the Filer now or in the future that offer ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (where the Mutual Funds and Alternative Mutual Funds are collectively referred to as the Future Funds, and, together with the Proposed Funds, the Funds, and, each, a Fund), for a decision under the securities legislation of the Jurisdictions (the Legislation) that exempts:
- (a) the Filer and each Fund from the requirement to prepare and file a long form prospectus for the ETF Securities in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2) provided that the Filer files: (i) a prospectus for the ETF Securities in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and Form 81-101F1 (as defined below), other than the requirements pertaining to the filing of a fund facts document; and (ii) an ETF facts document in accordance with Part 3B of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) (the ETF Prospectus Form Requirement);
  - (b) the Filer and each Fund from the requirement to include a certificate of the underwriter(s) in a Fund's prospectus in respect of each class or series of ETF Securities (the Underwriter's Certificate Relief);
  - (c) a person or company purchasing ETF Securities in the normal course through the facilities of the Exchange (as defined below) or another Marketplace (as defined below) from the Take-over Bid Requirements (as defined below) (the Take-over Bid Relief);
  - (d) each Fund that is not an alternative mutual fund from section 2.6(1)(a)(i) of National Instrument 81-102 *Investment Funds* (NI 81-102) to permit the Fund to borrow cash from the custodian of the Fund (the Custodian) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund (the Borrowing Relief); and
  - (e) the Filer and each Fund from the provisions of Parts 9, 10, and 14 of NI 81-102 to permit the Fund to treat its ETF Securities and its Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10, and 14 of NI 81-102 (the Sales and Redemptions Relief)
- (collectively, the Exemption Sought).

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

- (a) the British Columbia Securities Commission (BCSC) is the principal regulator for the application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the other provinces and territories of Canada other than the Jurisdictions; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory or regulator in Ontario.

## Interpretation

- ¶ 2 Terms defined in MI 11-102, National Instrument 14-101 *Definitions* (NI 14-101), NI 41-101, and 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 a Fund authorizing the dealer to subscribe for, purchase, and redeem Creation Units from one or more Funds on a continuous basis from time to time.

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

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

ETF Facts means an ETF facts document prepared, filed, and delivered in accordance with Part 3B of NI 41-101.

ETF Securities means securities of an exchange-traded class or series of a Fund that are listed or will be listed on the Exchange or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Exchange means the Toronto Stock Exchange.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

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

Mutual Fund Securities means securities of a non-exchange-traded class or series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

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

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund 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 or Mutual Fund Securities of a Fund, as applicable.

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 in each Jurisdiction.

### **Representations**

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

#### *The Filer*

1. the Filer is a corporation formed under the laws of Canada with its head office located in Kelowna, British Columbia;
2. the Filer is registered as: (i) a portfolio manager under the laws of Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Ontario, Québec, Saskatchewan, and Yukon; (ii) an investment fund manager under the laws of British Columbia, Newfoundland and Labrador, Ontario, and Québec; and (iii) an exempt market dealer under the laws of Alberta, British Columbia, Ontario, and Québec;
3. the Filer is, or will be, the investment fund manager of each of the Funds;
4. the Filer is not in default of securities legislation in any jurisdiction of Canada;

#### *The Funds*

5. each Fund is, or will be, an open-ended mutual fund established as either a trust or a class of shares of a mutual fund corporation that is governed by the laws of a jurisdiction of Canada or the laws of Canada. Each Fund is, or will be, a reporting issuer in the jurisdictions of Canada in which its securities are distributed. Each Proposed Fund will offer Mutual Fund Securities and ETF Securities. Each Future Fund that relies on the Exemption Sought may offer Mutual Fund Securities and ETF Securities;

6. subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102;
7. the Filer has or will file a preliminary simplified prospectus in respect of Mutual Fund Securities and ETF Securities of the Proposed Funds, as well as fund facts documents in the form prescribed by Form 81-101F3 *Contents of Fund Facts Document* for each series of Mutual Fund Securities and ETF facts documents in the form prescribed by NI 41-101F4 *Information Required in an ETF Facts Document* for each series of ETF Securities of the Proposed Funds, with the securities regulatory authorities in each of the jurisdictions of Canada;
8. the Filer has or will apply to list any ETF Securities of the Funds on the Exchange or another Marketplace. The Filer will not file a final simplified prospectus for any of the Funds in respect of the ETF Securities until the Exchange or other applicable Marketplace has conditionally approved the listing of the ETF Securities;
9. each Fund will be a reporting issuer in the jurisdictions of Canada in which its securities are distributed;
10. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through appropriately registered dealers;
11. ETF Securities will be distributed on a continuous basis in one or more of the jurisdictions of Canada under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**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 Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the Exchange or another Marketplace;
12. in addition to subscribing for and re-selling their 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;
13. 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, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities, and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order;
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 a Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer;
15. 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 a Fund 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;
16. each Fund 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;
17. 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 a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains;
18. 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 Exchange 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 Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the Exchange or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security;

*ETF Prospectus Form Requirement*

19. the Filer believes it is more efficient and expedient to include all classes and series of Mutual Fund Securities and ETF Securities of each Fund in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true, and plain disclosure of all material facts relating to the securities of the Funds by permitting disclosure relating to all classes and series of securities to be included in one prospectus;
20. the Filer will ensure that any additional disclosure included in the simplified prospectus relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes;
21. the Funds will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto;
22. the Funds will comply with Part 3B of NI 41-101 when preparing, filing, and delivering ETF Facts for the ETF Securities of the Funds;

*Underwriter's Certificate Requirement*

23. 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;
24. the Filer will generally conduct its own marketing, advertising, and promotion of the Funds to the extent permitted by its registrations;
25. authorized Dealers and Designated Brokers will not be involved in the preparation of a Fund's prospectus, will not perform any review or any independent due diligence as to the content of a Fund's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the Funds 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;
26. in addition, neither the Filer nor the Funds 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 underwriter's certificate in the prospectus(es) of the Funds;

*Take-over Bid Requirements*

27. as equity securities that will trade on the Exchange 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 a Fund, as the constating documents of each Fund will provide that there can be no changes made to such Fund that do not have the support of the Filer;
  - (b) in respect of a Fund structured as a corporation or class thereof, it will not be possible for one or more Securityholders to exercise control or direction over the Fund as the Fund will be a class of non-voting shares of a mutual fund corporation (which only has those voting rights available under corporate law and those prescribed by NI 81-102, which, for greater certainty, will not include the right to vote in connection with the election of directors of such mutual fund corporation);
  - (c) it will be difficult for purchasers of ETF Securities of a Fund to monitor compliance with the Take-over Bid Requirements because the number of outstanding ETF Securities of the Fund will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by such Fund;

- (d) the way in which 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 net asset value of the ETF Securities;
- 28. the application of the Take-over Bid Requirements to a Fund would have an adverse impact on the liquidity of the ETF Securities of the Fund because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Designated Brokers or other large Securityholders reach the prescribed threshold at which the Take-over Bid Requirements apply. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over a Fund.

#### *Borrowing Requirement*

- 29. section 2.6(1)(a)(i) of NI 81-102 prevents a mutual fund from borrowing cash or providing a security interest over its portfolio assets unless the transaction is a temporary measure to accommodate redemption requests or to settle portfolio transactions and does not exceed five percent of the net assets of the mutual fund. As a result, a Fund that is not an alternative mutual fund is not permitted under section 2.6(1)(a)(i) to borrow from the Custodian to fund distributions under its Distribution Policy (as defined below);
- 30. each Fund that is not an alternative mutual fund will make distributions on a monthly or annual basis or at such frequency as the Filer may, in its discretion, determine appropriate, may make additional distributions, and, in each taxation year, will distribute sufficient net income and net realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada) (the Tax Act), and for each Fund structured as a corporation or a class thereof, under Part IV of the Tax Act on taxable dividends from taxable Canadian corporations (collectively, the Distribution Policy);
- 31. amounts included in the calculation of net income and net realized capital gains of a Fund for a taxation year that must be distributed in accordance with its Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Fund from the issuers of securities held in the Fund's portfolio (Issuers);
- 32. while it is possible for a Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with its Distribution Policy, maintaining such a cash position or making such a disposition (which would generally be followed, when the cash is actually received from the Issuers, by an acquisition of the same securities) will impact the Fund's performance. Maintaining assets in cash or disposing of and reacquiring the same securities would preclude a portion of the net asset value of the Fund from being invested in accordance with its investment objective;
- 33. the Filer is of the view that it is in the interests of a Fund that is not an alternative mutual fund to have the ability to borrow cash from its Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund from the Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction to the Fund's performance if the Fund had to hold cash instead of securities in order to fund the distribution;

#### *Sales and Redemptions Requirements*

- 34. parts 9, 10, and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Sales and Redemptions Relief, the Filer and the Funds would not be able to technically comply with those parts of NI 81-102; and
- 35. the Exemption Sought will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10, and 14 of NI 81-102. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10, and 14 of NI 81-102, as appropriate, for the type of security being offered.

#### **Decision**

- ¶ 4 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.
  - 1. The decision of the Decision Makers under the Legislation is that the Exemption Sought from the ETF Prospectus Form Requirement is granted, provided that the Filer will be in compliance with the following conditions:

- a. the Filer files a simplified prospectus in respect of the ETF Securities in accordance with the requirements of NI 81-101 and Form 81-101F1, other than the requirements pertaining to the filing of a fund facts document;
  - b. the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1) in respect of the ETF Securities in each Fund's simplified prospectus; and
  - c. the Filer includes disclosure regarding this decision under the heading Additional Information in each Fund's simplified prospectus.
2. The decision of the Decision Makers under the Legislation is that each of the Underwriter's Certificate Relief and the Take-over Bid Relief is granted.
3. The decision of the Decision Makers under the Legislation is that the Borrowing Relief is granted, provided that each Fund that is not an alternative mutual fund will be in compliance with the following conditions:
  - a. the borrowing by the Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the Fund but have not been received by the Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the Fund;
  - b. the borrowing is not for a period longer than 45 days;
  - c. any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;
  - d. the Fund does not make any distribution to Securityholders where the distribution would impair the Fund's ability to repay any borrowing to fund distributions; and
  - e. the final prospectus or amendment thereto of the Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.
4. The decision of the Decision Makers under the Legislation is that the Sales and Redemptions Relief is granted, provided that the Filer and each Fund will be in compliance with the following conditions:
  - a. with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and
  - b. with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"John Hinze"  
Director, Corporate Finance  
British Columbia Securities Commission

**B.3.9 BMO Investments Inc. et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from certain provisions of NI 81-101, NI 81-102 and NI 81-106 to permit new continuing funds to use the past performance, financial data, start date and fund expenses of corresponding terminating funds in their sales communications, simplified prospectus, fund facts documents, management reports of fund performance and financial statements – subject to conditions.

**Applicable Legislative Provisions**

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1(1).

Form 81-101F1 Contents of Simplified Prospectus, Item 8 of Part B.

Form 81-101F3 Contents of Fund Facts Document, Items 2, 3, 4, 5 of Part I, Item 1.3 of Part II.

National Instrument 81-102 Investment Funds, ss. 2.3(1)(f), 3.1, 15.1.1, 15.3(2), 15.6(1)(a)(i)(A), 15.6(1)(b), 15.6(1)(d)(i), 15.8(2)(a), 15.8(2)(a.1), 15.8(3)(a), 15.8(3)(a.1), 15.9(2) and 19.1(1).

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 2.1, 2.3, 4.4 and 17.1(1).

Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(1), 3.1(7), 3.1(7.1), 3.1(8), 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(1)(b) of Part B, and Items 3(1) and 4 of Part C.

June 29, 2023

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

**AND**

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

**AND**

**IN THE MATTER OF  
BMO INVESTMENTS INC.  
(the Filer)**

**AND**

**BMO GLOBAL DIVIDEND OPPORTUNITIES FUND,  
BMO GLOBAL ENERGY FUND,  
BMO GLOBAL LOW VOLATILITY ETF FUND, AND  
BMO GREATER CHINA FUND  
(collectively, the Continuing Funds)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Continuing Funds, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption from:

- (a) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the following exemptions sought from Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**):
  - (i) item 8 of Part B of Form 81-101F1 to permit each Continuing Fund to use the date of formation of each series of the respective Terminating Fund in the disclosure required under “Name, Formation and History of the Mutual Fund” in the simplified prospectus for each Continuing Fund (the **Simplified Prospectus**)
  - (ii) item 2 of Part I of Form 81-101F3 to permit each Continuing Fund to use the management expense ratio (the **MER**) and the start date of each series of the respective Terminating Fund in the

- “Management expense ratio (MER)” and “Date series started” boxes, respectively, of the Quick Facts table in the fund facts documents of each series of the Continuing Funds (the **Fund Facts**);
- (iii) item 3 of Part I of Form 81-101F3 to permit each Continuing Fund to show the investments of the respective Terminating Fund in the “Top 10 investments” and “Investment mix” tables in the Continuing Fund’s initial Fund Facts;
  - (iv) item 4 of Part I of Form 81-101F3 to permit each Continuing Fund to use the performance history of the respective Terminating Fund to calculate its investment risk rating in the Fund Facts;
  - (v) item 5 of Part I of Form 81-101F3 to permit each Continuing Fund to use the performance data of the respective Terminating Fund in the “Average return”, “Year-by-year returns” and “Best and worst 3-month returns” sections in the Fund Facts; and
  - (vi) item 1.3 of Part II of Form 81-101F3 to permit each Continuing Funds to use the MER, trading expense ratio (the **TER**) and fund expenses of the respective Terminating Fund in the “Fund expenses” section of the Fund Facts;
- (b) sections 15.3(2), 15.6(1)(a)(i)(A), 15.6(1)(b), 15.6(1)(d)(i), 15.8(2)(a), 15.8(2)(a.1), 15.8(3)(a), 15.8(3)(a.1) and 15.9(2) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Continuing Fund to use the performance data of the respective Terminating Fund in sales communications and reports to securityholders of the Continuing Fund (the **Fund Communications**);
  - (c) section 15.1.1 of NI 81-102 and Items 2 and 4 of Appendix F *Investment Risk Classification Methodology* to NI 81-102 to permit each Continuing Fund to calculate its investment risk level using the performance history of the respective Terminating Fund (together with paragraphs (a) and (b) above, the **Past Performance Relief**);
  - (d) sections 2.1 and 2.3 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) to permit each Continuing Fund to file comparative annual and interim financial statements that include information that is derived from the financial statements of the respective Terminating Fund; and
  - (e) section 4.4 of NI 81-106 for relief from the requirements of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**) set out below, to permit each Continuing Fund to include in its annual and interim management reports of fund performance (**MRFPs**) the performance data and information derived from the financial statements and other financial information (collectively, the **Financial Data**) of the respective Terminating Fund as follows:
    - (i) items 3.1(1), 3.1(7), 3.1(7.1), and 3.1(8) of Part B of Form 81-106F1 to permit each Continuing Fund to use the financial highlights of the respective Terminating Fund in its Form 81-106F1;
    - (ii) items 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(1)(b) of Part B of Form 81-106F1 to permit each Continuing Fund to use the past performance data of the respective Terminating Fund in its Form 81-106F1; and
    - (iii) items 3(1) and 4 of Part C of Form 81-106F1 to permit each Continuing Fund to use the financial highlights and past performance data of the respective Terminating Fund in its Form 81-106F1(together with paragraph (d) above, the **Continuous Disclosure Relief**, and collectively with the **Past Performance Relief**, the **Exemption Sought**).

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

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

In addition, the following terms have the meanings set out below:

**“Continuing Funds”** means BMO Global Dividend Opportunities Fund, BMO Global Energy Fund, BMO Global Low Volatility ETF Fund, and BMO Greater China Fund.

**“Terminating Funds”** means BMO Global Dividend Class, BMO Global Energy Class, BMO Global Low Volatility ETF Class, and BMO Greater China Class.

**“Funds”** means the Continuing Funds and the Terminating Funds.

### **Representations**

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

#### *The Filer*

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The Filer’s head office is located in Toronto, Ontario.
2. The Filer is the investment fund manager (**IFM**) of each Terminating Fund and is the investment fund manager and trustee of each Continuing Fund.
3. The Filer is registered as an IFM in each of Ontario, Québec and Newfoundland and Labrador, and as a mutual fund dealer in each of the Canadian Jurisdictions.

#### *The Funds*

4. Each of the Terminating Funds is a class of shares of BMO Corporate Class Inc., a mutual fund corporation continued under the laws of Ontario.
5. Each of the Terminating Funds is a reporting issuer under the applicable securities legislation of each of the Canadian Jurisdictions, is subject to NI 81-102 and has been a reporting issuer for more than 12 months.
6. Securities of the Terminating Funds are currently qualified for distribution in each of the Canadian Jurisdictions under a simplified prospectus and Fund Facts dated May 30, 2023, each of which has been prepared in accordance with NI 81-101.
7. Each of the Continuing Funds is an open-ended trust established under the laws of Ontario.
8. Each of the Continuing Funds is a “mutual fund” for purposes of the securities legislation of Ontario.
9. Securities of each of the Continuing Funds are currently qualified for distribution in each of the Canadian Jurisdictions under a simplified prospectus and Fund Facts dated May 30, 2023, each of which has been prepared in accordance with NI 81-101.
10. The Filer will not begin distributing securities of any Continuing Fund prior to the applicable Merger (as defined below).
11. Each Continuing Fund is a reporting issuer under the applicable securities legislation in each of the Canadian Jurisdictions and is expected to be subject to NI 81-102.
12. The Filer, the Terminating Funds and the Continuing Funds are not in default of securities legislation in any of the Canadian Jurisdictions.
13. Each Terminating Fund follows, and each Continuing Fund follows the standard investment restrictions and practices established under NI 81-102, except pursuant to the terms of any exemption that has been previously obtained.

#### *The Mergers*

14. The Filer proposes to merge each Terminating Fund into the corresponding Continuing Fund (the **Mergers**) on a tax-deferred basis after the close of business on or about August 25, 2023 (the **Merger Date**) as follows:

| <b>Terminating Fund</b>   | <b>Continuing Fund</b>                 |
|---------------------------|----------------------------------------|
| BMO Global Dividend Class | BMO Global Dividend Opportunities Fund |
| BMO Global Energy Class   | BMO Global Energy Fund                 |

| Terminating Fund                    | Continuing Fund                    |
|-------------------------------------|------------------------------------|
| BMO Global Low Volatility ETF Class | BMO Global Low Volatility ETF Fund |
| BMO Greater China Class             | BMO Greater China Fund             |

15. The Mergers satisfy the pre-approval criteria set out in s. 5.6 of NI 81-102, and the Independent Review Committee (the **IRC**) of the Terminating Funds approved the Mergers. The IRC approved the Mergers at a meeting held on May 23, 2023.
16. As the Continuing Funds are new, the Continuing Funds will not have their own past performance data on the date each Merger is implemented.
17. The net assets (as at December 31, 2022) of the assets of each Terminating Fund are as follows:

| Terminating Fund                    | Net Assets    |
|-------------------------------------|---------------|
| BMO Global Dividend Class           | \$111,043,108 |
| BMO Global Energy Class             | \$49,752,633  |
| BMO Global Low Volatility ETF Class | \$87,021,216  |
| BMO Greater China Class             | \$84,478,345  |

18. Following its Merger, each Terminating Fund will be terminated on its Merger Date and will be dissolved as soon as reasonably possible thereafter.
19. Each Continuing Fund was created for the purpose of implementing the applicable Merger, and therefore:
  - (a) the securityholders of the Terminating Funds will have rights under securities legislation as securityholders of the Continuing Funds that are substantially similar in all material respects to the rights under securities legislation they had as securityholders of the Terminating Funds;
  - (b) the securityholders of the Terminating Funds will hold securities of the equivalent series of the corresponding Continuing Fund with the same aggregate net asset value that they held before as securityholders of the Terminating Funds;
  - (c) each Continuing Fund has an investment objective and investment strategies that are substantially similar to the investment objective and investment strategies of the corresponding Terminating Fund;
  - (d) with the exception of BMO Global Dividend Class and BMO Global Dividend Opportunities Fund, the portfolio manager and sub-adviser (if applicable) of each Terminating Fund is the same as the portfolio manager and sub-adviser (if applicable) of the corresponding Continuing Fund;
  - (e) each Continuing Fund has a valuation procedure that is identical to the valuation procedure of the corresponding Terminating Fund; and
  - (f) the total fees attached to each series of each Continuing Fund are the same, or lower, as the fees for each corresponding series of the corresponding Terminating Fund, and thus there will be either no change to, or a lowering of, the fee or expense structure as a result of the Merger, in each case neither will have a material impact on securityholders of a Terminating Fund who will become securityholders of the corresponding Continuing Fund.
20. As a result, notwithstanding the Mergers, the Continuing Funds will be managed in a manner which is substantially similar in all material respects to the manner in which the Terminating Funds have been managed.
21. The assets of the Terminating Funds will be transferred to the equivalent Continuing Funds in connection with the implementation of the Mergers.
22. Each Continuing Fund is a new fund. While it will have the same assets and liabilities as the corresponding Terminating Fund, as a new fund, it will not have its own Financial Data as at the Merger Date.

23. The Financial Data of the Terminating Funds are significant information which can assist investors in determining whether to purchase securities of the Continuing Funds. In the absence of the Exemption Sought, investors will have no historical financial or performance information (such as past performance) on which to base such an investment decision.
24. Without the Exemption Sought, the sales communications pertaining to, and the MRFPs of, the Continuing Funds cannot include Financial Data of the Terminating Funds that relate to a period prior to the applicable Merger and each Continuing Fund cannot provide performance data in their sales communications until it has distributed securities under a simplified prospectus for at least 12 months.
25. The Filer proposes to:
- (a) disclose the series start dates of the Terminating Funds as the series start dates of the Continuing Funds:
    - (i) under the heading “Name, Formation and History of the Fund” in the Simplified Prospectus;
    - (ii) in the “Fund Details” table in the fund-specific disclosure for each Continuing Fund in the Simplified Prospectus; and
    - (iii) under the subheading “Date series started” under the heading “Quick Facts” in the Fund Facts Documents;
  - (b) use the performance data of the Terminating Funds to calculate the risk rating of the Continuing Funds in the Fund Facts Documents;
  - (c) use the performance data of the Terminating Funds in:
    - (i) the Fund Communications of the Continuing Funds; and
    - (ii) the “Average return”, “Year-by-year returns” and “Best and worst 3- month returns” subsections of the Fund Facts Documents for the Continuing Funds;
  - (d) use the MER, TER and fund expenses of the Terminating Funds in the “Fund expenses” section of the Fund Facts Documents for the Continuing Funds;
  - (e) show the investments of the Terminating Funds in the “Top 10 investments” and “Investment mix” tables in the initial Fund Facts Documents for the Continuing Funds;
  - (f) incorporate by reference into the Simplified Prospectus the most recent annual financial statements and MRFPs of the Terminating Funds for the period ended September 30, 2022 and the most recent interim financial statements and MRFP of the Terminating Funds for the period ended March 31, 2023 (collectively, the **Terminating Fund Disclosure**), until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Funds;
  - (g) prepare annual MRFPs for the Continuing Funds commencing with the year ending September 30, 2023 and interim MRFPs for the Continuing Funds commencing with the period ending March 31, 2024 using the Terminating Funds’ financial highlights and past performance; and
  - (h) prepare comparative annual financial statements for the Continuing Funds commencing with the year ending September 30, 2023 and interim financial statements for the Continuing Funds commencing with the period ending March 31, 2024 using the Terminating Funds’ financial highlights and past performance.
26. The Filer is seeking to make the Mergers as seamless as possible for investors of the Terminating Funds. Accordingly, the Filer submits that treating a Continuing Fund as fungible with the corresponding Terminating Fund for purposes of the starting dates, investment holdings and Financial Data would be beneficial to investors and that to do otherwise would cause unnecessary confusion among investors concerning the difference between the Terminating Funds and the Continuing Funds.
27. The Filer submits that investors will not be misled if the starting dates, investment holdings and Financial Data of a Continuing Fund reflects the starting dates, investment holdings and Financial Data of the corresponding Terminating Fund.
28. On the basis of the foregoing, the Filer submits that 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:

1. the Past Performance Relief is granted, provided that:
  - (a) the Fund Communications of each series of each Continuing Fund include the applicable past performance data of the corresponding series of the corresponding Terminating Fund prepared in accordance with Part 15 of NI 81-102;
  - (b) the Simplified Prospectus:
    - (i) incorporates by reference the Terminating Fund Disclosure, until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Fund;
    - (ii) states that the start date for each series of the Continuing Fund is the start date of the corresponding series of the Terminating Fund; and
    - (iii) discloses the Merger where the start date for each series of the Continuing Fund is stated;
  - (c) the Fund Facts of each series of Continuing Fund:
    - (i) states that the "Date series started" date is the "Date series started" date of the corresponding series of the Terminating Fund;
    - (ii) includes the performance data of the corresponding series of the Terminating Fund prepared in accordance with Part 15 of NI 81-102; and
    - (iii) discloses the Merger where the "Date series started" date is stated; and
  - (d) the Continuing Fund prepares its MRFPs in accordance with the Continuous Disclosure Relief; and
2. the Continuous Disclosure Relief is granted, provided that:
  - (a) the MRFPs and financial statements for the Continuing Funds include the Financial Data of the Terminating Funds pertaining to the corresponding series of the Terminating Funds and disclose the Mergers for the relevant time periods; and
  - (b) the Continuing Funds prepare their Simplified Prospectus, Fund Facts, and other Fund Communications in accordance with the Past Performance Relief.

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

Application File #: 2023/0253  
SEDAR File #: 3547273

## B.4 Cease Trading Orders

### B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

### Failure to File Cease Trade Orders

| Company Name                               | Date of Order    | Date of Revocation |
|--------------------------------------------|------------------|--------------------|
| Banxa Holdings Inc.                        | November 3, 2022 | June 30, 2023      |
| GHP Noetic Science-Psychedelic Pharma Inc. | June 5, 2023     | July 4, 2023       |
| Delic Holdings Corp.                       | July 4, 2023     |                    |
| Magnetic North Acquisition Corp.           | July 4, 2023     |                    |
| LexaGene Holdings Inc.                     | July 5, 2023     |                    |
| NG International Energy Corp.              | May 10, 2023     | July 5, 2023       |
| Greenpower Motor Company Inc.              | July 6, 2023     |                    |
| Silver Elephant Mining Corp.               | July 6, 2023     |                    |
| VOLTAGE METALS CORP.                       | July 6, 2023     |                    |
| CRAFT 1861 Global Holdings Inc.            | April 6, 2023    | July 7, 2023       |
| Eddy Smart Home Solutions Ltd.             | July 7, 2023     |                    |
| Eat Well Investment Group Inc.             | July 7, 2023     |                    |
| Neptune Wellness Solutions Inc.            | July 7, 2023     |                    |

### B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

| Company Name                     | Date of Order | Date of Lapse |
|----------------------------------|---------------|---------------|
| Magnetic North Acquisition Corp. | May 8, 2023   | July 5, 2023  |
| Champion Gaming Group Inc.       | May 2, 2023   | July 5, 2023  |
| FenixOro Gold Corp.              | July 5, 2023  |               |
| VOLTAGE METALS CORP.             | May 2, 2023   | July 6, 2023  |
| Eddy Smart Home Solutions Ltd.   | May 2, 2023   | July 7, 2023  |

**B.4: Cease Trading Orders****B.4.3 Outstanding Management & Insider Cease Trading Orders**

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

| <b>Company Name</b>               | <b>Date of Order</b> | <b>Date of Lapse</b> |
|-----------------------------------|----------------------|----------------------|
| Agrios Global Holdings Ltd.       | September 17, 2020   |                      |
| Sproutly Canada, Inc.             | June 30, 2022        |                      |
| iMining Technologies Inc.         | September 30, 2022   |                      |
| Alkaline Fuel Cell Power Corp.    | April 4, 2023        |                      |
| mCloud Technologies Corp.         | April 5, 2023        |                      |
| Champion Gaming Group Inc.        | May 2, 2023          | July 5, 2023         |
| Element Nutritional Sciences Inc. | May 2, 2023          |                      |
| Eddy Smart Home Solutions Ltd.    | May 2, 2023          | July 7, 2023         |
| CareSpan Health, Inc.             | May 5, 2023          |                      |
| Canada Silver Cobalt Works Inc.   | May 5, 2023          |                      |
| XTM Inc.                          | May 2, 2023          |                      |
| VOLTAGE METALS CORP.              | May 2, 2023          | July 6, 2023         |
| Voxtur Analytics Corp.            | May 5, 2023          |                      |
| FRX Innovations Inc.              | May 2, 2023          |                      |
| Magnetic North Acquisition Corp.  | May 8, 2023          | July 5, 2023         |
| FenixOro Gold Corp.               | July 5, 2023         |                      |

## **B.7**

# **Insider Reporting**

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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](http://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](http://www.sedi.ca)).



## B.9

### IPOs, New Issues and Secondary Financings

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#### INVESTMENT FUNDS

**Issuer Name:**

Embark Student Plan  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated June 26, 2023

NP 11-202 Receipt dated July 10, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #3459464

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**Issuer Name:**

The Children's Educational Foundation of Canada  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated June 30, 2023

NP 11-202 Receipt dated July 4, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #3550612

---

**Issuer Name:**

Evolve NASDAQ Technology Index Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated Jul 4, 2023

NP 11-202 Final Receipt dated Jul 5, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #3550151

**Issuer Name:**

DFA Canadian Core Equity Fund  
DFA Canadian Vector Equity Fund  
DFA Five-Year Global Fixed Income Fund  
DFA Global 40EQ-60FI Portfolio  
DFA Global 50EQ-50FI Portfolio  
DFA Global 60EQ-40FI Portfolio  
DFA Global 70EQ-30FI Portfolio  
DFA Global 80EQ-20FI Portfolio  
DFA Global Equity Portfolio  
DFA Global Fixed Income Portfolio  
DFA Global Investment Grade Fixed Income Fund  
DFA Global Real Estate Securities Fund  
DFA Global Sustainability Core Equity Fund  
DFA Global Targeted Credit Fund  
DFA International Core Equity Fund  
DFA International Vector Equity Fund  
DFA U.S. Core Equity Fund  
DFA U.S. Vector Equity Fund  
DFA World Equity Portfolio  
Principal Regulator – British Columbia

**Type and Date:**

Final Simplified Prospectus dated Jul 1, 2023

NP 11-202 Final Receipt dated Jul 4, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #3535025

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**Issuer Name:**

CI DoubleLine Core Plus Fixed Income US\$ Fund  
CI DoubleLine Income US\$ Fund  
CI DoubleLine Total Return Bond US\$ Fund  
CI Enhanced Short Duration Bond Fund  
CI Floating Rate Income Fund  
CI Global Asset Allocation Private Pool  
CI Global Climate Leaders Fund  
CI Global Green Bond Fund  
CI Global High Yield Credit Private Pool  
CI Global Infrastructure Private Pool  
CI Global Longevity Economy Fund  
CI Global Real Asset Private Pool  
CI Global REIT Private Pool  
CI Global Sustainable Infrastructure Fund  
CI Munro Global Growth Equity Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated Jun 30, 2023

NP 11-202 Final Receipt dated Jul 4, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3540635**

---

**Issuer Name:**

CIBC Global Growth Balanced Fund  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified  
Prospectus dated Jul 4, 2023

NP 11-202 Preliminary Receipt dated Jul 5, 2023

**Offering Price and Description:**

-

**Underwriter(s) 3557798 or Distributor(s):**

-

**Promoter(s):**

-

**Project #3557798**

---

**Issuer Name:**

IG Beutel Goodman Canadian Balanced Fund  
IG Beutel Goodman Canadian Equity Fund  
IG Beutel Goodman Canadian Small Cap Fund  
IG BlackRock International Equity Fund  
IG Climate Action Portfolio - Global Equity  
IG Climate Action Portfolio - Global Equity Balanced  
IG Climate Action Portfolio - Global Fixed Income Balanced  
IG Climate Action Portfolio - Global Neutral Balanced  
IG Core Portfolio - Balanced  
IG Core Portfolio - Balanced Growth  
IG Core Portfolio - Global Income  
IG Core Portfolio - Growth  
IG Core Portfolio - Income  
IG Core Portfolio - Income Balanced  
IG Core Portfolio - Income Focus  
IG Core Portfolio - Income Plus (formerly Investors Income Plus Portfolio)  
IG Cornerstone Portfolio  
IG FI Canadian Equity Fund  
IG Franklin Bissett Canadian Equity Fund  
IG Graduation Portfolio  
IG JPMorgan Emerging Markets Fund  
IG Mackenzie Betterworld SRI Fund  
IG Mackenzie Canadian Corporate Bond Fund  
IG Mackenzie Canadian Dividend & Income Equity Fund  
(formerly IG Mackenzie Canadian Equity Income Fund)  
IG Mackenzie Canadian Equity Fund (formerly IG Mackenzie Dividend Growth Fund)  
IG Mackenzie Canadian Money Market Fund  
IG Mackenzie Canadian Small/Mid Cap Fund  
IG Mackenzie Canadian Small/Mid Cap Fund II  
IG Mackenzie Dividend Fund  
IG Mackenzie European Equity Fund  
IG Mackenzie European Mid-Cap Equity Fund  
IG Mackenzie Floating Rate Income Fund  
IG Mackenzie Global Bond Fund  
IG Mackenzie Global Dividend Fund  
IG Mackenzie Global Financial Services Fund  
IG Mackenzie Global Fund  
IG Mackenzie Global Fund II  
IG Mackenzie Global Natural Resources Fund  
IG Mackenzie Global Science & Technology Fund  
IG Mackenzie High Yield Fixed Income Fund (formerly IG Mackenzie Canadian High Yield Income Fund)  
IG Mackenzie Income Fund  
IG Mackenzie International Small Cap Fund  
IG Mackenzie Ivy European Fund  
IG Mackenzie Mortgage and Short Term Income Fund  
IG Mackenzie Mutual of Canada  
IG Mackenzie North American Equity Fund  
IG Mackenzie Pacific International Fund  
IG Mackenzie Pan Asian Equity Fund  
IG Mackenzie Strategic Income Fund  
IG Mackenzie U.S. Dividend Registered Fund  
IG Mackenzie U.S. Dollar Fund - Global Equity  
IG Mackenzie U.S. Dollar Fund - Global Equity Balanced  
IG Mackenzie U.S. Dollar Fund - Global Fixed Income Balanced  
IG Mackenzie U.S. Dollar Fund - Global Neutral Balanced  
IG Mackenzie U.S. Equity Fund (formerly IG Mackenzie Core U.S. Equity Fund)  
IG Mackenzie U.S. Money Market Fund

IG Mackenzie U.S. Opportunities Fund  
IG Managed Growth Portfolio - Canadian Focused Equity  
(formerly Investors Retirement Growth Portfolio)  
IG Managed Growth Portfolio - Canadian Neutral Balanced  
(formerly Investors Retirement Plus Portfolio)  
IG Managed Growth Portfolio - Global Equity (formerly  
Investors Growth Portfolio)  
IG Managed Growth Portfolio - Global Equity Balanced  
(formerly Investors Growth Plus Portfolio)  
IG Managed Growth Portfolio - Global Neutral Balanced  
IG Managed Payout Portfolio  
IG Managed Payout Portfolio with Enhanced Growth  
IG Managed Payout Portfolio with Growth  
IG Managed Risk Portfolio - Balanced  
IG Managed Risk Portfolio - Growth Focus  
IG Managed Risk Portfolio - Income Balanced  
IG Managed Risk Portfolio - Income Focus  
IG PIMCO Global Bond Fund  
IG Putnam U.S. Growth Fund  
IG Putnam U.S. High Yield Income Fund  
IG T. Rowe Price U.S. Large Cap Equity Fund  
IG Target Education 2030 Portfolio  
IG Target Education 2035 Portfolio  
IG Target Education 2040 Portfolio  
IG U.S. Taxpayer Portfolio - Global Equity  
IG U.S. Taxpayer Portfolio - Global Equity Balanced  
IG U.S. Taxpayer Portfolio - Global Fixed Income Balanced  
IG U.S. Taxpayer Portfolio - Global Neutral Balanced  
Principal Regulator – Manitoba

**Type and Date:**

Final Simplified Prospectus dated Jun 29, 2023

NP 11-202 Final Receipt dated Jul 7, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3541123**

---

**Issuer Name:**

CI Bitcoin Fund

CI Ethereum Fund

Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated Jul 7, 2023

NP 11-202 Final Receipt dated Jul 10, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3547440**

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**Issuer Name:**

Exemplar Global Growth and Income Class

Exemplar Growth and Income Fund

Exemplar Performance Fund

Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated Jul 7, 2023

NP 11-202 Final Receipt dated Jul 7, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3548224**

---

**Issuer Name:**

iProfile Active Allocation Private Pool I

iProfile Active Allocation Private Pool II

iProfile Active Allocation Private Pool III

iProfile Active Allocation Private Pool IV

iProfile Alternatives Private Pool

iProfile Canadian Equity Private Pool

iProfile Emerging Markets Private Pool

iProfile ETF Private Pool

iProfile Fixed Income Private Pool

iProfile International Equity Private Pool

iProfile Low Volatility Private Pool

iProfile Portfolio - Global Equity

iProfile Portfolio - Global Equity Balanced

iProfile Portfolio - Global Fixed Income Balanced

iProfile Portfolio - Global Neutral Balanced

iProfile U.S. Equity Private Pool

Principal Regulator – Manitoba

**Type and Date:**

Final Simplified Prospectus dated Jun 29, 2023

NP 11-202 Final Receipt dated Jul 7, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3541164**

---

**Issuer Name:**

Horizons Canadian Large Cap Equity Covered Call ETF

Horizons Equal Weight Canadian Bank Covered Call ETF

Horizons US Large Cap Equity Covered Call ETF

Principal Regulator - Ontario

**Type and Date:**

Amendment #3 to Final Long Form Prospectus dated July 6, 2023

NP 11-202 Final Receipt dated Jul 7, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3385537**

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NON-INVESTMENT FUNDS

**Issuer Name:**

Ayr Wellness Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 6, 2023  
NP 11-202 Preliminary Receipt dated July 6, 2023

**Offering Price and Description:**

C\$125,000,000.00 - Subordinate Voting Shares, Restricting Voting Shares, Limited Voting Shares, Warrants, Subscription Receipts, Debt Securities, Convertible Securities Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

MERCER PARK CB, L.P., by its general partner, MERCER PARK CB GP, LLC

**Project #**3558403

---

**Issuer Name:**

Brookfield Business Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 7, 2023  
NP 11-202 Preliminary Receipt dated July 10, 2023

**Offering Price and Description:**

US\$1,500,000,000  
Class A Exchangeable Subordinate Voting Shares of Brookfield Business Corporation Limited Partnership Units of Brookfield Business Partners L.P. (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558807

---

**Issuer Name:**

Brookfield Business Partners L.P.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 7, 2023  
NP 11-202 Preliminary Receipt dated July 10, 2023

**Offering Price and Description:**

Limited Partnership Units, Preferred Limited Partnership Units, Subscription Receipts

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558792

**Issuer Name:**

Brookfield Business Partners L.P.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 7, 2023  
NP 11-202 Preliminary Receipt dated July 10, 2023

**Offering Price and Description:**

US\$1,500,000,000  
Class A Exchangeable Subordinate Voting Shares of Brookfield Business Corporation Limited Partnership Units of Brookfield Business Partners L.P. (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558801

---

**Issuer Name:**

Criterion Energy Ltd. (formerly Softrock Minerals Ltd.)  
Principal Regulator - Alberta

**Type and Date:**

Amendment dated July 5, 2023, to Preliminary Short Form Prospectus dated June 14, 2023  
NP 11-202 Preliminary Receipt dated July 5, 2023

**Offering Price and Description:**

\$22,000,000.00 - 110,000,000 Subscription Receipts  
\$ 0.20 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3550162

---

**Issuer Name:**

DeFi Technologies Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated June 30, 2023  
NP 11-202 Preliminary Receipt dated July 4, 2023

**Offering Price and Description:**

\$20,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Convertible Securities, Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3557443

**Issuer Name:**

Enbridge Pipelines Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Shelf Prospectus dated July 5, 2023  
NP 11-202 Preliminary Receipt dated July 6, 2023

**Offering Price and Description:**

\$2,000,000,000.00 - MEDIUM TERM NOTES  
(UNSECURED)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558183

---

**Issuer Name:**

KO Gold Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment dated July 10, 2023 to Preliminary Long Form  
Prospectus dated April 6, 2023  
NP 11-202 Preliminary Receipt dated July 10, 2023

**Offering Price and Description:**

0.00

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Greg Isenor

**Project #**3517692

---

**Issuer Name:**

Verano Holdings Corp.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Shelf Prospectus dated July 7, 2023  
NP 11-202 Preliminary Receipt dated July 7, 2023

**Offering Price and Description:**

USD\$750,000,000.00 - SUBORDINATE VOTING  
SHARES, DEBT SECURITIES, WARRANTS, RIGHTS,  
UNITS, SUBORDINATE VOTING SHARES OFFERED BY  
THE SELLING SECURITYHOLDERS

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558602

---

**Issuer Name:**

Brookfield Business Partners L.P.  
Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated July 7, 2023  
NP 11-202 Receipt dated July 10, 2023

**Offering Price and Description:**

Limited Partnership Units, Preferred Limited Partnership  
Units, Subscription Receipts

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3558792

---

**Issuer Name:**

Phytome Life Sciences Limited

**Type and Date:**

Preliminary Long Form Non-Offering Prospectus dated  
January 3, 2023 and Amendment to Preliminary Long Form  
Prospectus dated March 30, 2023  
Withdrawn on July 4, 2023

**Offering Price and Description:**

0.00

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**3477092

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## B.10 Registrations

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### B.10.1 Registrants

| Type                                         | Company             | Category of Registration | Effective Date |
|----------------------------------------------|---------------------|--------------------------|----------------|
| Consent to Suspension<br>(Pending Surrender) | Amuka Capital Corp. | Exempt Market Dealer     | June 30, 2023  |

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## B.11

# CIRO, Marketplaces, Clearing Agencies and Trade Repositories

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### B.11.1 Canadian Investment Regulatory Organization (CIRO)

#### B.11.1.1 Canadian Investment Regulatory Organization (CIRO) – Republication of Proposed Derivatives Rule Modernization, Stage 1 – Request for Comment

#### REQUEST FOR COMMENT

#### CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

#### REPUBLICATION OF PROPOSED DERIVATIVES RULE MODERNIZATION, STAGE 1

CIRO is republishing for a third comment period proposed amendments to modernize and simplify its derivatives-related requirements. CIRO has made additional revisions to the proposed amendments set out in the previous two publications (the **Revised Proposed Amendments**) to:

- incorporate them in the most recent version of the Investment Dealer and Partially Consolidated Rules (IDPC Rules), formerly the IIROC Rules, which came into effect on January 1, 2023, and
- introduce changes to address concerns and suggestions received from commenters and the Canadian Securities Administrators (**CSA**).

The Revised Proposed Amendments are necessary to ensure consistency with the anticipated final version of CSA National Instrument 93-101 *Derivatives: Business Conduct* (**NI 93-101**).

A copy of the CIRO Notice, including the Revised Proposed Amendments, is also published on our website at [www.osc.ca](http://www.osc.ca). The comment period ends on August 14, 2023.

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