

The Ontario Securities Commission

OSC Bulletin

August 31, 2023

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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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A. Capital Markets Tribunal

A.1 Notices of Hearing

A.1.1 Nova Tech Ltd and Cynthia Petion – ss. 127(1) and 127.1

FILE NO.: 2023-20

IN THE MATTER OF
NOVA TECH LTD AND CYNTHIA PETION

NOTICE OF HEARING

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: September 28, 2023 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on August 24, 2023.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the *Capital Markets Tribunal Practice Guideline*.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 25th day of August, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

IN THE MATTER OF
NOVA TECH LTD AND CYNTHIA PETION

STATEMENT OF ALLEGATIONS

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

A. OVERVIEW

1. Nova Tech Ltd and its chief executive officer, Cynthia Petion, engaged in an aggressive and widespread campaign using the internet and social media to sell securities to the investing public. They sold these securities without registration and without prospectus disclosure. They continued to do so in the face of a cease trade order issued by the Ontario Securities Commission. These business activities have also attracted concerns by other Canadian and U.S. securities regulators.
2. The Respondents created a product known as the “Percentage Allocation Management Module” or “PAMM” and deployed an elaborate multi-level marketing scheme to sell units of the product—which are securities—to Ontario investors.
3. The Respondents used their website, social media and YouTube videos to promote the PAMM product and to solicit investors. The PAMM product was advertised as a way for investors to passively earn returns on investment without having to do any trading themselves. The company website depicted PAMM product returns of approximately 3% per week without ever sustaining a loss. Videos posted to the Nova Tech YouTube channel made statements soliciting investment in the PAMM product, including Cynthia Petion claiming that returns from the investment allowed people to buy luxury cars and homes.
4. On December 13, 2022, the Ontario Securities Commission issued an investor warning with respect to Nova Tech Ltd.
5. In early February 2023, the company announced that it decided to place a “temporary freeze” on withdrawals from investor accounts. Notwithstanding this announcement, it continued to accept new investments in the PAMM product.
6. In light of these ongoing investor protection concerns, the Ontario Securities Commission issued a temporary cease trade order against Nova Tech Ltd on February 16, 2023. The order was extended by the Capital Markets Tribunal on March 2, 2023. The Respondents breached this order by allowing reinvestments of purported returns into PAMM units, and by selling new PAMM units to Ontario investors.
7. While the Respondents made changes to their website to make it appear they were restricting access to Canadian investors, individuals involved in perpetuating NovaTech’s multi-level marketing scheme were publicly disseminating instructions on how to circumvent geographic restrictions.
8. During this period, other Canadian provincial securities regulators published warnings about the Respondents, and a Californian regulator issued a protective order.
9. Where business activities raise serious securities regulatory concerns, the Ontario Securities Commission takes action to protect investors. Registration requirements serve an important gate-keeping function by ensuring that only properly qualified persons are permitted to engage in the business of trading securities. Prospectus requirements are fundamental to ensuring that investors are provided with full, true, and plain disclosure of all material facts relating to the securities being offered.
10. None of the Respondents were registered to trade in securities and no prospectus was filed in connection with the sale of units of the PAMM product.
11. By disregarding these cornerstone principles of Ontario securities law, violating the temporary cease trade order, and conducting themselves contrary to the public interest, the Respondents exposed investors to serious risk and undermined confidence in the capital markets.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) makes the following allegations of fact:

I. The PAMM Product

12. Beginning in or around June 2019, and continuing until at least July 2023, the Respondents created and marketed a product known as the “Percentage Allocation Management Module” (**PAMM**) and sold units of the PAMM product through the Website, including to Ontario investors. PAMM units are securities under s. 1 (1) of the *Securities Act*, RSO 1990 c S.5 (the **Act**).

13. The marketing and sale of PAMM units is central to NovaTech's business, and these activities have been ongoing since the company's inception.
14. Nova Tech Ltd (**NovaTech**) was incorporated on September 26, 2019, in Saint Vincent and the Grenadines and carries on business as "NovaTech" and "NovaTech, LTD." NovaTech published and operated the website www.novatechfx.com (the **Website**).
15. Cynthia Petion (**Petion**) is NovaTech's founder, chief executive officer and sole director, shareholder and beneficial owner. Petion has been involved in NovaTech's operation since its inception and is the directing mind of NovaTech. According to the Website, Petion is responsible for creating, planning, implementing and integrating the strategic direction of the organization. She is responsible for managing and implementing the Company's research and development of strategies, and overseeing the company's overall operations. She also oversees all marketing initiatives, brand recognition, finances, and compensation, as well as new product development.
16. The PAMM product is described as a "form of pooled money Forex trading" that "allows investors to earn without having to trade." NovaTech explains that its own "traders" use these pooled investor funds to trade in crypto assets, and in the Forex markets, to generate profits for investors. PAMM units would therefore generate "sustainable passive profits" for investors that are paid consistently on a weekly basis. Figures on the Website depicted returns of approximately 3% per week.
17. The role of the investor is limited to the advancement of money. Investors purchase PAMM units by first creating an account through the Website using an online application process (**PAMM Account**). After opening a PAMM Account, investors can purchase PAMM units, which are priced in USD, by transferring the equivalent USD value of crypto assets (e.g., Bitcoin) to a wallet address provided by the Website. Purchases of PAMM units are only reflected in balances displayed in the PAMM Account. The units are not otherwise delivered to investors.
18. PAMM Accounts include both a "Trading Account" and a "Bonus Account." The Trading Account balance displays the USD value of any purchases of PAMM units. The Bonus Account displays the USD value of returns received on the units held in the Trading Account. After earning returns in the Bonus Account, investors can choose to re-invest those returns by purchasing additional PAMM units. The Website also offers an "Auto-Reinvestment" feature that automatically uses returns to purchase new PAMM units. These new units are then reflected in the balance of the investor's Trading Account.
19. Investors are not required to do anything beyond purchasing PAMM units to earn returns on investment. Investors in PAMM units are wholly dependant on the success of the Respondents' efforts to profit on their investment.
20. The Respondents are responsible for the control and operation of NovaTech and its Website. Investors are required to submit a withdrawal request through the Website to seek repayment of principal invested and payment of any returns earned on the investment.
21. NovaTech is also compensated for investments in the PAMM product. All PAMM Accounts are subject to a performance fee equal to 30% of all trading profits. NovaTech also charges a \$25 monthly service fee for PAMM Accounts, and a 15% fee on withdrawals from Trading Accounts made within three months of registering the account.

II. Aggressive Promotion and Multi-Level Marketing of the PAMM Product to Investors

22. The Respondents regularly and aggressively promoted investments in the PAMM product. Investors were solicited online, including through the Website and social media, and through videos available on NovaTech's YouTube channel. One video posted by the Respondents includes Petion stating that "I have people who started with \$99 accounts and are now buying Mercedes and living in nice houses they would have never lived in."
23. The Respondents also developed and engaged in an elaborate multi-level marketing scheme, which enlisted investors as a *de facto* sales force to funnel prospective investors to the Website to further the sale of PAMM units to the public (the **Affiliate Marketing Program**). By sharing NovaTech's products with friends, family and others, NovaTech investors who become "affiliates" or "sponsors" by participating in the Affiliate Marketing Program could earn bonuses, collect fees and progress through different "ranks" within the Program. Through this Program, the Respondents were involved in facilitating and intermediating the sale of PAMM units to investors.
24. Ontario investors opened PAMM Accounts using the Website and purchased PAMM units (**Ontario Accounts**). Some Ontario investors were solicited by others located in Ontario as part of the Affiliate Marketing Program. While Ontario investors reported earning returns on their investments in PAMM units, NovaTech's policies made it difficult for investors to withdraw from their PAMM Accounts. Some investors were unable to withdraw any funds from their PAMM Accounts.

III. Multi-Jurisdictional Concerns with the Respondents' Activities

25. NovaTech's operations have attracted Canadian and U.S. securities regulatory concerns.

A.1: Notices of Hearing

26. On November 22, 2022, the State of California, Business, Consumer Services and Housing Agency, Department of Financial Protection and Innovation, issued a Desist and Refrain Order against NovaTech, Petion and others.
27. On December 13, 2022, the Ontario Securities Commission issued an investor warning with respect to NovaTech.
28. The British Columbia Securities Commission, Financial and Consumer Affairs Authority of Saskatchewan, Autorité des Marchés Financiers, Alberta Securities Commission and the Canadian Securities Administrators have also issued warnings or alerts with respect to NovaTech.
29. In early February 2023, NovaTech announced that it decided to place a “temporary freeze” on withdrawals from investor accounts. Notwithstanding this announcement, NovaTech continued to accept new investments in its PAMM product.

IV. Violating the Temporary Cease Trade Order

30. On February 16, 2023, the Ontario Securities Commission issued a temporary cease trade order (**TCTO**) in respect of NovaTech’s activities, which ordered that:
 - a. all trading in any securities by NovaTech, or any person on their behalf, shall cease;
 - b. the acquisition of any securities by NovaTech, shall cease; and
 - c. any exemption contained in Ontario securities law does not apply to NovaTech.
31. On March 2, 2023, the Tribunal extended the TCTO.
32. NovaTech failed to comply with the terms of the TCTO. While the TCTO was in force, NovaTech continued to trade in securities, including by allowing reinvestments of purported returns into PAMM units, and by selling new PAMM units to Ontario investors.
33. Prior to the TCTO being issued, the Website did not include Canada or Ontario on its list of “Restricted Areas and Regions.” However, in or around March 2023, the Website was modified to include Canada on its list of “Restricted Areas and Regions.” NovaTech also removed the option to select Canada and Ontario from certain menus on the Website. No communications were sent to Ontario Account holders to advise of this change.
34. Investors in PAMM units, including Ontario investors, were advised to take steps to circumvent geographic restrictions imposed through the Website, including modifying the addresses on their PAMM Accounts. These practices were discussed publicly, including in videos posted on YouTube and by groups of investors participating in the Affiliate Marketing Program.
35. While the TCTO was in force, communications attributed to Petion were also sent to PAMM Accounts through the Website. These detailed new account withdrawal procedures and restrictions.

Unregistered Trading

36. None of the Respondents have ever been registered with the Ontario Securities Commission to trade in securities. No exemptions from the registration requirement were available to the Respondents under Ontario securities law.
37. Based on the conduct described above, NovaTech engaged in, and held itself out as engaging in, the business of trading in PAMM units, without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

Illegal Distribution

38. The sales of the PAMM units were trades in securities not previously issued and were therefore distributions.
39. No preliminary prospectus or prospectus was filed for the distribution of PAMM units. The investments did not qualify for any exemption from the prospectus requirements under Ontario securities law. No report of exempt distribution, including Form 45-106F1, was filed with the Ontario Securities Commission in connection with the distribution of PAMM units.
40. Based on the conduct described above, NovaTech engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to subsection 53(1) of the Act.

Breach of the TCTO Contrary to Ontario Securities Law

41. Based on the conduct described above, NovaTech failed to comply with the TCTO, thereby contravening Ontario securities law.

Authorizing, Permitting or Acquiescing in Breaches of Ontario Securities Law

42. Based on the conduct described above, Petion authorized, permitted or acquiesced in NovaTech's non-compliance with Ontario securities law described above. As a result, Petion is deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

Conduct Contrary to the Public Interest

43. Based on the conduct described above, each of the Respondents engaged in conduct that is contrary to the public interest. In particular, by continuing to accept investments in the PAMM product while simultaneously freezing and later restricting investor withdrawals, the Respondents engaged in practices contrary to the purposes and the animating principles under subsections 1.1(a) and 2.1(2) of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff alleges following breaches of Ontario securities law and/or conduct contrary to the public interest:

44. NovaTech engaged in, and held itself out as engaging in, the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.
45. NovaTech engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement, contrary to subsection 53(1) of the Act.
46. NovaTech breached the terms of the TCTO and thereby contravened Ontario securities law.
47. Petion authorized, permitted or acquiesced in NovaTech's non-compliance with Ontario securities law and is deemed not to have complied with Ontario securities law, pursuant to section 129.2 of the Act.
48. Each of the Respondents engaged in conduct that is contrary to the public interest.
49. These allegations may be amended, and further and other allegations may be added as the Tribunal may permit.

D. ORDERS SOUGHT

Enforcement Staff requests that the Tribunal make the following orders:

50. As against NovaTech and Petion:
- a. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - b. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - c. that any exemptions contained in Ontario securities law do not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of subsection 127(1) of the Act;
 - d. that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
 - e. that they be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
 - f. that they pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
 - g. that they disgorge to the Ontario Securities Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
 - h. that they pay costs of the Ontario Securities Commission's investigation and the hearing, pursuant to section 127.1 of the Act; and
 - i. such other order as the Tribunal considers appropriate in the public interest.

51. And further as against Petion:

- a. that she resign any position she may hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
- b. that she be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8 of subsection 127(1) of the Act;
- c. that she resign any position she may hold as a director or officer of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act; and
- d. that she be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.2 of subsection 127(1) of the Act.

DATED this 24th day of August, 2023

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

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Enforcement Branch

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A.2 Other Notices

A.2.1 Nova Tech Ltd

FOR IMMEDIATE RELEASE
August 23, 2023

NOVA TECH LTD,
File No. 2023-6

TORONTO – Take notice that a motion hearing to consider the extension of a Temporary Order in the above-named matter is scheduled to be heard on August 31, 2023 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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For General Inquiries:

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A.2.2 Mark Edward Valentine

FOR IMMEDIATE RELEASE
August 24, 2023

MARK EDWARD VALENTINE,
File No. 2022-7

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

A copy of the Order dated August 24, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.3 Nova Tech Ltd and Cynthia Petion

FOR IMMEDIATE RELEASE

August 25, 2023

**NOVA TECH LTD AND
CYNTHIA PETION,
File No. 2023-20**

TORONTO – The Tribunal issued a Notice of Hearing on August 25, 2023 setting the matter down to be heard on September 28, 2023 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above-named matter.

A copy of the Notice of Hearing dated August 25, 2023 and Statement of Allegations dated August 24, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3 Orders

A.3.1 Mark Edward Valentine

IN THE MATTER OF MARK EDWARD VALENTINE

File No. 2022-7

Adjudicators: Cathy Singer (chair of the panel)
Dale R. Ponder
Geoffrey D. Creighton

August 24, 2023

ORDER

WHEREAS on August 23, 2023, the Capital Markets Tribunal held a hearing by videoconference;

ON CONSIDERING a request from Staff of the Commission to adjourn certain merits hearing dates in this proceeding, and on hearing the submissions of the representatives for Staff and Mark Edward Valentine;

IT IS ORDERED THAT:

1. an adjournment motion shall be heard on September 6, 2023, by videoconference, at 2:00 p.m., or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat;
2. the parties shall adhere to the following schedule for the delivery of motion materials:
 - a. Staff shall serve and file its motion and motion record by 12:00 p.m. on August 28, 2023;
 - b. Valentine shall serve and file any responding affidavits by 4:30 p.m. on September 1, 2023;
 - c. Staff shall serve any reply affidavits and any memorandum of fact and law by 12:00 p.m. on September 4, 2023, to be filed on September 5, 2023; and
 - d. Valentine shall serve and file any memorandum of fact and law by 4:30 p.m. on September 5, 2023.

“Cathy Singer”

“Dale R. Ponder”

“Geoffrey D. Creighton”

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B. Ontario Securities Commission

B.1 Notices

B.1.1 Notice of Board Approval of OSC Rule 81-509

NOTICE OF BOARD APPROVAL OF OSC RULE 81-509

EXTENSION TO ONTARIO INSTRUMENT 81-508 TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS

August 31, 2023

Introduction

On July 18, 2023, the Ontario Securities Commission (the **OSC** or **we**) made as a rule under the *Securities Act* (Ontario) local OSC Rule 81-509 *Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (the **Rule**).

Under the OEO trailer ban, which came into effect on June 1, 2022 (the **Effective Date**),

- (a) investment fund managers (**IFMs**) are prohibited from paying trailing commissions where the dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and
- (b) dealers are prohibited from soliciting or accepting trailing commissions from an investment fund manager, in connection with securities of the mutual fund held in an account of a client of the dealer if the dealer is not required to make a suitability determination, including, among others, order-execution only (**OEO**) dealers.

The Rule extends the blanket relief issued on March 18, 2022 by Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (the **OSC Blanket Order**) by 18 months. The OSC Blanket Order provides temporary exemptions from the OEO trailer ban for OEO dealers and IFMs to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers. The OSC Blanket Order came into effect on June 1, 2022 and will cease to be effective on November 30, 2023. The Rule will cause the relief provided in the OSC Blanket Order to be in force for an additional 18-month period from December 1, 2023 to May 31, 2025.

The text of the Rule is contained in Annex A of this notice and is also available on the OSC website at www.osc.ca.

Substance and Purpose

On June 1, 2022, the Canadian Securities Administrators (**CSA**) adopted amendments to National Instrument 81-105 *Mutual Fund Sales Practices* to implement the OEO trailer ban. The amendments comprise the CSA's policy response to the investor protection and market efficiency issues identified with the payment and acceptance of trailing commissions where no suitability determination was required.

To facilitate implementation of the OEO trailer ban, the CSA issued blanket orders to provide temporary exemptions from the OEO trailer ban for IFMs and OEO dealers to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers.

To comply with the OEO trailer ban, IFMs and OEO dealers transitioned mutual funds held in OEO dealer accounts prior to the Effective Date for which trailing commissions are paid (**Current Holdings**) as follows:

- (a) switched to a non-trailing commission paying class or series of the same mutual fund,
 - (i) where the only difference is a lower management fee and where there are no tax consequences for effecting such switch (a **Like-to-Like Switch**), or

- (ii) where the only differences are a lower management fee and a difference in distribution policy and/or currency, and where there are no tax consequences for effecting such switch (a **Like-to-Similar Switch**), or
- (b) provided with a rebate by the IFM, equal to the amount of the trailing commission that would otherwise be paid by the IFM to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the security in an OEO dealer account (a **Management Fee Rebate**), and
- (c) where a Like-to-Like Switch or a Like-to-Similar Switch (each, a **Switch**) is not available or a Management Fee Rebate is not used, relief from the OEO trailer ban would be required to facilitate a rebate to a client by an OEO dealer, equal to the amount of the trailing commission paid by the IFM to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the trailing commission paying mutual fund security in the OEO dealer account (a **Dealer Rebate**), which would result in a better outcome for a client compared to a redemption, which may have tax consequences.

For client-initiated transfers of trailing commission paying mutual fund securities to OEO dealers on or after the Effective Date (**Client Transfers**), where a Switch or a Management Fee is not available or used, respectively, or where a Switch is available but the trailing commission paying mutual fund securities remain subject to a redemption fee under a deferred sales charge option (**DSC**), relief from the OEO trailer ban would be required to facilitate a Dealer Rebate, which would result in a better outcome for a client, compared to a redemption or payment of a DSC redemption fee.

As Client Transfers are largely a manual process, OEO dealers and IFMs require a period of up to 45 days (the **Grace Period**), during which relief from the OEO trailer ban would be required, in order for the OEO dealer to determine whether a Switch is available, or a Management Fee Rebate can be used, or failing which, provide a Dealer Rebate, which would result in a better outcome for a client compared to a redemption or payment of a DSC redemption fee. During the Grace Period, a Switch will generally be executed by OEO dealers within 15 days of the date of the Client Transfer, following which, within the remaining 30 days of the Grace Period, the OEO dealer will assess whether the Switch has been properly processed, failing which the OEO dealer will take action to ensure the relevant switch is properly processed. Any trailing commissions paid by IFMs in respect of the Client Transfers and accepted by OEO dealers during the Grace Period will be rebated to the client by way of a Dealer Rebate.

The OSC Blanket Order will cease to be effective on November 30, 2023. However, the relief provided in the OSC Blanket Order is required after November 30, 2023 because:

- (a) for Current Holdings where a Switch or a Management Fee Rebate was not available or used, respectively, a Dealer Rebate should continue to be provided for a client, which is a better outcome for the client compared to a redemption, which may have tax consequences,
- (b) for Client Transfers, a Grace Period should continue to be provided
 - (i) for the OEO dealer to determine whether a Switch is available, or a Management Fee Rebate can be used, or failing which, provide a Dealer Rebate, which is a better outcome for a client compared to a redemption, which may have tax consequences, or payment of a DSC redemption fee, if applicable, and
 - (ii) for the OEO dealer to rebate to the client any trailing commissions paid by IFMs in respect of the Client Transfers and accepted by OEO dealers during the Grace Period by way of a Dealer Rebate.

The purpose of the Rule is to cause the blanket relief issued under the OSC Blanket Order to be extended for an additional 18-month period, from December 1, 2023 to May 31, 2025. Without an extension, IFMs and OEO dealers in Ontario would no longer be able to rely on the relief provided in the OSC Blanket Order after November 30, 2023. This would result in an unlevel playing field for IFMs and OEO dealers in Ontario as equivalent blanket orders issued by the other CSA jurisdictions continue to be in effect and are not subject to an expiration date, with the exceptions of certain other CSA jurisdictions. The equivalent blanket orders in other CSA jurisdictions that expire on November 30, 2023 are expected to be extended.

Authority for the Local Amendments

Paragraph 143.11(3)(b) of the *Securities Act* (Ontario) provides the authority for the making of a rule which extends a blanket order for a further period of up to 18 months, in accordance with sections 143.3 to 143.6.

Delivery of Rule to Minister

The OSC delivered the Rule to the Minister of Finance on or about August 31, 2023. The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on December 1, 2023.

Questions

Please refer any questions to the following OSC staff:

Irene Lee
Senior Legal Counsel
Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-3668
ilee@osc.gov.on.ca

Stephen Paglia
Manager
Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-2393
spaglia@osc.gov.on.ca

ANNEX A

OSC RULE 81-509

***EXTENSION TO ONTARIO INSTRUMENT 81-508
TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO
FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS***

Purpose

1. This Rule provides, in Ontario, a temporary extension to the exemptions provided in Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers*, pursuant to paragraph 143.11(3)(b) of the *Securities Act* (Ontario).

Extension of temporary exemptions

2. ***Section 46 of Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers is amended by replacing “November 30, 2023” with “May 31, 2025”.***

Effective date

3. This Rule comes into force on December 1, 2023.

B.1.2 Multilateral CSA Notice – Repeal of National Instrument 81-104 Alternative Mutual Funds



Multilateral CSA Notice
Repeal of
National Instrument 81-104 *Alternative Mutual Funds*

August 31, 2023

Introduction

The Canadian Securities Administrators (**CSA**), except the Autorité des marchés financiers (**AMF**), (the **Participating Jurisdictions** or **we**) are repealing National Instrument 81-104 *Alternative Mutual Funds* (**NI 81-104**) in its entirety (the **Repeal**).

As a result of prior policy work aimed at modernizing investment fund regulation, most operational aspects of NI 81-104 have been migrated to National Instrument 81-102 *Investment Funds* (**NI 81-102**). Part 4 of NI 81-104, which is focused on proficiency requirements (the **Proficiency Requirements**) for mutual fund restricted individuals (**MFRIs**) for the distribution of alternative mutual funds (as defined in NI 81-102), is the only remaining element.

CSA members issued harmonized blanket orders (the **Blanket Orders**) to provide additional proficiency course options as the course options prescribed by the Proficiency Requirements pre-date the introduction of the alternative mutual funds regime and do not address the specific differences between conventional mutual funds and alternative mutual funds. The Blanket Orders have been codified by Policy No. 11 *Proficiency Standards for the Sale of Alternative Mutual Funds* (**Policy No. 11**) of the Mutual Fund Dealers Association of Canada (**MFDA**). As of January 1, 2023, Policy No. 11 is known as Interim Mutual Fund Dealer Rule 1000 *Proficiency Standards for the Sale of Alternative Mutual Funds* (**Rule 1000**) of the Canadian Investment Regulatory Organization (**CIRO**).¹ Given the overlap between Rule 1000 and the Proficiency Requirements set out in Part 4 of NI 81-104, we have determined that NI 81-104 is no longer necessary.

The AMF is not proposing to repeal NI 81-104 and will continue to rely on its local blanket order (**AMF Blanket Order**).² It is appropriate for the Proficiency Requirements to remain applicable in Québec as CIRO has issued a decision exempting all mutual fund dealers registered in Québec as of January 1, 2023 from the application of its rules for their activities in Québec, except for its operating rules, during the transition phase of the AMF's transition plan for Québec mutual fund dealer membership in CIRO.³ The AMF will consider repealing NI 81-104 and revoking the AMF Blanket Order following the start of the permanent phase of the AMF's transition plan for Québec mutual fund dealer membership, as it is anticipated that mutual fund dealers registered in Québec will be subject to equivalent requirements provided by CIRO rules at that time.

The British Columbia Securities Commission (**BCSC**) anticipates that the Repeal will be effected through an Order in Council of the government of British Columbia (**BC**), and would be effective at the same time as the Repeal in the other CSA jurisdictions, except Québec as discussed above.

In some jurisdictions, ministerial approvals are required for the implementation of the Repeal. Provided all ministerial approvals are obtained, the Repeal will come into force on January 29, 2024.

Except in BC, the text of the Repeal is contained in Annex B of this Notice and will also be available on the websites of the following Participating Jurisdictions:

¹ As of January 1, 2023, CIRO is the national self-regulatory organization that oversees all investment dealers, mutual fund dealers and trading activity on Canada's debt and equity marketplaces. CIRO is carrying on the regulatory functions of the Investment Industry Regulatory Organization of Canada and the MFDA.

² Décision n° 2021-PDG-0003 Décision générale relative à des dispenses de certaines obligations prévues au Règlement 81-104 sur les organismes de placement collectif alternatifs issued on January 27, 2021. Available (in French only) at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilières/81-104/2021-01-28/2021-PDG-0003-decision-generale-opc-alternatif-fr.pdf>.

³ AMF Notice of publication - Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations – Amendments relating to the transition for Québec mutual fund dealers to the new SRO, November 24, 2022 available at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilières/31-103/2022-11-24/2022nov24-31-103-avis-publication-nouvel-oar-en.pdf>.

www.asc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.ca
www.fcnb.ca
nssc.novascotia.ca

In BC, because the Repeal is anticipated to be made through an Order in Council, the BCSC would publish any Order in Council at the time it becomes effective.

Substance and Purpose

The Proficiency Requirements apply to MFRIs who trade in securities of alternative mutual funds. However, very few of the existing MFRIs meet the Proficiency Requirements and the existing course options contain little material on alternative mutual funds. The Blanket Orders offer a temporary exemption from the Proficiency Requirements by providing additional course options to satisfy the Proficiency Requirements for trades in alternative mutual fund securities. However, as the Blanket Orders have been codified by Rule 1000, NI 81-104 is no longer necessary in the Participating Jurisdictions.

The Repeal of the Proficiency Requirements will allow MFRIs to continue to be able to rely on the appropriate course options to meet the proficiency requirements to distribute alternative mutual fund securities pursuant to Rule 1000. As the Proficiency Requirements created a regulatory burden for MFRIs and limited retail investor access to alternative investment strategies, the Repeal will also result in regulatory burden reduction.

The purpose of the Repeal, together with Rule 1000, is to modernize the Proficiency Requirements by providing robust dealer proficiency standards applicable to MFRIs who distribute alternative mutual funds. Providing MFRIs with additional proficiency course options that offer updated and relevant information on alternative mutual funds helps facilitate access to alternative investment strategies for retail investors, while also maintaining investor protection. As a result, retail investors may be able to benefit from additional portfolio diversification opportunities through better access to alternative investment strategies.

Background

The Repeal is the final step of the CSA's Modernization of Investment Fund Product Regulation Project (the **Modernization Project**) relating to the establishment of a regulatory framework for alternative mutual funds.

The mandate of the Modernization Project has been to review the parameters of product regulation that apply to publicly offered investment funds (both mutual funds and non-redeemable investment funds) and to consider whether our current regulatory approach sufficiently addresses product and market developments in the Canadian investment fund industry, and whether it continues to adequately protect investors.

Introduction of Alternative Mutual Funds

On March 27, 2013, the CSA first published a Notice and Request for Comment, which outlined a proposed regulatory framework for alternative mutual funds (the **Proposed Alternative Funds Framework**), including, a series of questions that focused on the broad parameters for such a regulatory framework (the **Framework Consultation Questions**).

On June 25, 2013, CSA Staff Notice 11-324 *Extension of Comment Period* was published to advise that the CSA had decided to consider the Proposed Alternative Funds Framework at a later date, in conjunction with certain investment restrictions for non-redeemable investment funds that we considered to be interrelated with the Proposed Alternative Funds Framework.

On February 12, 2015, CSA Staff Notice 81-326 *Update on an Alternative Funds Framework for Investment Funds* was published to summarize some of the feedback we received in connection with the Framework Consultation Questions.

On September 22, 2016, the CSA published proposed amendments (the **Proposed Amendments**) to codify a number of the parameters and proposals set out in the Proposed Alternative Funds Framework, as well as commentary we received in connection with those proposals. The Proposed Amendments contemplated the repeal of NI 81-104.

On October 4, 2018, the CSA published final amendments (**Alternative Mutual Fund Amendments**) to NI 81-102 that introduced a new category of mutual funds known as "alternative mutual funds" which invest in physical commodities or specified derivatives, and borrow or engage in short selling, in a manner not otherwise permitted for conventional mutual funds under NI 81-102. The Alternative Mutual Fund Amendments moved most of the regulatory framework applicable to commodity pools out of NI 81-104 and into NI 81-102 and renamed these funds as "alternative mutual funds". These amendments aimed to provide retail investors with greater access to alternative investment strategies, while maintaining appropriate protections.

The CSA retained the Proficiency Requirements, with the acknowledgement that alternative mutual funds can be more complex than other types of mutual funds and that additional proficiency may be needed for mutual funds dealers selling these products.

The Proficiency Requirements are the only remaining part in NI 81-104 and the CSA indicated that once the Proficiency Requirements were replaced, the CSA intended to repeal NI 81-104.

CSA Blanket Orders

On January 28, 2021, the CSA issued the Blanket Orders to provide additional proficiency course options to address two issues.⁴ First, to better align proficiency requirements with information on alternative mutual funds, and second, to ensure MFRIs seeking to distribute alternative mutual fund securities have the education, training and experience that is necessary to understand the structure, features and risks of any alternative mutual fund that they may wish to recommend to a client, to support investor protection.

Policy No. 11 (now, Rule 1000)

On November 25, 2021, the MFDA published for comment Policy No. 11 to establish proficiency requirements for the distribution of alternative mutual funds by MFDA Members and Approved Persons. The accompanying MFDA notice indicated that the CSA intended to repeal NI 81-104 when more appropriate proficiency requirements for the distribution of alternative mutual funds are put in place.

Policy No. 11 (now, Rule 1000 of CIRO), which took effect on July 21, 2022, adopted proficiency requirements that are consistent with the Blanket Orders. Policy No. 11 differs from the Blanket Orders in that the proficiency requirements for the distribution of alternative mutual funds sold pursuant to a prospectus are also extended to the distribution of alternative mutual funds sold on a prospectus-exempt basis.

Summary of Written Comments Received by the CSA on the Proposed Amendments

On October 4, 2018, the CSA published a summary of the comments and responses together with the Alternative Mutual Fund Amendments. Annex A provides a reproduction of the excerpts from the summary of comments and responses relating to “Part 4 - Proficiency and Supervisory Requirements” of NI 81-104.

Commenters expressed support for the proposal to repeal Part 4 of NI 81-104, while noting that the CSA should engage with the MFDA to review how the Proficiency Requirements may need to be reconsidered in respect of alternative mutual funds. In response to the comments, the CSA issued the Blanket Orders to provide additional proficiency course options for the distribution of alternative mutual funds and subsequently, the MFDA adopted Rule 1000, which codified the Blanket Orders.

Copies of the comment letters are posted on the website of the Ontario Securities Commission at www.osc.ca.

Adoption of the Repeal

The Blanket Orders provide MFRIs with additional proficiency options for distributing alternative mutual funds. Additional proficiency requirements support appropriate know your product and suitability assessments of alternative mutual funds by MFRIs for their clients. Rule 1000 codifies the Blanket Orders.

Part 4 of NI 81-104 sets out the Proficiency Requirements, but as Part 4 of NI 81-104 is the only remaining part of NI 81-104, and the Proficiency Requirements are now replaced with Rule 1000, NI 81-104 is unnecessary. Therefore, the Participating Jurisdictions are repealing NI 81-104.

Effective Date

The Repeal will come into force on January 29, 2024.

Content of Annexes

The text of the Repeal is contained in Annex B to this Notice and is available on the websites of members of the Participating Jurisdictions.

Annex A: Excerpts from the Summary of Comments and Responses on the CSA Notice and Request for Comment, Modernization of Investment Fund Product Regulation – Alternative Funds re Part 4 of NI 81-104 *Alternative Mutual Funds*

⁴ In Ontario, the blanket relief was issued by Ontario Instrument 81-506 *Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* (the **OSC Blanket Order**) with an expiry date of July 28, 2022. On February 24, 2022, the OSC published OSC Rule 81-507 *Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* to cause the relief provided in the OSC Blanket Order to be in force for an additional 18-month period from July 29, 2022 to January 29, 2024.

B.1: Notices

Annex B: Repeal of National Instrument 81-104 *Alternative Mutual Funds*

Annex C: Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

Noreen Bent
Chief, Corporate Finance Legal Services
British Columbia Securities Commission
Tel: 604-899-6741
Email: nbent@bcsc.bc.ca

Alberta Securities Commission

Jan Bagh
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
Tel: 403-355-2804
Email: jan.bagh@asc.ca

Chad Conrad
Senior Legal Counsel, Investment Funds
Alberta Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan

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Director, Corporate Finance
Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
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Manitoba Securities Commission

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B.1: Notices

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ANNEX A

EXCERPTS FROM THE

SUMMARY OF COMMENTS AND RESPONSES ON THE

CSA NOTICE AND REQUEST FOR COMMENT

MODERNIZATION OF INVESTMENT FUND PRODUCT REGULATION –

ALTERNATIVE FUNDS

RE: PART 4 OF NI 81-104 *ALTERNATIVE MUTUAL FUNDS*

On October 4, 2018, the CSA published final amendments to National Instrument 81-102 *Investment Funds* (**NI 81-102**) that introduced a new category of mutual funds known as “alternative mutual funds”. The following is a reproduction of the excerpts from the summary of comments and responses relating to “Part 4 - Proficiency and Supervisory Requirements” of National Instrument 81-104 *Alternative Mutual Funds*.

Table of Contents	
Part	Title
Part I	Background
Part II	Part 4 – Proficiency and Supervisory Requirements
Part III	List of Commenters
Part I – Background	
On September 22, 2016, the Canadian Securities Administrators (CSA) published for comment proposals to repeal National Instrument 81-104 <i>Commodity Pools</i>, (NI 81-104) and to amend NI 81-102, National Instrument 41-101 <i>General Prospectus Requirements</i>, National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i>, National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i>, and National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> (the Proposed Amendments). The Proposed Amendments represent the final phase of the CSA’s ongoing policy work to modernize investment fund product regulation and are aimed at developing a more comprehensive regulatory framework for mutual funds that seek to make use of more “alternative” investment strategies (alternative mutual funds). We received submissions from 41 commenters in respect of the Proposed Amendments. The name of each commenter is listed in Part III of this Summary of Comments. We wish to thank all of those who took the time to comment.	
Part II – Part 4 – Proficiency and Supervisory Requirements	
Comments	Responses
There was support for our proposal to repeal the proficiency requirements for mutual fund dealers dealing in commodity pools from Part 4 of NI 81-104, and to engage with the Mutual Fund Dealers Association (MFDA) regarding reviewing how existing proficiency requirements may need to be reconsidered in respect alternative funds.	We have reconsidered our initial proposal on mutual fund dealer proficiency for alternative mutual funds and decided to retain those provisions within NI 81-104. We recognize that any consideration of revisions to these proficiency standards should be conducted as part of a larger review of overall dealer proficiency requirements which would be beyond the scope of this Project.

Part II – Part 4 – Proficiency and Supervisory Requirements	
Comments	Responses
A number of these commenters added that they do not believe that the Proposed Amendments for alternative funds represent a significant departure from conventional mutual funds in terms of complexity, in that many of the same strategies can be employed by both types of products — the difference relates primarily to the extent these strategies can be used. They recommend we take a principles based approach to any additional proficiency requirements, consistent with general registrant proficiency requirements in National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103).	Please see our response above.
A different commenter suggested the proficiency for selling alternative funds should be the same as for selling hedge funds as they are equally complex.	Please see our response above.
One commenter expressed concern that any proposed changes in proficiency requirements not create increased confusion or burden for investors, noting that in some cases, an investor may have to deal with multiple dealers in the same firm with respect to different investment funds in their account with that firm.	Please see our response above.
Others agreed that proficiency is best dealt with through the MFDA. These commenters added that the current proficiency requirements under NI 81-104 have been a significant impediment to distribution by mutual fund dealers and that establishing unnecessarily strict proficiency requirements again would result in the same issue.	Please see our response above.
One commenter recommended specific proficiency requirements for trading in alternative funds. It added that if the CSA decides to raise the base level for mutual fund dealers then it should recommend a refresher course for all existing dealers as well to level the playing field. This commenter suggests that any additional proficiency courses and content be validated in collaboration with the MFDA, the CSA and any applicable proficiency course providers to ensure consistency and has offered to participate in that process.	Please see our response above. We welcome any input in this area.
Two commenters expressed concern that similar issues that have arisen in the past with the mis-selling of certain products by dealers due to inadequate training can occur again with alternative funds. They believe specific training is required for dealing representatives with evidence of	The concerns are noted. Please see our response above regarding the mutual fund dealer proficiency standards for alternative mutual funds.

Part II – Part 4 – Proficiency and Supervisory Requirements	
Comments	Responses
successful completion of the training being retained in personnel records. These commenters added that deficiencies in the "know your client" process could be harmful for investors investing in alternative funds. They also believe that the current suitability standard is inadequate and that a fiduciary or "best interest" standard should be applied to dealers. They added that they do not expect these products to be sold on a "DSC" basis. They also took note of the concurrent work the CSA is engaged in regarding the relationship between dealers and clients, notably under CSA Consultation Paper 33-404 which may address some of these concerns.	As the commenter notes, the CSA is currently working on initiatives that are intended to address some of these concerns and issues.

Part III – List of Commenters

AGF Investments Inc.
 Alternative Investment Management Association (AIMA)
 Arrow Capital Management Inc.
 AUM Law Professional Corporation
 Aviva Investors Canada Inc.
 BlackRock Asset Management Canada Limited
 BMO Capital Markets and BMO Global Asset Management
 Borden Ladner Gervais LLP
 Brompton Funds Limited
 Canadian Advocacy Council for Canadian CFA Institute Societies
 The Canadian Foundation for Advancement of Investor Rights (FAIR)
 Canadian Imperial Bank of Commerce
 Canadian Securities Institute, The (CSI)
 East Coast Fund Management Inc.
 First Asset Investment Management Inc.
 Jeffrey L. Glass and Darrin R. Renton
 Hedge Fund Standards Board
 Invesco Canada Ltd.
 The Investment Funds Institute of Canada (IFIC)
 Investors Group Inc.
 Irwin, White & Jennings (on behalf of Growthworks Capital Ltd.)
 Kenmar Associates
 Lawrence Park Asset Management Ltd.
 Lightwater Partners Ltd.
 Lysander Funds Limited
 Mackenzie Financial Corporations
 Manulife Asset Management Limited
 McCarthy Tétrault LLP
 McMillan LLP
 Morgan Meighen & Associates Limited
 Picton Mahoney Asset Managements
 Portfolio Management Association of Canada (PMAC)
 RBC Capital Markets
 RBC Global Asset Management Inc.
 RP Investment Advisors
 Stikeman Elliott LLP (Financial Products and Services Group)
 Sun Life Global Investments (Canada) Inc.
 TD Securities Inc.
 Tim McElvaine
 Vision Capital Corporation
 Wildeboer Dellece LLP

ANNEX B

REPEAL OF

NATIONAL INSTRUMENT 81-104 ALTERNATIVE MUTUAL FUNDS

1. ***National Instrument 81-104 Alternative Mutual Funds is repealed by this Instrument.***
2.
 - (a) This Instrument comes into force on January 29, 2024.
 - (b) In Saskatchewan, despite subsection 2(a), if this Instrument is filed with the Registrar of Regulations after January 29, 2024, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

LOCAL MATTERS

Delivery of Repeal to Minister

Ministerial approval is required for the implementation of the repeal (the **Repeal**) of National Instrument 81-104 *Alternative Mutual Funds (NI 81-104)*. The Repeal, as well as other required materials, have been delivered to the Minister of Finance on or about August 31, 2023. The Minister may approve or reject the Repeal or return the Repeal for further consideration. If the Minister approves the Repeal or does not take any further action, the Repeal will come into force in Ontario on January 29, 2024.

Authority for Repeal

Subparagraph 143(1)2(i) of the *Securities Act* (Ontario) (the **Act**) provides the Ontario Securities Commission (the **Commission**) with the authority to make the Repeal. In addition, paragraph 143.2(5)(b) of the Act permits the Commission to make the Repeal without publishing the Repeal for comment, as the Repeal removes the proficiency requirements in NI 81-104 and is not likely to have a substantial effect on the interests of investors or mutual fund restricted individuals, who are subject to Interim Mutual Fund Dealer Rule 1000 *Proficiency Standards for the Sale of Alternative Mutual Funds* of the Canadian Investment Regulatory Organization.

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B.2 Orders

B.2.1 Uni-Select Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications.

Applicable Legislative Provisions

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

[Original text in French]

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
UNI-SELECT INC.
(the Filer)

ORDER

August 11, 2023

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* (Regulation 11-102) is intended to be relied upon Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan, 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*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* 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*;
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* 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 #: 2023/0351

B.2.2 Highvista Gold Inc.

Headnote

NP 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of a cease trade order issued by the Commission – Cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law within the prescribed timeframe – Defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s.144.

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

HIGHVISTA GOLD INC.
REVOCATION ORDER
UNDER THE SECURITIES LEGISLATION OF
ONTARIO
(the Legislation)

Background

1. Highvista Gold Inc. (the **Applicant**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on August 2, 2019.
2. The Applicant has applied to the Principal Regulator under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) for an order revoking the FFCTO.

Interpretation

3. Terms defined in National Instrument 14-101 *Definitions* or NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Representations

4. This decision is based on the following facts represented by the Applicant:
 - a. The Applicant was incorporated under the *Business Corporations Act* (Ontario) on November 19, 2009 as “Triumph Ventures Corp.”. By articles of amendment dated October 6, 2011, the Applicant amended its articles of incorporation to change its name from “Triumph Ventures Corp.” to “Highvista Gold Inc.”
 - b. The Applicant’s registered and head office is located at 80 Richmond Street West, Suite 1400, Toronto, Ontario M5H 2A4.
 - c. The Applicant is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, Alberta, and Saskatchewan. The Applicant is not a reporting issuer in any other jurisdiction in Canada.
 - d. The authorized capital of the Applicant consists of an unlimited number of common shares (the Common Shares) and an unlimited number of special shares, issuable in series. The Applicant currently has 10,210,033 Common Shares issued and outstanding and no special shares issued and outstanding.
 - e. The Common Shares were transferred from the TSX Venture Exchange (the TSXV) to the NEX board of the TSXV under the symbol “HVV” on January 19, 2021, for failure to maintain the requirements for a TSXV Tier 2 company.
 - f. The Applicant’s Common Shares are listed for trading on the NEX board of the TSXV under the symbol “HVV”. The Common Shares remain suspended on the NEX as of the date hereof. The Common Shares are not listed, quoted or traded on any other exchange, marketplace or other facility for bringing together buyers and sellers in Canada or elsewhere.
 - g. The FFCTO was issued as a result of the Applicant’s failure to file the following continuous disclosure documents (collectively, the Annual Filings) as required by Ontario securities law:
 - i. audited annual financial statements for the year ended March 31, 2019 as required under National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102);

- ii. management's discussion and analysis relating to the audited annual financial statements for the year ended March 31, 2019; and
 - iii. certification of the foregoing filings as required by National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109).
- h. The Applicant is seeking a full revocation of the FFCTO now that the Annual Filings have been filed, which filing occurred on October 28, 2019.
- i. Subsequent to the issuance of the FFCTO, the Applicant also failed to file, within the timeframe stipulated by NI 51-102 the interim financial statements, management's discussion and analysis and certificates required by NI 52-109 for the interim period ended June 30, 2019 (collectively, the Interim Filings). The Interim Filings were filed on November 25, 2019.
- j. Except for the failure to file the Annual Filings and the Interim Filings, the Applicant (i) is up-to-date with all of its other continuous disclosure obligations; (ii) is not in default of any of its obligations under the FFCTO, except for the possible contraventions of the FFCTO described in paragraphs k, l and m below; and (iii) is not in default of any requirements under the Legislation or the rules and regulations made pursuant thereto.
- k. While the FFCTO was in effect, the Applicant entered into a non-binding letter of intent (LOI) with Highvista Capital Corp. (Highvista Capital), an unrelated party of the Applicant. The LOI terminated in accordance with its terms without any renewal, the parties have not commenced the preparation or negotiation of any definitive transaction documents in connection with any proposed transaction, and none of the conditions precedent described in the LOI have been satisfied. The entering into of the LOI may have contravened the terms of the FFCTO.
- l. In addition, while the FFCTO was in effect, the Applicant issued promissory notes (the Promissory Notes) of approximately \$130,000 in total (and no more than \$25,000 each issuance) to six counterparties (G. Edmund King, Prince Arthur Capital, Gerald McCarvill, Rev Royalty Income and Growth L.P., Pavilion Flow-Through Fund L.P. (Pavilion), and Highvista Capital (collectively, the Counterparties)) in order to meet its continuous disclosure obligations and fund its operational and administrative expenses. Since the Promissory Notes are evidence of indebtedness of the Applicant, each Promissory Note may, in the circumstances, be a "security" as that term is defined under applicable securities legislation. Insofar as the Promissory Notes may have been securities, entering into the Promissory Notes contravened the terms of the FFCTO. The Applicant is of the view that the issuance of the Promissory Notes constituted the distribution of securities by the Applicant in contravention of the FFCTO. At the time the Promissory Notes were issued, G. Edmund King, Prince Arthur Capital and Gerald McCarvill were related parties of the Applicant.
- m. In addition, while the FFCTO was in effect, the Applicant informed the Principal Regulator that it intended to, and subsequently that it did, enter into a loan agreement (the Loan Agreement) with Pavilion, an unrelated party of the Applicant, with respect to a loan to be advanced to it in the amount of up to \$50,000, to facilitate the timely regulatory filing of the following continuous disclosure documents, which were filed on SEDAR+ on July 31, 2023:
 - i. audited annual financial statements for the year ended March 31, 2023 as required under NI 51-102;
 - ii. management's discussion and analysis relating to the audited annual financial statements for the year ended March 31, 2023; and
 - iii. certification of the foregoing filings as required by NI 52-109.

The Loan Agreement may be a "security" as that term is defined under applicable securities legislation since it represents an evidence of indebtedness of the Applicant. Insofar as the Loan Agreement may have been a security, entering into the Loan Agreement may have contravened the terms of the FFCTO. As of the date of this Order, the Applicant has received \$35,000 pursuant to the Loan Agreement.
- n. Subsequent to the FFCTO, the Applicant refiled and restated its interim financial statements for the nine months ended December 31, 2022 (the Q3 2023 FS) and management's discussion and analysis for the nine months ended December 31, 2022 (the Q3 2023 MD&A) to:

- i. reflect that discussions, negotiations and any amendments in relation to the LOI have ceased until the FFCTO is revoked;
- ii. clarify that the accounts payable and promissory notes of approximately \$2.1M as at December 31, 2022 were overdue and due on demand under the "Liquidity and Capital Resources" section of the Q3 2023 MD&A; and
- iii. clarify disclosure confirming that the Applicant currently does not have any exploration activities.

In connection with the refiling of the Q3 2023 FS and the Q3 2023 MD&A, the Applicant was placed on the Errors and Refilings List on August 1, 2023 in accordance with OSC Staff Notice 51-711 (Revised) Refilings and Corrections of Errors.

- o. Prior to the issuance of the FFCTO, the Applicant was a public mining and exploration company seeking a qualifying transaction. Subsequent to the issuance of the FFCTO, the Applicant ceased to carry on an active business. The Applicant has provided the Principal Regulator with an undertaking that it will not complete:
 - i. a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada;
 - ii. a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada; or
 - iii. a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada; unless
 - a) the Applicant files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Securities Act (Ontario);
 - b) the Applicant files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41101 General Prospectus Requirements (NI 41-101) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Applicant; and
 - c) the preliminary prospectus and final prospectus contain the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).
- p. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid and has filed all forms associated with such payments.
- q. The Applicant's profile on the System for Electronic Document Analysis and Retrieval (SEDAR+) is up-to-date and the Applicant's profile on the System for Electronic Disclosure by Insiders will be made up-to-date as soon as practicable following the revocation of the FFCTO.
- r. Effective July 13, 2020, Ms. Janet O'Donnell was appointed a director and the Chief Financial Officer of the Applicant, and Mr. Paul Crath was appointed the Interim Chief Executive Officer of the Applicant. Effective October 20, 2022, each of Mr. Cameron Wickham and Paul Manias were appointed as directors of the Applicant (collectively, the Appointments). Other than the Appointments, the Applicant has had no changes to its directors or executive officers since the issuance of the FFCTO. The Applicant filed a news release related to the Appointments of Ms. O'Donnell and Mr. Crath on July 13, 2020. The Applicant filed a material change report related to the Appointments of Messrs. Wickham and Manias on October 20, 2022.
- s. Since the issuance of the FFCTO, except for the Appointments, there have not been any material changes in the business, operations or affairs of the Applicant which have not been disclosed by news release and/or material change report and filed on SEDAR+.
- t. The Applicant has provided the Principal Regulator with a written undertaking to hold an annual meeting of shareholders pursuant to the Business Corporations Act (Ontario), within 90 days of the revocation of the FFCTO and will prepare a management information circular in accordance with Form 51-102F5 Information Circular, which will be sent to shareholders and filed on SEDAR+ in accordance with NI 51-102.

- u. Upon revocation of the FFCTO, the Applicant will issue a news release and concurrently file a material change report on SEDAR+ announcing the revocation of the FFCTO and outlining the Applicant's future plans.

Order

The Principal Regulator is satisfied that the order to revoke the FFCTO 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 FFCTO is revoked.

DATED this 24th day of August, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0481

B.2.3 SwapEx, LLC – s. 144

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

AND

**IN THE MATTER OF
SWAPEX, LLC**

**REVOCATION OF ORDER
(Section 144 of the Act)**

WHEREAS SwapEx, LLC (**SwapEx**) operates an electronic trading facility for swaps in the United States under the jurisdiction of the Commodity Futures Trading Commission (**CFTC**) and has obtained permanent registration as a swap execution facility (**SEF**) as of January 22, 2016;

AND WHEREAS the Ontario Securities Commission (**Commission**) has, by order dated June 13, 2016 (**Order**), exempted SwapEx, pursuant to section 147 of the Act, from the requirement to be recognized as an exchange under subsection 21(1) of the Act;

AND WHEREAS SwapEx has filed an application dated July 11, 2023, with the Commission requesting the revocation of the Order;

AND WHEREAS SwapEx has represented to the Commission that it does not have any participants in Ontario, has no physical presence in Ontario, is not carrying business in Ontario, and therefore does not require the exemptive relief provided by the Order;

AND WHEREAS, based on the application and the representations made by SwapEx to the Commission, the Commission has determined that the revocation of the Order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission, pursuant to section 144 of the Act, that the Order is revoked.

DATED August 28, 2023

“Michelle Alexander”
Manager, Market Regulation

B.2.4 Banxa Holdings Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of cease trade orders – issuer cease traded due to failure to file certain continuous disclosure materials required – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Ontario opt-in to revocation order issued by British Columbia Securities Commission, as principal regulator.

Applicable Legislative Provisions

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

Citation: *Re Banxa Holdings Inc.*, 2023 BCSECCOM 322

BANXA HOLDINGS INC.

REVOCATION ORDER

**UNDER THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND
ONTARIO
(the Legislation)**

Background

- ¶ 1 Banxa Holdings Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator of the British Columbia Securities Commission (the Principal Regulator) and Ontario Securities Commission (each a Decision Maker) respectively on November 3, 2022.
- ¶ 2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 Failure-to-File Cease Trade Orders and Revocation in Multiple Jurisdictions (NP 11-207) for an order revoking the FFCTOs.
- ¶ 3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

- ¶ 4 Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Order

- ¶ 5 Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.
- ¶ 6 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked as it applies to the Issuer.
- ¶ 7 June 30, 2023

“Larissa M. Streu”
Manager, Corporate Disclosure
Corporate Finance

OSC File #: 2023/0218

B.3

Reasons and Decisions

B.3.1 RBC Dominion Securities Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – offering of corporate strip securities; exemption granted from the eligibility requirements of National Instrument 44-102 Shelf Distributions and National Instrument 44-101 Short Form Prospectus Distributions to permit the filing of a shelf prospectus and prospectus supplements qualifying for distribution strip residuals, strip coupons and strip packages to be derived from debt obligations of Canadian corporations and trusts; exemption also granted from the requirements that the prospectus contain a certificate of the issuer and that the prospectus incorporate by reference documents of the underlying issuer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., subsection 58(1).
National Instrument 44-101 Short Form Prospectus Distributions, s. 2.1 and 8.1.
National Instrument 44-102 Shelf Distributions, ss. 2.1, 5.5 and 11.1.
Form 44-101F1 Short Form Prospectus, Item 11.

August 24, 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
RBC DOMINION SECURITIES INC.,
BMO NESBITT BURNS INC.,
CIBC WORLD MARKETS INC.,
DESJARDINS SECURITIES INC.,
NATIONAL BANK FINANCIAL INC.,
TD SECURITIES INC.
(collectively, the Filers)

AND

IN THE MATTER OF
THE CARS AND PARS PROGRAMME™
OF THE FILERS

DECISION

Background

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

1. an exemption from Section 2.1 of National Instrument 44-102 - *Shelf Distributions* and Section 2.1 of National Instrument 44-101 - *Short Form Prospectus Distributions* so that a Prospectus can be filed by the Filers to renew the CARS and PARS Programme and offer Strip Securities in the Jurisdictions; and
2. an exemption from the following requirements in respect of any Underlying Issuer whose Underlying Obligations are purchased by any one or more of the Filers on the secondary market, and Strip Securities derived therefrom and sold under the CARS and PARS Programme:
 - (i) the requirements of the Legislation that the Prospectus contain a certificate of the Underlying Issuer; and
 - (ii) the requirements of the Legislation that the Prospectus incorporate by reference documents of an Underlying Issuer.

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

- (i) the Ontario Securities Commission is the principal regulator for this application, and
- (ii) the 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Nova Scotia, Yukon Territory, Northwest Territories and Nunavut (collectively with Ontario, 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.

CARSTM means strips coupons and strips residuals.

CARS and PARS ProgrammeTM means the strip bond product programme of the Filers to be offered by Prospectus.

CDS means CDS Clearing and Depository Services Inc.

CDS Book-Entry Strip Service means the services provided by CDS to enable Participants to strip, reconstitute and package securities, as set out in the CDSX Procedures and User Guide, or any successor operating rules and procedures.

NI 44-101 means National Instrument 44-101 - *Short Form Prospectus Distributions*.

NI 44-102 means National Instrument 44-102 - *Shelf Distributions*.

Offering Date means the time of the closing of the discrete offering in respect of the related Strip Securities.

PARSTM means par adjusted rate strips, comprising an entitlement to receive the principal amount of, and a portion, equal to a market rate (at the applicable time of issuance) of the interest payable under the Underlying Obligations.

Participants means participants in the depository system of CDS.

Prospectus means a short form prospectus which is a base shelf prospectus together with the appropriate prospectus supplements.

SEDAR+ means the System for Electronic Data Analysis and Retrieval +.

Strip Coupons means separate components of interest derived from an Underlying Obligation.

Strip Packages means packages of Strip Securities, including packages of Strip Coupons and packages of PARS.

Strip Residuals means separate components of principal derived from an Underlying Obligation.

Strip Securities means separate components of interest, principal or combined principal and interest components derived from Underlying Obligations using the CDS Book-Entry Strip Service and sold under the CARS and PARS Programme, including Strip Residuals, Strip Coupons and Strip Packages.

Underlying Issuers means Canadian corporate, trust and/or partnership issuers.

Underlying Obligations means publicly-issued debt obligations of Underlying Issuers, which obligations will carry a “designated rating” as such term is defined in NI 44-101 at the Offering Date.

Underlying Obligations Prospectus means a prospectus for which a receipt was issued by the securities regulatory authorities in British Columbia, Alberta, Ontario and Quebec.

Representations

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

1. Each of the Filers is a corporation incorporated under the laws of Canada, and all the Filers have their head offices in Toronto, except Desjardins Securities Inc. and National Bank Financial Inc., which have their head offices in Montreal.
2. None of the Filers are in default of securities legislation in the Jurisdictions.
3. The CARS and PARS Programme has been in effect since November 19, 2002 in reliance on a MRRS decision document dated October 31, 2002, and has subsequently been renewed and continued in reliance on decision documents dated March 6, 2003, November 19, 2004, December 18, 2006, January 15, 2009, February 17, 2011, April 8, 2013, April 17, 2015, May 29, 2017, June 29, 2019 and August 13, 2021.
4. The Filers propose to continue to operate the CARS and PARS Programme.
5. The CARS and PARS Programme will continue to be operated by purchasing, on the secondary market, Underlying Obligations of Underlying Issuers, and deriving separate components therefrom, being Strip Residuals, Strip Coupons, and/or Strip Packages.
6. The relevant Underlying Issuer will, to the best of the knowledge of each Filer participating in the relevant offering under the CARS and PARS Programme, be eligible to file a short form prospectus under NI 44-101 (whether such eligibility results from the specific qualification criteria of NI 44-101 or from the granting of an exemption from those criteria) at the Offering Date.
7. The Underlying Obligations will have been distributed under a prospectus for which a receipt was granted by the regulator in British Columbia, Alberta, Ontario, and Quebec.
8. A single short form base shelf prospectus will be established for the renewed CARS and PARS Programme as a whole, with a separate series of Strip Securities being offered under a discrete prospectus supplement for each distinct series or class of Underlying Obligations.
9. It is expected that the Strip Securities will continue to be predominantly sold to retail customers.
10. It is expected that the Filers, or certain of them, will continue to periodically identify, as demand indicates, series of outstanding debt obligations of Canadian corporations, trusts or partnerships and will purchase and “repackage” individual series of these for sale under the CARS and PARS Programme as discrete series of Strip Securities. In purchasing the Underlying Obligations and creating the Strip Securities, the Filers will not enter into any agreement or other arrangements with the Underlying Issuers.
11. The Prospectus will refer purchasers of the Strip Securities to the SEDAR+ website where they can obtain the continuous disclosure materials of the Underlying Issuer.
12. The Filers, or certain of them, may, from time to time, form and manage a selling group consisting of other registered securities dealers to solicit purchases of, and sell to the public, the Strip Securities.
13. The Strip Securities will be sold in series, each such series relating to separate Underlying Obligations of an Underlying Issuer. The base shelf prospectus for use with the CARS and PARS Programme will describe the CARS and PARS Programme in detail. The shelf prospectus supplement for any series of Strip Securities that are offered will describe the specific terms of the Strip Securities.
14. Each offering of Strip Securities will be derived from one or more Underlying Obligations of a single class or series of an Underlying Issuer. The Filer(s) participating in each offering under the CARS and PARS Programme intend to use the CDS Book-Entry Strip Service to separate the Underlying Obligations for such series into separate principal and interest components, or strip bonds. These components will, in connection with each series, be re-packaged using the CDS Book-Entry Strip Service if and as necessary to create the Strip Securities.
15. The Strip Residuals of a particular series, if any, will consist of the entitlement to receive payments of a portion of the principal amounts payable under the Underlying Obligations, if, as and when paid by the Underlying Issuer on the Underlying Obligations, in accordance with their respective terms.

16. The Strip Coupons of a particular series will consist of the entitlement to receive a payment of a portion of the interest payable under the Underlying Obligations, if, as and when paid by the Underlying Issuer on the Underlying Obligations, in accordance with their respective terms.
17. The Strip Packages will consist of the entitlement to receive (a) in the case of PARS, both payments of a portion of the principal amounts payable and periodic payments of a portion equal to a market rate (at the time of issuance of the PARS) of the interest payable under the Underlying Obligations, and/or (b) in the case of packages consisting of Strip Coupons, periodic payments of portions of the interest payable, or the principal amounts payable, under the Underlying Obligations, in each case, if, as and when paid by the Underlying Issuer on the Underlying Obligations, in accordance with their respective terms.
18. Holders of a series of Strip Securities will be entitled to payments from cash flows from the related Underlying Obligations if, as and when made by the respective Underlying Issuer. The Strip Securities of one series will not be entitled to receive any payments from the cash flows of Underlying Obligations related to any other series. As the Underlying Issuers will be the sole obligors under the respective Underlying Obligations, holders of Strip Securities will be entirely dependent upon the Underlying Issuers' ability to perform their respective obligations under their respective Underlying Obligations.
19. The Strip Securities will be sold at prices determined by the Filers from time to time and, as such, these may vary as between purchasers of the same series and during the offering period of Strip Securities of the same series. In quoting a price for the Strip Securities, the Filers will advise the purchaser of the annual yield to maturity thereof based on such price.
20. The Underlying Issuers will not receive any proceeds, and the Filers will not be entitled to be paid any fee or commission by the Underlying Issuers, in respect of the sale by the Filers, or the members of any selling group, of the Strip Securities. Each Filer's overall compensation will be increased or decreased by the amount by which the aggregate price paid for a series of the Strip Securities by purchasers exceeds or is less than the aggregate price paid by such Filer for the related Underlying Obligations.
21. The payment dates of any particular series of Strip Coupons and the interest component of Strip Packages will be coincident with the interest payment dates for the Underlying Obligations for the series, with terms of up to 30 years or longer. The maturity date of a particular series of Strip Residuals and the principal component of Strip Packages, if any, will be the maturity date of the Underlying Obligations for the series.
22. The Strip Securities will be issuable in Canadian and U.S. dollars and in such minimum denomination(s) and with such maturities as may be described in the applicable shelf prospectus supplement.
23. The Underlying Issuers will be Canadian corporations, trusts or partnerships. The Underlying Obligations are securities of the Underlying Issuers. The Strip Securities will be derived without regard, except as to ratings and eligibility to file a short form prospectus under NI 44-101, for the value, price, performance, volatility, investment merit or creditworthiness of the Underlying Issuers historically or prospectively.
24. To be eligible for inclusion in the CARS and PARS Programme, (i) the Underlying Obligations must have been qualified for distribution under a prospectus for which a receipt was issued by the regulators in British Columbia, Alberta, Ontario and Quebec, (ii) at least four months must have passed from the date of closing of the original issue of the relevant class or series of Underlying Obligations and (iii) the distribution of the Underlying Obligations must be complete.
25. The Filers will cause all Underlying Obligations from which the Strip Securities will be derived and which are not already in the CDS system to be delivered to CDS and registered in the name of CDS. The Underlying Obligations from which the Strip Securities will be derived will, except in very limited circumstances, be held by CDS until their maturity and will not otherwise be released or removed from the segregated account used by CDS to maintain the Underlying Obligations. A separate security identification number or ISIN will be assigned by CDS to each series of Strip Securities.
26. Pursuant to the operating rules and procedures of its CDSX Procedures and User Guide, or any successor operating rules and procedures, CDS will maintain book based records of ownership for the Strip Securities, entering in such records only the names of Participants. No purchaser of Strip Securities will be entitled to any certificate or other instrument from the Underlying Issuer, the Filers or CDS evidencing the Strip Securities or the ownership thereof, and no purchaser of Strip Securities will be shown on the records maintained by CDS except through the book entry account of a Participant. Upon the purchase of Strip Securities, the purchaser will receive only the customary confirmation slip that will be sent to such purchaser by one of the Filers or another Participant.
27. Transfers of beneficial ownership in Strip Securities will be effected through records maintained for Strip Securities by CDS or its nominee (with respect to interests of Participants) and on the records of Participants (with respect to interests of persons other than Participants). Beneficial holders who are not Participants, but who desire to purchase, sell or

otherwise transfer beneficial ownership of, or any other interest in, such Strip Securities of a series, may do so only through Participants.

28. Payments in respect of a principal component (if any), interest component(s) (if any), or other amounts (if any) owing under a series of Strip Securities will be made from payments received by CDS in respect of the related Underlying Obligations from the relevant Underlying Issuer. Amounts payable on the maturity of the Strip Securities will be payable by the Underlying Issuer to CDS as the registered holder of the Underlying Obligations. Following receipt thereof, CDS will pay to each of its Participants shown on its records as holding matured Strip Securities the amount to which such Participant is entitled. The Filers will, and the Filers understand that each other Participant, who holds such Strip Securities on behalf of a purchaser thereof will, pay or otherwise account to such purchaser for the amounts received by it in accordance with the instructions of the purchaser to such Participant. Holders of a series of Strip Securities will not have any entitlement to receive payments under any Underlying Obligations acquired in connection with the issue of any other series of Strip Securities.
29. As the registered holder of the Underlying Securities, CDS will receive any voting rights in respect of the Underlying Obligations for the Strip Securities. CDS will allocate these rights to the holders of the Strip Securities in accordance with the operating rules and procedures of its CDSX Procedures and User Guide, or any successor operating rules and procedures, in effect at the time. These procedures currently provide for the distribution of the voting rights based on the "proportionate economic interest", determined as to be described in the base shelf prospectus for use with the CARS and PARS Programme. Such voting rights will be vested on a series by series basis. In order for a holder of Strip Securities to have a legal right to attend a meeting of holders of Underlying Obligations, or to vote in person, such holder of Strip Securities must be appointed as proxyholder for the purposes of the meeting by the CDS Participant through whom he or she holds Strip Securities.
30. In the event that an Underlying Issuer repays a callable Underlying Obligation prior to maturity in accordance with its terms, CDS will allocate the amount of proceeds it receives as the registered holder of the Underlying Obligations to the holders of the Strip Securities in accordance with the operating rules and procedures of its CDSX Procedures and User Guide, or any successor operating rules and procedures, in effect at the time. These procedures currently provide for the distribution of proceeds on the repayment of a callable Underlying Obligation based on the "proportionate economic interest".
31. Any other entitlements received by CDS with respect to the Underlying Obligations upon the occurrence of an event other than in respect of maturity, including entitlements on the insolvency or winding-up of an Underlying Issuer, the non-payment of interest or principal when due, or a default of the Underlying Issuer under any trust indenture or other agreement governing the Underlying Obligations, will be processed by CDS in accordance with the operating rules and procedures of its CDSX Procedures and User Guide, or any successor operating rules and procedures, in effect at the time. These procedures also currently provide for CDS to distribute the resulting cash and/or securities to the holders of the Strip Securities based on "proportionate economic interest". In addition, if the Underlying Issuer offers an option to CDS as the registered holder of the Underlying Obligations in connection with the event, the Filers understand that CDS will attempt to offer the same option to the holders of the Strip Securities, where feasible.

Decision

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

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

- (a) the Underlying Obligations were qualified for distribution under the Underlying Obligations Prospectus, at least four months have passed from the date of closing of the original issue of the relevant class or series of Underlying Obligations and the distribution of the Underlying Obligations is complete;
- (b) to the best of the knowledge of the Filer(s) participating in a relevant offering under the CARS and PARS Programme, the relevant Underlying Issuer is eligible to file a short form prospectus under NI 44-101 (whether such eligibility results from the specific qualification criteria of NI 44-101 or from the granting of an exemption from those criteria) at the Offering Date;
- (c) a receipt issued for the Prospectus filed in reliance on this decision document is not effective after October 24, 2025;
- (d) the offering and sale of the Strip Securities complies with all the requirements of NI 44-102 and NI 44-101 as varied by NI 44-102, other than those from which an exemption is granted by this decision document or from which an exemption is granted in accordance with Part 11 of NI 44-102 by the securities regulatory authority or regulator in each of the Jurisdictions as evidenced by a receipt for the Prospectus;

B.3: Reasons and Decisions

- (e) each offering of Strip Securities will be derived from one or more Underlying Obligations of only a single class or series of an Underlying Issuer and only through the CDS Book-Entry Strip Service;
- (f) the Filers issue a press release and file a material change report in respect of:
- (g) a material change to the CARS and PARS Programme which affects any of the Strip Securities other than a change which is a material change to an Underlying Issuer; and
- (h) a change in the operating rules and procedures of the CDSX Procedures and User Guide of CDS, or any successor operating rules and procedures in effect at the time, which may have a significant effect on a holder of Strip Securities; and
- (i) the Filers file the Prospectus, the material change reports referred to above, and all documents related thereto on SEDAR+ under the SEDAR+ profile for the CARS and PARS Programme and pay all filing fees applicable to such filings.

“Erin O’Donovan”
Manager, Corporate Finance Branch
Ontario Securities Commission

OSC File #: 2023/0319

B.3.2 Frontenac Mortgage Investment Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to non-investment fund reporting issuer for extension of times provided for refiling of a prospectus as if the lapse date was extended to October 16, 2023 – extension of times will not affect the current status or accuracy of the information contained in the prospectus – the issuer will not distribute securities under the prospectus until a receipt is issued for the renewal prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

August 24, 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
FRONTENAC MORTGAGE INVESTMENT CORPORATION
(the Filer)

DECISION

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits pertaining to filing a renewal prospectus in respect of the Filer's long form prospectus dated June 16, 2022 (the **Current Prospectus**) be further extended as if the lapse date was October 16, 2023 (the **Requested Relief**).

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* is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan and Manitoba (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of securities legislation in any of the Jurisdictions.
2. Common shares of the Filer are qualified for distribution in each of the Jurisdictions on a continuous monthly basis under the Current Prospectus. The Filer distributes its securities on a continuous basis pursuant to a long-form prospectus in the form of Form 41-101F1 which is renewed annually.
3. The Filer filed an amendment, dated June 6, 2023 to the Current Prospectus (**Amendment No. 5**). The Filer is engaged with OSC Staff in the comment process in connection with Amendment No. 5 and discussions remain ongoing as at the date hereof. A receipt has not yet been issued for Amendment No. 5.

B.3: Reasons and Decisions

4. The lapse date of the Current Prospectus was June 16, 2023.
5. Pursuant to the continuous distribution of the Filer's securities, the Filer filed a pro forma prospectus in the form of Form 41-101F1 on May 17, 2023 (the **Pro Forma Prospectus**). The Filer is engaged with OSC Staff in the comment process in connection with the Pro Forma Prospectus and discussions remain ongoing as at the date hereof.
6. The Filer obtained exemptive relief pursuant to a decision granted by the OSC *In the Matter of Frontenac Mortgage Investment Corporation* dated June 26, 2023 that the time limits pertaining to filing a renewal prospectus in respect of the Current Prospectus be extended as if the lapse date was August 15, 2023.
7. Absent the Requested Relief, pursuant to the Legislation, the Filer must file a prospectus on or before August 25, 2023, being 10 days after the extended lapse date, for which a receipt is issued by the Jurisdiction on or before September 4, 2023, being 20 days after the extended lapse date, in order for the distribution of the Filer's common shares in the Jurisdictions to continue without interruption.
8. The Filer and OSC Staff continue to be engaged in the comment process in connection with Amendment No. 5 and the Pro Forma Prospectus and believe that such discussions will not be concluded within such time as to permit the Filer to file its prospectus by August 25, 2023.
9. The Filer has ceased distribution of its common shares on a continuous monthly basis under the Current Prospectus and will not distribute its common shares under the Current Prospectus until the comment process in respect of Amendment No. 5 and the Pro Forma Prospectus have been completed and a receipt has been issued, respectively.
10. The Filer is seeking the Requested Relief to allow it an opportunity to obtain a receipt for Amendment No. 5 and to file a final prospectus and obtain a receipt therefor such that it can continue to offer its common shares on a continuous monthly basis, uninterrupted, in the Jurisdictions pursuant to a final prospectus in the form of Form 41-101F1.
11. There have been no undisclosed material changes in the affairs of the Filer since the date of the receipt issued September 30, 2022 for the last amendment to the Current Prospectus.
12. In the event that any material changes occur, the Filer will file an amendment to the Current Prospectus as required under the Legislation.
13. Given that the Filer has ceased distributing any securities under the Current Prospectus, the Requested Relief will not be prejudicial to the public interest.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0382

B.3.3 NADG NNN Real Estate Investment Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – application for relief from requirement to obtain separate minority approval for each class of units – no difference of interest between holders of each class of units in connection with the proposed related party transaction – safeguards include independent committee, fairness opinions, and appraisal – declaration of trust provides that unitholders will vote as a single class unless the nature of the business affects holders of one class of units in a manner materially different from another class – requiring a class-by-class vote could give a de facto veto right to a very small group of unitholders.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 8.1(1) and 9.1(2).

August 28, 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
NADG NNN REAL ESTATE INVESTMENT TRUST
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer, pursuant to Section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**), from the requirement in Subsection 8.1(1) of MI 61-101 to obtain minority approval from the holders of every class of affected securities of the Filer, each voting separately as a class, in connection with a related party transaction to which the Filer is a party, and requiring instead that minority approval be obtained from all Disinterested Unitholders (as defined below) voting together as a single class.

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

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

Interpretation

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

Representations

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

1. The Filer is an unincorporated open-ended trust established in accordance with the laws of the Province of Ontario pursuant to a declaration of trust dated June 8, 2017, as amended and restated on July 26, 2017 (the **DoT**).
2. The Filer's head office is located at 2851 John Street, Suite One, Markham, Ontario, L3R 5RT.

3. The Filer completed its initial public offering (**IPO**) on August 17, 2017.
4. The Filer is a reporting issuer in each province of Canada. The Filer is not in default of any requirement of the securities legislation of such provinces.
5. The Filer's investment objectives are to: (a) indirectly acquire, own and lease a portfolio of interests in diversified income producing commercial real estate properties in the U.S. with a focus on outparcel properties leased to national or regional operators pursuant primarily to triple-net leases; (b) enhance the potential for long-term growth capital; (c) generate cash flow from operations to achieve targeted annualized pre-tax distributed yield; and (d) initiate and complete a liquidity event defined as (i) the listing of Units (as defined below) on a stock exchange or the exchange of Units for securities listed on a stock exchange, (ii) the sale of the Filer's portfolio of Properties (as defined below), securities of the Filer's subsidiaries or investee entities directly or indirectly holding Properties or the Units for cash or securities listed on a stock exchange or a combination of cash and securities listed on a stock exchange, (iii) a transaction which provides the Unitholders (as defined below) with comparable liquidity that such holders would have if the Units were listed on a stock exchange, whether by means of a reverse take-over, merger, amalgamation, arrangement, take-over bid, insider bid, reorganization, joint venture or similar transaction or other combination with a public issuer, (iv) a transaction involving a combination of the Filer's portfolio of Properties with one or more other portfolio of properties (whether owned, controlled or managed by a related party or otherwise), (v) a direct or indirect initial public offering or listing of securities of an existing or newly created entity that owns or will own all or substantially all of the Properties (whether as a result of a reorganization, combination, merger or other similar transaction), or (vi) an event similar to those described in (i) to (v) above and designated a liquidity event by the independent trustees of the board of trustees (the **Board**) of the Filer.
6. The Filer is externally managed and operated pursuant to a management agreement entered into with North American Asset Management Corp. (the **Canadian Manager**) and NADG (US), LLLP (which subsequently assigned the agreement to its affiliate, North American Realty Services, LLLP) (the **US Manager**, and together with the Canadian Manager, the **Managers**).
7. The Filer's activities are conducted indirectly through its subsidiaries and investee entities, which own 54 investment properties (the **Properties**) on a 50/50 basis with an investment vehicle domiciled in the U.S. for which the US Manager is the asset manager.
8. The beneficial interests in the Filer are divided into three classes of units (collectively, the **Units**): Class A units (**Class A Units**), Class I units (**Class I Units**) and Class U units (**Class U Units**).
9. As at June 30, 2023, there were 3,804,150 Units issued and outstanding, comprised of 2,165,950 Class A Units, 684,300 Class I Units and 953,900 Class U Units.
10. As at June 30, 2023, the Class A Units represented approximately 56.9% of the issued and outstanding Units, the Class I Units represented approximately 18.0% of the issued and outstanding Units and the Class U Units represented approximately 25.1% of the issued and outstanding Units.
11. No class of Units are listed on a stock exchange and the Filer is a venture issuer under applicable securities law, including for purposes of MI 61-101.
12. At the time of the IPO, the Units were divided into three classes for the following reasons:
 - (a) the Class A Units were designed for investors wishing to make their investment and receive distributions in Canadian dollars;
 - (b) the Class U Units were designed for investors wishing to make their investment and receive distributions in U.S. dollars; and
 - (c) the Class I Units were designed for institutional investors wishing to make their investment and receive distributions in Canadian dollars, and differed from the Class A Units because the IPO agents' fee payable on the issuance of Class I Units was lower than those payable on the issuance of Class A Units.
13. The holders of the Class A Units, Class I Units and Class U Units (the **Unitholders**) have the same rights and obligations and no Unitholder is entitled to any privilege, priority or preference in relation to any other such holder, subject to the following:
 - (a) The Class A Units and Class I Units are denominated in Canadian dollars. The Class U Units are denominated in U.S. dollars.
 - (b) The proportionate entitlement of the holders of Class A Units, Class I Units and Class U Units (together, the **Proportionate Class Interest**) to participate in distributions made by the Filer including distributions of Net

Realized Capital Gains (as defined in the DoT) or income, if any, and to receive proceeds on a redemption of Units and/or upon termination of the Filer, wherein the Proportionate Class Interest is essentially equal to (i) (A) the aggregate gross proceeds received by the Filer for the issuance of such class of Units less the agents' fee payable in respect of such class of Units, less (B) the aggregate amount paid on redemption of such class of Units, divided by (ii) the net proceeds of the IPO (being the gross proceeds less the agents' fee) for all classes of Units less the aggregate amount paid on redemption of all classes of Units.

- (c) The Class I Units are convertible by holders thereof into Class A Units at a ratio determined in accordance with the DoT based on the Proportionate Class Interest of each class.
14. Section 10.5 of the DoT provides that the Unitholders vote as a single class in respect of any matter to be voted upon unless the nature of the business to be transacted at the meeting affects holders of one class of Units in a manner materially different from its effect on holders of another class of Units, in which case the Units of the affected class will vote separately as a class.
15. Section 10.5 of the DoT also provides that in the event the Filer enters into a transaction that is subject to review under MI 61-101, and as a result requires approval from each class of Units, in each case voting separately as a class, the Filer will apply to applicable securities regulatory authorities for discretionary relief from such obligation given that (i) Section 10.5 of the DoT provides that Unitholders will vote as a single class unless the nature of the business to be transacted at the meeting of Unitholders affects holders of one class of Units in a manner materially different from its effect on holders of another class of Units, (ii) the relative returns of any proposed transaction to each class of Units are fixed pursuant to the formula set out herein, and (iii) providing a class vote could grant disproportionate voting power to a potentially small number of Unitholders.
16. The Filer, a subsidiary holding entity of the Filer, NADG NNN Operating LP (**Operating LP**), a limited partnership formed under the laws of the State of Delaware, and a subsidiary of the 50/50 co-owner of the Properties, and a subsidiary holding entity of Operating LP (the **Purchaser**) have entered into an interest purchase agreement, pursuant to which the Purchaser will indirectly acquire the Filer's 50% interest in the Properties (the **Proposed Transaction**).
17. The Proposed Transaction will not alter the entitlements or otherwise provide for the payment of cash or assets to Unitholders in a manner that differs from their pre-established Proportionate Class Interest entitlements in the DoT. Therefore, the interests of the holders of each class of Units are aligned in respect of the Proposed Transaction.
18. The purchase price to be paid by the Purchaser to the Filer under the Proposed Transaction was negotiated by the parties and is the result of arm's length negotiations over the course of several months between the Purchaser and the independent committee (the **Independent Committee**), which is comprised solely of trustees of the Board who are independent of the Filer and the Managers for purposes of MI 61-101. In accepting the proposed purchase price, the Independent Committee considered, in part, (i) the certainty of value and liquidity which the Transaction provides to Unitholders, (ii) the Transaction's attractive proposition to Unitholders relative to the available alternatives, including the risks and ongoing costs associated with pursuing an alternative liquidity event for Unitholders, (iii) the Proposed Transaction values the Filer's 50% interest in the Properties greater than the appraised value of the Filer's approximate 50% non-controlling fractional interest in the Properties and that the Appraisal (as defined below) was based on an April 1, 2023 valuation date and market conditions have deteriorated since then, (iv) the Proposed Transaction value compares favourably to the fair value of the Properties as set out in the Filer's financial statements for the three-month period ended March 31, 2023, (v) the arm's length negotiation process and oversight, and (vi) the Fairness Opinion. Subject to satisfaction of the conditions to closing, the Purchaser intends to satisfy the purchase price with cash.
19. The Purchaser is a "related party" of the Filer for purposes of MI 61-101.
20. The Proposed Transaction is a "related party transaction" pursuant to clause (a) of the definition of "related party transaction" in MI 61-101 and is subject to the applicable requirements of MI 61-101 relating to, among other things, the approval by a majority of the votes cast by disinterested Unitholders entitled to vote on the Proposed Transaction (the **Minority Vote**) at a special meeting (the **Meeting**) of Unitholders to seek the approval in accordance with MI 61-101 of the Proposed Transaction.
21. The Minority Vote requires the exclusion of the votes attached to Units beneficially owned, or over which control or direction is exercised, by any party specified in Subsection 8.1(2) of MI 61-101, being the U.S. Manager, any other interested party and any related party or joint actor thereof. The balance of the Unitholders (the **Disinterested Unitholders**) are entitled to have their votes included in the Minority Vote.
22. As at June 30, 2023, the U.S. Manager held:
- (a) 0 Class A Units (or approximately 0% of the Class A Units and 0% of the Units);
- (b) 0 Class I Units (or approximately 0% of the Class I Units and 0% of the Units); and

- (c) 100,000 Class U Units (or approximately 10.5% of the Class U Units and 2.6% of the Units).
23. As at June 30, 2023, the Disinterested Unitholders held:
- (a) 2,165,950 Class A Units (or approximately 100% of the Class A Units and 58.5% of the Units);
 - (b) 684,300 Class I Units (or approximately 100% of the Class I Units and 18.5% of the Units); and
 - (c) 853,900 Class U Units (or approximately 89.5% of the Class U Units and 23.1% of the Units).
24. The Proposed Transaction is subject to the following procedural mechanisms to ensure the collective interests of Unitholders are protected:
- (a) Negotiation of the Proposed Transaction has been overseen by the Independent Committee.
 - (b) The Independent Committee retained Blair Franklin Capital Partners Inc. (**Blair Franklin**) as financial advisor in respect of the Proposed Transaction and Blair Franklin has provided the Independent Committee and the Board with a fairness opinion (the **Fairness Opinion**) concluding that, the consideration to be received by Disinterested Unitholders pursuant to the Proposed Transaction is fair, from a financial point of view, to such Unitholders. The Fairness Opinion will be included in the Information Circular (as defined below). The Fairness Opinion and the associated disclosure will comply with the provisions of CSA Multilateral Staff Notice 61-302 *Staff Review and Commentary on Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions*.
 - (c) The Independent Committee has retained Miller Thomson LLP to act as counsel for the Independent Committee.
 - (d) The Board has exercised the requisite standard of care in accordance with the terms of the DoT with respect to the Proposed Transaction. Stephen S.B. Preston (as Managing Partner, North American Development Group) and Robert S. Green (as President and Partner, North American Development Group) have recused themselves from any Board deliberations and the passing of any resolutions.
 - (e) The Filer will hold a special meeting of Unitholders to allow Unitholders to consider and, if deemed advisable, approve the Proposed Transaction by a majority of votes cast by the Disinterested Unitholders, voting together as a single class of the Filer.
 - (f) The Filer will prepare and deliver to its Unitholders an information circular (the **Information Circular**) prepared in accordance with the applicable securities law requirements and including the enhanced disclosure requirements mandated by MI 61-101, in order to provide sufficient information to allow the Unitholders to make an informed decision at the Meeting in respect of the Proposed Transaction.
 - (g) The Independent Committee retained Joseph J. Blake and Associates, Inc. to prepare, and provide to the Independent Committee and the Board, an appraisal of the portfolio of Properties in contemplation of a potential transaction with the Purchaser (the **Appraisal**). A description of the Appraisal will be included in the Information Circular and a copy of the Appraisal will be appended to the Information Circular.
25. The Filer and the Managers are of the view that the mechanisms set out above are the optimal mechanisms to ensure that the public interest is well protected and that the Disinterested Unitholders are treated fairly and in accordance with their voting and economic entitlements under the DoT.
26. The Filer, the Managers and the Independent Committee have each determined that the Proposed Transaction will not affect holders of one class of Units in a manner materially different than holders of another class of Units, as holders of all Units will receive the formulaic and pre-established treatment as specified by their respective Proportionate Class Interest (subject to payment in the currency of the particular class of Units) determined at the time of the IPO when investors selected their preferred class (if applicable) and purchased or acquired their Units.
27. Separate class votes by the Unitholders would have the effect of granting disproportionate importance to Disinterested Unitholders of Class I Units (18.5% of issued and outstanding Units) and Class U Units (23.1% of issued and outstanding Units). Despite their relatively small holdings (and, in the case of Class I Units, they can be converted into Class A Units), Disinterested Unitholders in each of these groups would be afforded a *de facto* veto right in respect of the Proposed Transaction that could be exercised against all other Unitholders. Because quorum for a meeting of a class of Unitholders is only 10% for each class, it is possible that a holder of less than 2% of the Units could “veto” the Proposed Transaction. Such an outcome would not be in accordance with the reasonable expectations of the Unitholders.
28. To the best of the knowledge of the Filer and the Managers, there is no reason to believe that the holders of Units of any particular class would not approve the Proposed Transaction where the holders of Units of other classes are in favour.

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 the following mechanisms are implemented and remain in place:

1. a special meeting of Unitholders is held in order for the Disinterested Unitholders to consider and, if deemed advisable, approve the Proposed Transaction, such approval to be obtained with the Disinterested Unitholders voting together as a single class of the Filer;
2. the Information Circular is prepared and delivered by the Filer to its Unitholders in accordance with applicable securities law requirements; and
3. the Fairness Opinion concluding that the consideration to be received by Disinterested Unitholders is fair, from a financial point of view, to such Unitholders is included in its entirety in the Information Circular.

“David Mendicino”
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

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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
Highvista Gold Inc.	August 2, 2019	August 24, 2023
Acerus Pharmaceuticals Corporation	April 6, 2023	August 25, 2023
Fire & Flower Holdings Corp.	August 28, 2023	

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

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

B.4.3 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
Minnova Corp.	August 02, 2023	

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B.7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:

Ninepoint High Interest Savings Fund
Principal Regulator – Ontario

Type and Date:

Amendment #2 to Final Simplified Prospectus dated August 22, 2023

NP 11-202 Final Receipt dated Aug 24, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03511801

Issuer Name:

Discovery 2023 Short Duration LP
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Aug 23, 2023

NP 11-202 Preliminary Receipt dated Aug 23, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06013115

Issuer Name:

Income Financial Trust
Principal Regulator – Ontario

Type and Date:

Preliminary Shelf Prospectus (NI 44-102) dated Aug 22, 2023

NP 11-202 Preliminary Receipt dated Aug 22, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06012565

Issuer Name:

NBI Canadian Preferred Equity Private Portfolio
Principal Regulator – Quebec

Type and Date:

Amendment #2 to Final Simplified Prospectus dated August 8, 2023

NP 11-202 Final Receipt dated Aug 23, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03502415

Issuer Name:

BetaPro Canadian Gold Miners -2x Daily Bear ETF
BetaPro Canadian Gold Miners 2x Daily Bull ETF
BetaPro Crude Oil Inverse Leveraged Daily Bear ETF
BetaPro Crude Oil Leveraged Daily Bull ETF
BetaPro Equal Weight Canadian Bank -2x Daily Bear ETF
BetaPro Equal Weight Canadian Bank 2x Daily Bull ETF
BetaPro Equal Weight Canadian REIT -2x Daily Bear ETF
BetaPro Equal Weight Canadian REIT 2x Daily Bull ETF
BetaPro Gold Bullion -2x Daily Bear ETF
BetaPro Gold Bullion 2x Daily Bull ETF
BetaPro Inverse Bitcoin ETF
BetaPro Marijuana Companies 2x Daily Bull ETF
BetaPro Marijuana Companies Inverse ETF
BetaPro NASDAQ-100® -2x Daily Bear ETF
BetaPro NASDAQ-100® 2x Daily Bull ETF
BetaPro Natural Gas Inverse Leveraged Daily Bear ETF
BetaPro Natural Gas Leveraged Daily Bull ETF
BetaPro S&P 500 VIX Short-Term Futures ETF
BetaPro S&P 500® -2x Daily Bear ETF
BetaPro S&P 500® 2x Daily Bull ETF
BetaPro S&P 500® Daily Inverse ETF
BetaPro S&P/TSX 60 -2x Daily Bear ETF
BetaPro S&P/TSX 60 2x Daily Bull ETF
BetaPro S&P/TSX 60 Daily Inverse ETF
BetaPro S&P/TSX Capped Energy -2x Daily Bear ETF
BetaPro S&P/TSX Capped Energy 2x Daily Bull ETF
BetaPro S&P/TSX Capped Financials -2x Daily Bear ETF
BetaPro S&P/TSX Capped Financials 2x Daily Bull ETF
BetaPro Silver -2x Daily Bear ETF
BetaPro Silver 2x Daily Bull ETF
Horizons Crude Oil ETF
Horizons Gold ETF
Horizons Natural Gas ETF
Horizons Silver ETF
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Aug 25, 2023

NP 11-202 Final Receipt dated Aug 28, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03562048

Issuer Name:

Income Financial Trust

Principal Regulator – Ontario

Type and Date:

Final Shelf Prospectus (NI 44-102) dated Aug 25, 2023

NP 11-202 Final Receipt dated Aug 28, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06012565

Issuer Name:

Horizons All-Equity Asset Allocation ETF

Horizons Balanced Asset Allocation ETF

Horizons Conservative Asset Allocation ETF

Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Aug 25, 2023

NP 11-202 Final Receipt dated Aug 28, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03562163

Issuer Name:

Hamilton Technology Yield Maximizer ETF

Hamilton U.S. Bond Yield Maximizer ETF

Hamilton U.S. Equity Yield Maximizer ETF

Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Aug 28, 2023

NP 11-202 Preliminary Receipt dated Aug 28, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06017362

Issuer Name:

Waypoint All Weather Alternative Fund

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Aug 22, 2023

NP 11-202 Final Receipt dated Aug 23, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03562234

Issuer Name:

Langdon Canadian Smaller Companies Portfolio

Langdon Global Smaller Companies Portfolio

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Aug 24, 2023

NP 11-202 Final Receipt dated Aug 25, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03562092

NON-INVESTMENT FUNDS

Issuer Name

Brookfield Infrastructure Partners L.P.

Principal Regulator – Ontario

Type and Date

Final Shelf Prospectus dated August 24, 2023

NP 11-202 Final Receipt dated August 25, 2023

Offering Price and Description

Limited Partnership Units, Class A Preferred Limited Partnership Units

Filing # 06014860

Issuer Name

Brookfield Renewable Partners L.P.

Principal Regulator – Ontario

Type and Date

Final Shelf Prospectus dated August 23, 2023

NP 11-202 Final Receipt dated August 24, 2023

Offering Price and Description

US\$2,000,000,000.00 - Limited Partnership Units, Preferred Limited Partnership Units

Filing # 06013662

Issuer Name

Brookfield Renewable Partners ULC

Principal Regulator – Ontario

Type and Date

Final Shelf Prospectus dated August 23, 2023

NP 11-202 Final Receipt dated August 24, 2023

Offering Price and Description

US\$2,000,000,000.00 - Debt Securities

Filing # 06013675

Issuer Name

Brookfield Renewable Power Preferred Equity Inc.

Principal Regulator – Ontario

Type and Date

Final Shelf Prospectus dated August 23, 2023

NP 11-202 Final Receipt dated August 24, 2023

Offering Price and Description

US\$2,000,000,000.00 - Class A Preference Shares

Filing # 06013715

Issuer Name

Constellation Software Inc.

Principal Regulator – Ontario

Type and Date

Final Short Form Prospectus dated August 23, 2023

NP 11-202 Final Receipt dated August 24, 2023

Offering Price and Description

\$700,000,000.00 - Offering of Rights to Subscribe for Unsecured Subordinated Floating Rate Debentures, Series 1 Due March 31, 2040

Filing # 06005155

Issuer Name

Ero Copper Corp.

Principal Regulator – British Columbia

Type and Date

Short Form Prospectus dated August 18, 2023

NP 11-202 Final Receipt dated August 21, 2023

Offering Price and Description

Common Shares, Debt Securities, Warrants Units, Subscription Receipts, Share Purchase Contracts

Filing # 06011972

Issuer Name

Kobrea Exploration Corp.

Principal Regulator – British Columbia

Type and Date

Preliminary Long Form Prospectus dated

August 23, 2023

NP 11-202 Preliminary Receipt dated August 24, 2023

Offering Price and Description

2,589,496 Common Shares and 2,589,496 Warrants on Exercise of 2,589,496 Outstanding Special Warrants

Filing # 06013926

Issuer Name

NOA Lithium Brines Inc.

Principal Regulator – Alberta

Type and Date

Preliminary Shelf Prospectus dated August 18, 2023

NP 11-202 Preliminary Receipt dated August 21, 2023

Offering Price and Description

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

Filing # 06012049

Issuer Name

Outcrop Silver & Gold Corporation

Principal Regulator – British Columbia

Type and Date

Final Shelf Prospectus dated August 18, 2023

NP 11-202 Final Receipt dated August 21, 2023

Offering Price and Description

\$50,000,000.00 - Common Shares, Warrants

Subscription Receipts, Units, Share Purchase Contracts

Filing # 03562085

Issuer Name

TAG Oil Ltd

Principal Regulator – British Columbia

Type and Date

Final Short Form Prospectus dated August 21, 2023

August 21, 2023

NP 11-202 Final Receipt dated August 21, 2023

Offering Price and Description

\$11,000,048.00 - 18,965,600 Common Shares

Filing # 06005513

Issuer Name

Tiny Ltd.

Principal Regulator – British Columbia

Type and Date

Preliminary Shelf Prospectus dated August 24, 2023

NP 11-202 Preliminary Receipt dated August 24, 2023

Offering Price and Description

\$150,000,000.00 - Common Shares, Debt Securities

Warrants, Units, Subscription Receipts

Filing # 06014627

Issuer Name

UGE International Ltd.

Principal Regulator – Ontario

Type and Date

Final Short Form Prospectus dated August 21, 2023

NP 11-202 Final Receipt dated August 21, 2023

Offering Price and Description

US\$4,999,912.50 - 9% Secured Debentures Maturing September 30, 2027

Price: US\$977.50 per US\$1,000 face value Debenture

Filing # 06002502

Issuer Name

Urban Plus Capital Corp.

Principal Regulator – British Columbia

Type and Date

Amended and Restated CPC Prospectus dated August 21, 2023

NP 11-202 Amendment to Preliminary Receipt dated August 22, 2023

Offering Price and Description

Minimum Offering: \$250,000 or 2,500,000 Common Shares

Maximum Offering: \$450,000 or 4,500,000 Common Shares

Price: \$0.10 per Common Share

Filing # 03539451

B.10 Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Graticule Asia Macro Advisors LLC	Exempt Market Dealer	August 22, 2023
Voluntary Surrender	Matnor Holdings Inc.	Exempt Market Dealer	August 28, 2023
Suspend (Regulatory Action)	Ensign Capital Inc.	Exempt Market Dealer	August 28, 2023

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B.11

CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.1 CIRO

B.11.1.1 Canadian Investment Regulatory Organization (CIRO) – Proposed Clarifying Amendments to Registration and Proficiency Requirements – Request for Comment

REQUEST FOR COMMENT

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

PROPOSED CLARIFYING AMENDMENTS TO REGISTRATION AND PROFICIENCY REQUIREMENTS

CIRO is publishing for comment proposed amendments to refine and clarify the registration and proficiency requirements in the Investment Dealer and Partially Consolidated Rules (**Proposed Amendments**). More specifically, through the Proposed Amendments, CIRO has:

- refined the proficiency requirements in Rule 2600,
- clarified redundant and ambiguous language in Rules 2500, 2600, 2700, and 3900, and
- made consequential changes to cross-references and terminology arising from the foregoing changes.

CIRO is publishing the Proposed Amendments for comment to clarify differing views on the interpretation of the requirements impacted by the Proposed Amendments.

A copy of the CIRO Notice including the text of the Proposed Amendments is also published on our website at www.osc.ca. The comment period ends on October 2, 2023.

B.11.2 Marketplaces

B.11.2.1 ICE NGX Canada Inc. – Application for Amendment of Order Exempting It from Recognition as a Commodity Futures Exchange and as an Exchange – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY ICE NGX CANADA INC. FOR AMENDMENT OF ORDER EXEMPTING IT FROM RECOGNITION AS A COMMODITY FUTURES EXCHANGE AND AS AN EXCHANGE

A. Introduction

This notice requests comment on:

- (i) the application (**Application**) filed by ICE NGX Canada Inc. (**ICE NGX**) under section 78 of the Commodity Futures Act (Ontario) (**CFA**) and section 147 of the *Securities Act* (Ontario) (**OSA**) to amend the order dated July 27, 2012 exempting it from the requirements to be registered as a commodity futures exchange under section 15 of the CFA and as an exchange under section 21 of the OSA (**2012 Exemption Order**) to allow it to offer trading and settlement of products based on environmental quality, including emissions or emission credits (**Environmental Products**); and
- (ii) the draft variation order (**Draft Order**).

The Application and Draft Order are attached to this notice and can also be found on our website www.osc.ca.

B. Application and Draft Order

The 2012 Exemption order contains a list of contracts that ICE NGX is permitted to allow participants located in Ontario access to trade on its trading system. Environmental Products are not included in this list.

ICE NGX would like to offer trading in Environmental Products utilizing its existing marketplace infrastructure. The Environmental Products may be based on carbon regimes available in any jurisdictions. It is expected that the initial offering of Environmental Products will be Alberta Offsets and EPCs available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta. The Environmental Products will be available to all Participants.

In Ontario, “a product based on environmental quality, including emissions or emission credits” is designated as a “commodity” pursuant to OSC Rule 14-502 *Commodity Futures Act* (Ontario) *Designation of Additional Commodities*, and fall within the purview of the CFA.

The Application also describes how Environmental Products will be traded and delivered.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order for 30 days. We are seeking comment on all aspects of the Application and Draft Order.

Please provide your comments in writing, via e-mail, on or before **October 2, 2023** to the attention of:

Ontario Securities Commission
20 Queen Street West,
22nd Floor
Toronto, Ontario
M5H 3S8
[Email: comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Timothy Baikie
Senior Legal Counsel, Market Regulation
Email: tbaikie@osc.gov.on.ca

Tim Reibetanz
Senior Legal Counsel, Derivatives
Email: treibetanz@osc.gov.on.ca

August 17, 2023

Terence Doherty
Direct Dial: 212.991.2545
tdoherty@osler.com
Our Matter Number: 1239500

VIA OSC PORTAL

Timothy Baikie
Senior Legal Counsel Market Regulation
Ontario Securities Commission 20 Queen Street West
P.O. Box 55
Toronto, ON M5H 3S8

Dear Tim,

Application pursuant to section 78 of the *Commodity Futures Act* (Ontario) (the “CFA”) and section 144 of the *Securities Act* (Ontario) (the “OSA”) for an amendment to the order dated July 27, 2012 (“2012 Order”) exempting ICE NGX Canada Inc. (the “Applicant” or “NGX”) from the requirement to be registered as a commodity futures exchange under section 15 of the CFA, exempting trades by NGX participants (“Participants”) in Ontario (“Ontario Participants”) in contracts on the NGX (“Contracts”) from the registration requirement under section 22 of the CFA, exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA, and exempting NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA (the “Exemption Sought”).

Capitalized terms not defined in this Application have the meanings given to them in the draft decision document attached as Appendix “B” (the “**Draft Decision Document**”).

PURPOSE

We are counsel to the Applicant. As previously disclosed by email to the Ontario Securities Commission (the “**OSC**”) on March 21, 2023 and further discussed over calls with staff at the OSC, the Applicant proposes to introduce a new category of contracts on the trading systems of NGX (“**Trading System**”) that allows trading and settlement of products based on environmental quality, including emissions or emission credits (“**Environmental Products**”). The Environmental Products will be available to all Participants (including Ontario Participants). It is expected that the initial offering of Environmental Products will be for Emissions Offsets (“**Offsets**”) and Emission Performance Credits (“**EPCs**”) under the Alberta TIER program and available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta.

The Environmental Products are not an enumerated category of contracts permitted to be traded on the Applicant’s Trading System under the 2012 Order.

In Ontario, “a product based on environmental quality, including emissions or emission credits” is designated as a “commodity” pursuant to OSC Rule 14-502 *Commodity Futures Act* (Ontario) *Designation of Additional Commodities*, and fall within the purview of the CFA. Environmental Products are therefore subject to the approval requirement under section 33 of the CFA prior to trading on the Applicant’s Trading System. In addition, Section 9 *Products* of Schedule “E” *Terms and Conditions* of the 2012 Order does not list Environmental Products as an exempt category of Contracts traded on the Trading System.

DETAILS OF THE ENVIRONMENTAL PRODUCT

The Applicant would like to offer trading in Environmental Products utilizing its existing marketplace infrastructure (the Trading System). The Environmental Products may be based on carbon regimes available in any jurisdictions. It is expected that the initial offering of Environmental Products will be Alberta Offsets and EPCs available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta. The Environmental Products (each a “Contract”) will be available to all Participants.

The proposed mechanism for trading Alberta Environmental Products is as follows:

Net Delivery

- a) At expiry of trading, the Applicant will net buys and sells for each counterparty under each traded contract;
- b) Each counterparty will have a report that sets out net delivery obligations per contract;
- c) Contract sellers may deliver carbon credits generated under any protocol that meets the product specifications, with the same or longer usable life as the vintage they contracted for;

- d) Contract buyers will receive carbon credits generated under any protocol that meets the product specifications, with the same or longer usable life as the vintage they contracted for;
- e) Contract buyers may not request or demand carbon credits generated under specific protocols or vintages.

Physical Delivery

- a) The Applicant will have an account at the registry for making and taking delivery of carbon credits;
- b) Each contract seller with a net delivery position will transfer carbon credits to the Applicant's registry account to effect physical delivery;
- c) The Applicant will confirm the transferred carbon credits meet the product specifications (i.e., are of the type and vintage contracted for and, if applicable, were generated under protocols determined by the Applicant to be acceptable for delivery);
- d) The Applicant will transfer carbon credits to the registry account of each Contract buyer that has a net receiving position to effect physical delivery.

Post-delivery

- a) Offsets and EPCs may be retired for compliance in June of each year, for value at the applicable Tier value in the previous year;
- b) Carbon offsets and EPCs are retired via the registry;
- c) Whether or not to retire an Offset or EPC is a determination of the carbon credit owner, outside the scope of the Applicant's Trading System;
- d) Once retired, a carbon credit is "off the market" and no longer available for transfer or compliance;
- e) The Alberta government has the right to audit a project that generates Offsets or EPCs - (audits are typically conducted on credits that have been retired) and to revoke credits;
- f) A company whose retired credits have been revoked is required to pay the applicable TIER price;
- g) The Applicant will not collect or charge margin post delivery for revocation risk;
- h) The Applicant's rules will provide that the seller warrants each Offset and EPC it delivers under a contract traded and cleared via the Applicant against revocation for a period of three years beginning on the first day of the month in which it delivered the Offset or EPC;
- i) The buyer of a revoked Offset or EPC will have recourse to the seller via the Applicant; the Applicant is not liable for the revocation value;
- j) Failure on the part of a seller to pay the revocation value will be a default under the Applicant's rules and the Applicant will have authority to liquidate the seller's entire portfolio, across all asset classes.

SUBMISSION

The Exemption Sought pursuant to this application would not be prejudicial to the public interest and should be granted based upon the following considerations:

1. The Applicant is a private company and is a wholly-owned subsidiary of Intercontinental Exchange Holdings.
2. The Applicant operates the Trading System, and a clearing and settlement system ("**Clearing System**"), based in Calgary, Alberta, for the trading, and/or clearing and settlement, respectively, of Contracts in natural gas, electricity, heat rate, crude oil products and products based on environmental quality, including emissions and emission credits.
3. The Trading System provides an electronic platform for trading of energy and environmental quality related commodities by sophisticated parties in a principal-to-principal market, and as such, the timing of settlement aligns with either standard over-the-counter market settlement conventions or with futures-style settlement conventions.
4. The Applicant is recognized by the Alberta Securities Commission ("**ASC**") under the *Securities Act* (Alberta) as an exchange and as a clearing agency for natural gas, electricity, crude oil and related commodity contracts by orders that became effective on December 6, 2018 (the "**ASC Decisions**"), and is subject to regulatory oversight by the ASC.

5. The Applicant is subject to the 2012 Order in Ontario.
6. The Applicant has been advised that the OSC and the ASC are each party to the *Memorandum of Understanding Respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems*, as amended from time to time, respecting oversight of exchanges and quotation and trade reporting systems, which applies to the oversight of the Applicant, and under which the ASC is identified as the Lead Regulator that is responsible for the oversight of the Applicant.
7. The ASC discharges its regulatory oversight over the Applicant as an exchange and clearing agency through ongoing reporting requirements and by conducting periodic oversight assessments of the Applicant's operations to confirm that the Applicant is in compliance with the operating and clearing principles set out in the ASC Decisions.
8. The Applicant confirms that it is in compliance with all terms and conditions of the ASC Decisions and the 2012 Order.
9. The Applicant is registered as a Derivatives Clearing Organization and a Foreign Board of Trade by the Commodity Futures Trading Commission ("CFTC") under the *Commodity Exchange Act* (United States) ("CEA") and is subject to oversight by the CFTC pursuant to the CEA.
10. Access to the Trading System and the Clearing System is restricted to Participants, each of which:
 - a. has entered into a Contracting Party's Agreement; and
 - b. is a corporation, partnership, organization, trust or other business entity which has, or is controlled directly or indirectly by a corporation, partnership, organization, trust or other business entity which has, a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000 (the "NGX Sophistication Thresholds"); and
 - c. uses the Trading System and Clearing System only as principal.
11. The Applicant applies its qualification criteria by subjecting each Participant applicant to a due diligence process, which includes: review of constituent documentation and financial statements, conducting searches of relevant financial services information databases and conducting other know-your-client procedures.
12. The Applicant is required under its regulations to provide to the ASC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.
13. Contracts traded on the Trading System are cleared and settled either through the Applicant's central counterparty clearing house, or, for all Contracts other than the Environmental Products, settled by the Participants themselves, independent of the Applicant.
14. Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA.
15. The Applicant has been, and seeks to continue, providing Participants with access to trading in Contracts, and now seeks to provide market participants with access to contracts based on environmental quality, including emissions or emission credits.
16. Participants may be: (i) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity and, to the extent applicable, (ii) investment banking arms of banks and (iii) hedge funds and other proprietary trading firms.

VERIFICATION AND DRAFT DECISION DOCUMENT

In support of the Exemption Sought pursuant to this Application, we attach or forward the following:

- (a) an authorization and verification statement from the Applicant authorizing us to file this application and confirming the truth of the facts contained herein is attached at Appendix A;
- (b) the Draft Decision Document attached at Appendix B; and
- (c) payment of the required application fee.

If you have any questions or require any further information regarding this application, please do not hesitate to contact Terence Doherty (212.991.2545 or tdoherty@osler.com).

Yours very truly,

“Terence Doherty”
Osler, Hoskin & Harcourt LLP

Cc:

Greg Abbott, ICE NGX Canada Inc.
Martin McGregor, INC NGX Canada Inc.
Sheri Wang, Osler, Hoskin & Harcourt LLP

APPENDIX A

VERIFICATION AND AUTHORIZATION STATEMENT

To: Ontario Securities Commission

The undersigned, ICE NGX Canada Inc., hereby authorizes the making and filing of the attached application by Osler, Hoskin & Harcourt LLP on its behalf and confirms the truth and accuracy of the facts contained therein.

DATED this

14 day of August, 2023.

ICE NGX CANADA INC.

By: "Greg Abbott"

Name: Greg Abbott

Title: President & COO

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(CFA)

AND

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

AND

IN THE MATTER OF
ICE NGX CANADA INC.
(NGX)

VARIATION TO EXEMPTION ORDER
(Section 78 of the CFA and Section 144 of the OSA)

WHEREAS the Commission granted an order dated July 27, 2012 (**2012 Order**):

- (a) pursuant to section 80 of the CFA, exempting NGX from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;
- (b) pursuant to section 38 of the CFA, exempting trades by NGX participants (**Participants**) in Ontario (**Ontario Participants**) in contracts on NGX (**Contracts**) from the registration requirement under section 22 of the CFA;
- (c) pursuant to section 38 of the CFA, exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA; and
- (d) pursuant to section 147 of the OSA, exempting NGX from the requirement to be recognized as an exchange under section 21 of the OSA;

AND WHEREAS NGX filed an application (the **Environmental Products Application**) requesting the 2012 Order be varied to authorize NGX to offer Contracts for products based on environmental quality, including emissions or emission credits (**Environmental Products**);

AND WHEREAS NGX has represented to the Commission as follows.

- 1. The Environmental Products will be traded and cleared through the Trading System and Clearing System, respectively, each as defined in the 2012 Order.
- 2. Access to the Trading System and the Clearing System is restricted to Participants, each of which:
 - (a) has entered into a Contracting Party's Agreement; and
 - (b) has, or is controlled directly or indirectly, by an entity which has a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000 (**NGX Sophistication Thresholds**); and
 - (c) uses the Trading System and Clearing System only as principal.
- 3. The Environmental Products are Contracts that fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA.
- 4. NGX seeks to provide Ontario Participants with access to trading in Environmental Products in Ontario.

AND WHEREAS based on the 2012 Order and the representations made to the Commission, the Commission is satisfied that it is not prejudicial to the public interest to vary the 2012 Order;

IT IS ORDERED by the Commission that:

- (a) the 2012 Order is varied by inserting "and products based on environmental quality, including emissions and emission credits" immediately following "... and crude oil products" in representation number 2; and

- (b) the 2012 Order is varied by inserting “and environmental quality” immediately preceding “related commodities” in representation number 3;
- (c) section 9 *Products* of Schedule “E” Terms and Conditions to the 2012 Order is amended by replacing “and renewable energy certificates” with “renewable energy certificates, and products based on environmental quality, including emissions or emission credits”.

provided that NGX continues to comply with the applicable terms and conditions set out in Schedule “E” to the 2012 Order.

DATED this • day of •, 2023.

“”

Director, Market Regulation Branch
Ontario Securities Commission

B.11.2.2 Neo Exchange Inc. – Proposed Public Interest Rule Amendment to the NEO Trading Policies – Request for Comments

NEO EXCHANGE INC.

PROPOSED PUBLIC INTEREST RULE AMENDMENT TO THE NEO TRADING POLICIES

REQUEST FOR COMMENTS

Introduction

Neo Exchange Inc. (“**NEO**” or the “**Exchange**”) is publishing a proposed public interest rule amendment to the NEO Trading Policies (the “**Trading Policies**”) in accordance with Schedule 5 to its recognition order, as amended (the “**Public Interest Rule Amendment**”). The Public Interest Rule Amendment was filed with the Ontario Securities Commission (the “**OSC**”) and is being published for comment. A description of the Public Interest Rule Amendment is set out below and the text of the Public Interest Rule Amendment is set out in Appendix A. Subject to any changes resulting from the comments received, the Public Interest Rule Amendment will be effective upon publication of the notice of approval on the OSC’s website.

Description of the Public Interest Rule Amendment

We are proposing to offer a new order type, the On-Stop order (also referred to as a “Stop Loss” order), by amending section 6.02(2) (Order Modifiers – Functional Attributes), under Part VI (Trading in NEO-L) of the Trading Policies, to add the following:

On-Stop A Limit Order or Market Order which resides inactive off the book until it is “triggered” at which time it can interact with other orders. An On-Stop order is triggered when the LSP trades down to (if it is a sell order) or up to (if it is a buy order) or through the stop price specified on the On-Stop order. Once triggered, the On-Stop order will trade in NEO-L up to its limit and any unfilled volume will be posted at its limit price (or if it is a Market Order converted to a Limit Order at the LSP).

Note that the trigger for On-Stop orders is based on the Last Sale Price (LSP) which has the meaning set out in UMIR. I.e. the national last sale price and not only the last sale price on NEO-L.

Conditions:

- On-Stop buy orders must have a trigger price equal to or less than the limit price.
- On-Stop sell orders must have a trigger price equal to or greater than the limit price.
- On-Stop orders may only be entered with a fixed trigger price.
- On-Stop orders can only be triggered during the continuous trading session between 09:30 – 16:00.
- On-Stop orders can be marked with either Protect and Reprice or Protect and Cancel and will be evaluated for OPR compliance at the time they trigger.
- On-Stop orders submitted during the pre-open session will be accepted and will remain inactive off the book and may be triggered immediately after the Opening Call. Following continuous trading session, any untriggered on-stop order in the system will not be triggered by the Closing Call.
- On-stop order can be triggered upon entry, or remain inactive off the book until triggered by LSP at which time it becomes an active order
- A triggered On-Stop Market or On-Stop Limit order is converted to its regular order type equivalent (i.e. On-Stop Market becomes a Market order and On-Stop Limit becomes a Limit order upon trigger).
- On-Stop orders submitted to NEO-N and NEO-D will be rejected.

Expected Date of Implementation

We are seeking to implement the Public Interest Rule Amendment in Q4 of 2023.

Rationale and Relevant Supporting Analysis

We have received many requests from NEO Members on behalf of their retail clients for this order type to be made available.

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

No impact is anticipated as the On-Stop order is not a novel concept and is currently available on other marketplaces.

Information on the On-Stop order offered by the CSE can be found in the CSE Order Types and Functionality document available [here](#), and information on that order type offered by the TSX can be found in the TMX Order Types and Functionality Guide available [here](#).

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

The Public Interest Rule Amendment will not impact NEO's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets. The proposed order type is common for equity marketplaces in Canada, and other Canadian marketplaces already offer such order type. The On-Stop order will be available for all marketplace participants.

Consultation and Review

We consulted with various NEO Members in connection with the introduction of On-Stop orders, and they were all supportive of the change as this order type has often been requested by their retail clients.

Expected Impact on the Systems of Members or Service Vendors

Because the On-Stop order exists on other marketplaces and the offset price will use an existing standard FIX tag, the technology changes required by NEO Members and service vendors are minor. No changes are required for those that do not want to take advantage of the new order type.

Alternatives Considered

No alternatives were considered.

New Feature or Rule

The On-Stop order is not a novel concept and is currently available on other marketplaces.

Comments

Comments should be provided, in writing, no later than October 2, 2023, to:

Joacim Wiklander
Chief Operating Officer
Neo Exchange Inc. (operating as Cboe Canada)
65 Queen Street West
Suite 1900
Toronto, ON M5H 2M5
jwiklander@cboe.com

with a copy to:

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

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

APPENDIX A

TEXT OF THE PUBLIC INTEREST RULE AMENDMENT

Trading Policies Section	Amendment
Part VI. Trading in NEO-L <i>6.02 Additional Order Modifiers Available in NEO-L</i> <i>(2) Order Modifiers – Functional Attributes</i>	Added the following: <i>On-Stop</i> A Limit Order or Market Order which resides inactive off the book until it is “triggered” at which time it can interact with other orders. An On-Stop order is triggered when the LSP trades down to (if it is a sell order) or up to (if it is a buy order) or through the stop price specified on the On-Stop order. Once triggered, the On-Stop order will trade in NEO-L up to its limit and any unfilled volume will be posted at its limit price (or if it is a Market Order converted to a Limit Order at the LSP).

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