

The Ontario Securities Commission

OSC Bulletin

November 23, 2023

Volume 46, Issue 47

(2023), 46 OSCB

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

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

The Ontario Securities Commission

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

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

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

Published under the authority of the Commission by:

Thomson Reuters
19 Duncan Street
Toronto, Ontario
M5H 3H1
416-609-3800 or 1-800-387-5164



The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

Thomson Reuters Canada offers every issue of the Bulletin, from 1994 onwards, fully searchable on *SecuritiesSource*[™], Canada's pre-eminent web-based securities resource. *SecuritiesSource*[™] also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*[™], as well as ordering information, please go to:

<https://www.westlawnextcanada.com/westlaw-products/securitiessource/>

or call Thomson Reuters Canada Customer Support at 1-416-609-3800 (Toronto & International) or 1-800-387-5164 (Toll Free Canada & U.S.).

Claims from *bona fide* subscribers for missing issues will be honoured by Thomson Reuters Canada up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

The publisher is not engaged in rendering legal, accounting or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Printed in the United States by Thomson Reuters.

© Copyright 2023 Ontario Securities Commission
ISSN 0226-9325
Except Chapter B.7 ©CDS INC.



THOMSON REUTERS
19 Duncan Street
Toronto, ON
M5H 3H1
Canada

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Email CustomerSupport.LegalTaxCanada@TR.com

Table of Contents

A.	Capital Markets Tribunal.....	9391
A.1	Notices of Hearing.....	(nil)
A.2	Other Notices.....	9391
A.2.1	Jiubin Feng and CIM International Group Inc.....	9391
A.2.2	Cormark Securities Inc. et al.	9391
A.2.3	Xiao Hua (Edward) Gong	9392
A.2.4	Thomas John Finch.....	9392
A.2.5	Mughal Asset Management Corporation et al....	9393
A.3	Orders.....	9395
A.3.1	Jiubin Feng and CIM International Group Inc. – ss. 127(1), 127.1.....	9395
A.3.2	Cormark Securities Inc. et al.	9396
A.3.3	Xiao Hua (Edward) Gong	9397
A.3.4	Thomas John Finch.....	9397
A.4	Reasons and Decisions	9399
A.4.1	Jiubin Feng and CIM International Group Inc. – ss. 127(1), 127.1.....	9399
B.	Ontario Securities Commission	9411
B.1	Notices	(nil)
B.2	Orders.....	9411
B.2.1	BevCanna Enterprises Inc.....	9411
B.2.2	Osisko Green Acquisition Limited.....	9412
B.2.3	Terra Firma Capital Corporation.....	9415
B.3	Reasons and Decisions	9417
B.3.1	McEwen Mining Inc.	9417
B.3.2	TD Asset Management Inc. and The Funds ...	9419
B.3.3	Brandes Investment Partners & Co. and Nuveen Global Green Bond Fund	9425
B.4	Cease Trading Orders.....	9429
B.4.1	Temporary, Permanent & Rescinding Issuer Cease Trading Orders	9429
B.4.2	Temporary, Permanent & Rescinding Management Cease Trading Orders	9429
B.4.3	Outstanding Management & Insider Cease Trading Orders.....	9429
B.5	Rules and Policies.....	(nil)
B.6	Request for Comments	(nil)
B.7	Insider Reporting.....	9431
B.8	Legislation	(nil)
B.9	IPOs, New Issues and Secondary Financings	9529
B.10	Registrations	9537
B.10.1	Registrants	9537
B.11	CIRO, Marketplaces, Clearing Agencies and Trade Repositories.....	9539
B.11.1	CIRO	(nil)
B.11.2	Marketplaces.....	9539
B.11.2.1	EquiLend, LLC – Application for an Exemption from the Marketplace Rules – Notice and Request for Comment	9539
B.11.3	Clearing Agencies	(nil)
B.11.4	Trade Repositories.....	(nil)
B.12	Other Information	(nil)
Index		9573

A. Capital Markets Tribunal

A.2 Other Notices

A.2.1 Jiubin Feng and CIM International Group Inc.

FOR IMMEDIATE RELEASE
November 15, 2023

**JIUBIN FENG AND
CIM INTERNATIONAL GROUP INC.,
File No. 2021-27**

TORONTO – The Tribunal issued its Reasons and Decision and an Order in the above-named matter.

A copy of the Reasons and Decision and the Order dated November 14, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.2 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
November 15, 2023

**CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24**

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

A copy of the Order dated November 15, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.3 Xiao Hua (Edward) Gong

**FOR IMMEDIATE RELEASE
November 16, 2023**

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

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

A copy of the Order dated November 16, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.4 Thomas John Finch

**FOR IMMEDIATE RELEASE
November 16, 2023**

**THOMAS JOHN FINCH,
File No. 2023-29**

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

A copy of the Order dated November 16, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.5 Mughal Asset Management Corporation et al.

**FOR IMMEDIATE RELEASE
November 21, 2023**

**MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION AND
USMAN ASIF,
File No. 2022-15**

TORONTO – Take notice that an attendance in the above-named matter is scheduled to be heard on November 28, 2023 at 9:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

This page intentionally left blank

A.3 Orders

A.3.1 Jiubin Feng and CIM International Group Inc. – ss. 127(1), 127.1

IN THE MATTER OF JIUBIN FENG AND CIM INTERNATIONAL GROUP INC.

File No. 2021-27

Adjudicators: Cathy Singer (chair of the panel)
Sandra Blake
Russell Juriansz

November 14, 2023

ORDER

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

WHEREAS on August 17, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on the respondents as a result of the findings in the Reasons and Decision on the merits, issued on March 15, 2023;

ON READING the materials filed by the parties, and on hearing the submissions of the representative for Staff of the Ontario Securities Commission and Jiubin Feng and CIM International Group Inc.;

IT IS ORDERED THAT:

1. with respect to Feng:

- a. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, Feng is permanently prohibited from trading in any securities or derivatives, or from acquiring any securities, except that after he has fully paid the amounts in subparagraphs 1(f), 1(g) and 1(h) below, he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act* of which only he is the sole legal and beneficial owner, through a registered dealer in Canada to whom he has given both a copy of this order and a certificate from the Commission confirming that he has paid the required amounts;

- b. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario Securities law shall not apply to Feng permanently;
- c. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*, Feng shall resign any positions that he holds as a director or officer of an issuer or registrant;
- d. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*, Feng is permanently prohibited from acting as a director or officer of an issuer or registrant;
- e. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, Feng is permanently prohibited from becoming or acting as a registrant or promoter;
- f. pursuant to paragraph 9 of s. 127(1) of the *Act*, Feng shall pay an administrative penalty of \$500,000;
- g. pursuant to paragraph 10 of s. 127(1) of the *Act*, Feng shall, jointly and severally with CIM, disgorge to the Commission the amount of \$7,630,000; and
- h. pursuant to s. 127.1 of the *Act*, Feng shall, jointly and severally with CIM, pay to the Commission \$206,769.34 for the costs of the investigation and proceeding; and

2. with respect to CIM International Group Inc.:

- a. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, CIM International Group Inc. is permanently prohibited from trading in any securities or derivatives, or from acquiring any securities;
- b. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario Securities law shall not apply to CIM International Group Inc. permanently;
- c. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, CIM International Group Inc. is permanently prohibited from becoming or acting as a registrant or promoter;
- d. pursuant to paragraph 9 of s. 127(1) of the *Act*, CIM International Group Inc. shall pay an administrative penalty of \$500,000;
- e. pursuant to paragraph 10 of s. 127(1) of the *Act*, CIM International Group Inc.

shall, jointly and severally with Feng, disgorge to the Commission the amount of \$7,630,000; and

- f. pursuant to s. 127.1 of the *Act*, CIM International Group Inc. shall, jointly and severally with Feng, pay to the Commission \$206,769.34 for the costs of the investigation and proceeding.

“Cathy Singer”

“Sandra Blake”

“Russell Juriansz”

A.3.2 Cormark Securities Inc. et al.

**IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.**

File No. 2022-24

Adjudicator: M. Cecilia Williams

November 15, 2023

ORDER

WHEREAS on November 15, 2023, the Capital Markets Tribunal held a hearing by videoconference to schedule a motion by Staff of the Ontario Securities Commission objecting to the admissibility of an expert opinion the respondents intend to introduce at the merits hearing in this matter;

AND WHEREAS Staff also seeks an extension of the time by which it must file any responding expert reports, as set out in the June 28, 2023 Order of the Tribunal, and to have its motion heard prior to the merits hearing;

ON HEARING the submissions of the representatives for Staff and for each of the respondents;

IT IS ORDERED THAT:

1. a hearing to decide:
 - a. whether to extend the time by which Staff must file any responding expert reports, as set out in the June 28, 2023 Order of the Tribunal; and
 - b. whether Staff’s motion about the admissibility of the respondents’ expert opinion ought to be heard prior to the merits hearing;

shall take place on December 19, 2023, at 10:00 a.m. by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and
2. the parties shall adhere to the following schedule for the delivery of materials:
 - a. Staff shall serve and file any submissions by no later than 4:30 p.m. on November 24, 2023;
 - b. the respondents shall serve and file any responding submissions by no later than 12:00 p.m. on December 11, 2023; and
 - c. Staff shall serve and file any reply submissions by no later than 4:30 p.m. on December 15, 2023.

“M. Cecilia Williams”

A.3.3 Xiao Hua (Edward) Gong

**IN THE MATTER OF
XIAO HUA (EDWARD) GONG**

File No. 2022-14

Adjudicator: Russell Juriansz (chair of the panel)

November 16, 2023

ORDER

WHEREAS on November 15, 2023, the Capital Markets Tribunal held a hearing by videoconference regarding the scheduling of Xiao Hua (Edward) Gong's motion for a stay of the proceeding;

ON HEARING the submissions of the representatives of each of Gong and Staff of the Ontario Securities Commission and on being advised that Stern Landesman Clark LLP intends to bring a motion to remove itself as the representative of record for Gong;

IT IS ORDERED THAT:

1. the hearing of the Stern Landesman Clark LLP's motion to be removed as the representative of record for Gong is scheduled for November 30, 2023 at 10:00 a.m., via videoconference, or on such other date or time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and
2. the parties shall adhere to the following timeline for the delivery of materials for Stern Landesman Clark LLP's motion:
 - a. by 4:30 p.m. on November 24, 2023, Stern Landesman Clark LLP shall serve and file its motion materials;
 - b. by 12:00 p.m. on November 28, 2023, Gong shall serve and file his responding motion materials, if any; and
 - c. by 12:00 p.m. on November 29, 2023, Staff shall serve and file its responding motion materials, if any.

"Russell Juriansz"

A.3.4 Thomas John Finch

**IN THE MATTER OF
THOMAS JOHN FINCH**

File No. 2023-29

Adjudicators: Timothy Moseley (chair of the panel)
Jane Waechter

November 16, 2023

ORDER

WHEREAS on November 16, 2023, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission (**Staff**) and for Thomas John Finch;

IT IS ORDERED THAT:

1. by 4:30 p.m. on February 23, 2024, the respondent shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents;
2. by 4:30 p.m. on February 27, 2024, Staff shall:
 - a. serve and file a witness list,
 - b. serve a summary of each witness's anticipated evidence on the respondent, and
 - c. indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and
3. a further attendance in this matter is scheduled for March 6, 2024, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Timothy Moseley"

"Jane Waechter"

This page intentionally left blank

A.4

Reasons and Decisions

A.4.1 Jiubin Feng and CIM International Group Inc. – ss. 127(1), 127.1

Citation: *Feng (Re)*, 2023 ONCMT 43

Date: 2023-11-14

File No. 2021-27

IN THE MATTER OF JIUBIN FENG AND CIM INTERNATIONAL GROUP INC.

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

Adjudicators: Cathy Singer (chair of the panel)
Sandra Blake
Russell Juriansz

Hearing: By videoconference, August 17, 2023

Appearances: Adam Gotfried For Staff of the Ontario Securities Commission
Rohit Kumar For Jiubin Feng and CIM International Group Inc.
Tina Kaye

REASONS AND DECISION

1. OVERVIEW

- [1] In a decision on the merits dated March 15, 2023 (the **Merits Decision**),¹ the Capital Markets Tribunal found that the respondents, Jiubin Feng and his company CIM International Group Inc. (**CIM**), perpetrated a securities fraud on investors, contrary to s. 126.1(1)(b) of the *Securities Act* (the **Act**).²
- [2] Staff of the Ontario Securities Commission asks that we impose two types of sanctions against the respondents under s. 127(1) of the *Act*:
- a. permanent restrictions on the respondents' participation in the capital markets; and
 - b. financial sanctions, including an order requiring the respondents to disgorge funds they obtained improperly and to pay an administrative penalty.
- [3] We will address each of these categories in turn, as well as Staff's request that the respondents pay a portion of the Commission's costs of the investigation and this proceeding.
- [4] For the reasons set out below, we conclude it would be in the public interest to order that:
- a. Feng and CIM shall pay administrative penalties of \$500,000 each;
 - b. Feng and CIM shall jointly and severally disgorge \$7,630,000;
 - c. Feng and CIM shall be subject to permanent restrictions on their ability to participate in the capital markets, subject to a carve-out allowing Feng to trade in his personal registered accounts; and
 - d. Feng and CIM shall jointly and severally pay costs of the investigation and proceeding in the amount of \$206,769.34.

¹ *Feng (Re)*, 2023 ONCMT 12

² RSO 1990, c S.5

2. BACKGROUND

- [5] The Merits Decision made the following findings of fact that are relevant to our decision on sanctions and costs:
- a. Feng is a real estate developer who was CIM's principal directing mind;
 - b. between February 6 and August 2, 2018, the respondents raised \$10 million through CIM debentures from 36 investors to develop the "Bayview Creek" real estate project which Feng controlled;
 - c. the offering documents, marketing materials and in-person representations made by Feng and CIM to investors stipulated that CIM would use the funds exclusively to finance the Bayview Creek project;
 - d. between February 7 and August 8, 2018, CIM loaned the net proceeds from the debenture offering to Bayview Creek in several tranches at an annual interest rate of 20%, payable semi-annually (**Net Proceeds Loan**);
 - e. between February 7 and November 14, 2018, approximately \$3.39 million of the Net Proceeds Loan were diverted from the Bayview Creek bank account and used for non-Bayview Creek expenses, including for unsecured loans made from Bayview Creek back to CIM, and for investments in, or unsecured loans to, other real estate projects controlled by Feng;
 - f. in 2019, Feng had a second mortgage registered on the Bayview Creek property to secure a loan made by Feng on behalf of Bayview Creek from a third-party lender, contrary to the series of pledges and covenants made by Bayview Creek to CIM on the Net Proceeds Loan;
 - g. CIM had also been borrowing funds from Bayview Creek and by June 30, 2019, CIM's debt to Bayview Creek was nearly as large as Bayview Creek's debt to CIM for the Net Proceeds Loan;
 - h. Feng caused CIM to offset the debt between CIM and Bayview Creek, thereby reducing Bayview Creek's interest obligations to CIM and causing CIM to be unable to pay interest to CIM investors; and
 - i. CIM defaulted on its interest payments to investors on December 16, 2019.
- [6] The Merits Decision found that the respondents raised funds from investors to be used exclusively to finance the Bayview Creek project, but then misapplied investor funds for purposes other than the development of the Bayview Creek project, which was contrary to the representations Feng and CIM made to CIM investors.
- [7] The Merits Decision concluded that the respondents engaged in a course of conduct relating to the securities that they knew perpetrated a fraud on investors, which ultimately caused investors to suffer significant losses.

3. ANALYSIS

3.1 Introduction

- [8] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal's exercise of its jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.
- [9] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets, and they must be appropriate and proportionate to the respondent's conduct in the circumstances of the case.³
- [10] In determining sanctions, the Tribunal has previously identified a non-exhaustive list of factors to consider. The applicability and importance of each factor will vary according to the circumstances of each case.⁴ The particular factors that influenced our decisions are set out in the following paragraphs.

3.2 Sanctioning factors

3.2.1 Seriousness of the misconduct

- [11] The Tribunal has held that fraud is the most egregious violation of securities law and that sanctions must reflect that.⁵

³ *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 42

⁴ *York Rio Resources Inc (Re)*, 2014 ONSEC 9 (*York Rio*) at para 34

⁵ *Solar Income Fund (Re)*, 2023 ONCMT 3 (*Solar Income Fund*) at para 20

- [12] The respondents obtained \$10 million from investors over a six-month period through their repeated false representations to investors that the funds would be used exclusively to finance the Bayview Creek project.
- [13] Staff submits that, in addition to fraudulently misrepresenting to investors how investor funds would be used, and then misusing the funds, the respondents later offset the debt between CIM and Bayview Creek and registered a second mortgage on the Bayview Creek property, contrary to promises made on the Net Proceeds Loan.
- [14] The respondents submit that in considering the seriousness of their misconduct, we should distinguish this case from those where it was found that the parties had engaged in illegitimate business practices, or in activity that was part of a larger fraudulent scheme or from which they were personally enriched as a result of the fraud. The respondents say there is no evidence that their misconduct was part of a larger fraudulent scheme or involved illegal distributions of securities, or that Feng was personally enriched as a result of the fraud.
- [15] The respondents submit that fraud falls along a spectrum – with those who commit fraud intending that their victims will lose their money on one end to those who are well-intentioned but misguided or reckless on the other. The respondents submit that the Merits Decision did not find an overt fraudulent scheme or an intent on behalf of the respondents to deprive investors of their money. Rather, the misconduct in this case falls towards the other end of the spectrum, being more demonstrative of a misguided course of conduct.
- [16] The Tribunal has stated that, without diminishing the seriousness of fraud, it must be viewed in perspective recognizing that some who commit fraud are well-intentioned but misguided or reckless.⁶
- [17] We agree that fraudulent misconduct warrants significant sanctions. We also agree that the conduct in question should be put into context, and we acknowledge that the fraud in this case is not among the most egregious of frauds that have come before this Tribunal. However, we disagree with the respondents in characterizing their actions as closer to being misguided or reckless. The actions of Feng and CIM were deliberate from the start.
- [18] In the Merits Decision, it was found that Feng understood what he was representing to investors, and that he understood and participated in using a substantial amount of the proceeds for other purposes. Feng also caused CIM's debt to Bayview Creek to be offset by the debt owed by Bayview Creek to CIM under the Net Proceeds Loan, thereby resulting in CIM being unable to pay interest on the CIM debentures. Feng further had a second mortgage registered on the Bayview Creek property to secure a loan made by Feng on behalf of Bayview Creek from a third-party lender, contrary to the series of pledges and covenants made by Bayview Creek to CIM on the Net Proceeds Loan.
- [19] In doing so, Feng and CIM placed investors' investments at a risk they did not bargain for, with all but one of the investors ultimately losing all of their investments and all of the investors losing interest they were entitled to under the debentures.

3.2.2 Level of activity in the marketplace and whether violations were isolated or recurrent

- [20] The next two factors are the respondents' level of activity in the marketplace and whether the misconduct was an isolated instance or a recurring series of events.
- [21] The respondents' level of activity in the marketplace is gauged by a number of factors, including the dollar amount raised, the number of investors affected, the number of individual breaches, and the duration of the misconduct.⁷
- [22] The Merits Decision found that \$10 million was raised from 36 investors over a period of 9 months. We find this level of activity to be fairly significant.
- [23] Staff submits that Feng and CIM's fraudulent activities, including the representations made to investors and the diversions of investors' funds, were recurrent. The evidence indicates that Feng's actual diversion of the investors' funds occurred over dozens of transfers of funds by Bayview Creek back to CIM or to other real estate projects controlled by Feng, often immediately after they were deposited into the Bayview Creek bank account.
- [24] The respondents submit that the violations in this case were isolated, in that the debenture offering took place over a period of less than six months and the diverted funds were transferred over a period of nine months, both time periods being not as extensive as seen in other comparable fraud cases before the Tribunal.
- [25] The respondents cite *Solar Income Fund* as comparable, where there were 22 transactions in 10 months. We distinguish the duration and number of individual transactions in that case from the facts before us in that almost all of those transactions involved the same kind of repetitive transaction (*i.e.*, a monthly distribution to unitholders) as opposed to independent transactions like the active financing initiatives carried out by the respondents.

⁶ *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSC 10 (**Money Gate**) at para 16

⁷ *Solar Income Fund* at para 15

- [26] In our view, the duration of the misconduct in this case is not as lengthy as the Tribunal has seen in other instances. However, there was still a significant amount of activity during the period, resulting in a substantial amount of money (\$10 million) being raised from a large number of investors (36).

3.2.3 Mitigating factors

- [27] Staff submits there are no mitigating factors present in this case, other than a reduction that could apply to disgorgement to account for a \$2.37 million settlement between Feng, CIM and one investor (the **Settlement**).
- [28] Staff submits that Feng has otherwise refused to take accountability for his actions or recognize and acknowledge the seriousness of his and CIM's fraudulent activities.
- [29] The respondents submit that Staff's characterization of Feng and CIM is unfair in that the respondents had the right to, and chose to, exercise their rights to make full answer and defence at the merits hearing.
- [30] The respondents also submit that there are several mitigating factors that ought to guide the Tribunal in determining the appropriate sanctions, including:
- a. Feng did not personally profit;
 - b. there is no evidence that this was a fraudulent scheme intended on defrauding investors;
 - c. this was not a case alleging illegal distributions in addition to fraud;
 - d. the Tribunal found that only a portion of investor funds were diverted;
 - e. Feng was inexperienced in the capital markets having never operated as CEO of a public company;
 - f. the Settlement;
 - g. Feng has commenced a civil lawsuit in an attempt to recover investor funds in relation to the Mackenzie Creek Project (another real estate project controlled by Feng);
 - h. neither Feng nor CIM have any regulatory or disciplinary history with the Tribunal;
 - i. Steven Sun, the President of the Canada-China Realty Professional Association, provided a strong character reference for Feng as to the nature of Feng's good character and contributions to the community;
 - j. the diverted funds were loaned to other legitimate real estate projects;
 - k. Bayview Creek continued to pay for Bayview Creek expenses after August 2018; and
 - l. English is not Feng's first language.
- [31] We have considered all of these factors and note throughout our analysis those we find relevant in determining appropriate sanctions.
- [32] We note, as the Tribunal has previously held,⁸ that the respondents' choice to defend themselves at the merits hearing and any lack of remorse on their part, are not aggravating factors in determining sanctions.

3.2.4 Specific and general deterrence

- [33] The final factor is the likely effect that any sanction would have on the respondents ("specific deterrence") as well as on others ("general deterrence").
- [34] Staff submits that the sanctions it has requested will be effective in meeting these twin goals while the respondents submit that undue emphasis on general deterrence may result in a penalty that is disproportionate and punitive.
- [35] The Tribunal has found that misconduct that is of the most egregious kind (such as fraud), must carry with it significant sanctions to achieve the necessary deterrent effect.⁹ We agree. Both specific and general deterrence are important considerations in our determination of what sanctions would be in the public interest.

⁸ *Kitmitto (Re)*, 2023 ONCMT 4 (*Kitmitto*) at para 15

⁹ *Money Gate* at para 33

3.3 Restrictions on participation in capital markets

3.3.1 Introduction

[36] Staff asks that we impose an order permanently restricting the respondents from participating in the capital markets. Specifically, Staff asks for an order that:

- a. trading in any securities or derivatives by Feng and CIM cease permanently;
- b. the acquisition of any securities by Feng and CIM cease permanently;
- c. any exemptions contained in Ontario securities law do not apply to Feng and CIM permanently;
- d. Feng resign any positions he holds as a director or officer of an issuer or registrant;
- e. Feng be permanently prohibited from acting as a director or officer of an issuer or registrant; and
- f. Feng and CIM be permanently prohibited from becoming or acting as registrants or promoters.

[37] The respondents submit that the market participation bans sought by Staff in relation to Feng are disproportionate in light of the Tribunal's jurisprudence and when assessed against the particular circumstances of this case.

[38] We find that it is in the public interest to permanently prohibit the respondents from participating in Ontario's capital markets, subject to limited exceptions for certain personal trading once all monetary sanctions and costs are paid, as discussed below.

3.3.2 Appropriate market participation bans

[39] The market participation bans sought by Staff are frequent in cases of fraud.¹⁰

[40] Staff submits that no exceptions to any of the requested sanctions for personal trading are appropriate in this case as the respondents' conduct was deceitful and harmful to investors.

[41] The respondents submit that Feng's continued participation in the capital markets as it relates to trading will not be detrimental to the integrity of the capital markets as the misconduct did not relate to any personal trading by Feng. The respondents similarly submit that a permanent ban on acting as an officer or director is disproportionate to the circumstances of this case.

[42] Should the Tribunal find that permanent market participation bans are warranted, the respondents submit that a carve-out is appropriate. We note that in making this submission, the respondents did not provide any specifics about the nature of the trading carve-out sought, nor the reasons for seeking the carve-out. However, the respondents pointed us to two Tribunal decisions, *Money Gate* and *Solar Income Fund*, where respondents were found to have committed fraud but were granted carve-outs to trade in and acquire securities in their personal registered accounts.¹¹

[43] Staff opposes the inclusion of a carve-out, but asks that if we impose one, it should only take effect once all monetary sanctions and costs are paid by the respondents.

[44] We find permanent market participation bans to be appropriate in the circumstances. The fraudulent misconduct, its serious nature, and the need to send a message of deterrence, all support permanent market restrictions. These restrictions are necessary to protect investors and restore confidence in the capital markets.

[45] With respect to a trading carve-out, we note that previous Tribunal decisions have articulated that participation in Ontario's capital markets is a privilege, not a right.¹² By engaging in fraudulent misconduct, the respondents have proven to us that they cannot be trusted to participate in the capital markets unchecked. However, a permanent ban, with no trading carve-out should be reserved for the most egregious misconduct.¹³

[46] We do not find it necessary nor in the public interest to withhold a carve-out allowing Feng to trade in his personal registered accounts. However, without the benefit of submissions on a director and officer carve-out, we cannot entertain this additional request.

¹⁰ *Money Gate; Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 31; *Quadrex Asset Management Inc (Re)*, 2018 ONSEC 3 (**Quadrex**); *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19 (**Bradon Technologies**)

¹¹ *Money Gate* at paras 36-38; *Solar Income Fund* at paras 148-156

¹² *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 (ONSC) at para 55

¹³ *Solar Income Fund* at para 144

[47] We find it is in the public interest to include a carve-out in our order that largely mirrors the language used in the *Solar Income Fund* decision. The carve-out will enable Feng to trade in and acquire securities in registered accounts of which he is the owner.

[48] We did not receive any submissions from the respondents concerning Staff's request that financial sanctions and costs be paid before the carve-out is to take effect. While past panels have commented that such a term may be viewed as punitive,¹⁴ since the term was not contested by the respondents our order will stipulate that the carve-out is to be subject to the satisfaction of the respondents' financial obligations to the Commission.

3.4 Financial sanctions

3.4.1 Introduction

[49] Staff seeks two financial sanctions against the respondents:

- a. disgorgement of \$7,630,000; and
- b. an administrative penalty of \$750,000 for each of Feng and CIM.

[50] The respondents submit that the financial sanctions sought by Staff are excessive and not supported by the Tribunal's jurisprudence.

[51] The respondents also submit that Feng does not have the financial resources to satisfy the total amount of monetary sanctions and costs sought in this case. We discuss Feng's ability to pay in our analysis below.

[52] We conclude that it would be in the public interest to order the disgorgement amount sought by Staff, but lower administrative penalties of \$500,000 for each of Feng and CIM.

3.4.2 Disgorgement

[53] Staff seeks a disgorgement order of \$7,630,000, to be paid by the respondents on a joint and several basis, representing the amount obtained by the respondents minus the Settlement. For the reasons below, we find it is in the public interest to order disgorgement of this amount.

[54] When considering whether a disgorgement order is appropriate, and if so in what amount, the following non-exhaustive list of factors applies:

- a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;
- b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;
- c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;
- d. whether those who suffered losses are likely to be able to obtain redress; and
- e. the deterrent effect of a disgorgement order on the respondents and on other market participants.¹⁵

[55] In coming to our conclusions, we considered all the relevant factors for disgorgement and the circumstances in this case.¹⁶

3.4.2.a.i Did the respondents obtain an amount as a result of non-compliance with Ontario securities law?

[56] The objective of a disgorgement order is to deprive wrongdoers of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits.¹⁷

[57] The test in paragraph 10 of s. 127(1) is whether the respondents "obtained amounts" as a result of their non-compliance. There is no requirement to show that the respondents directly or indirectly profited from the amounts obtained or that any of those amounts flowed directly to them.¹⁸

¹⁴ *Kitmitto* at para 23, citing *VRK Forex & Investments Inc (Re)*, 2022 ONCMT 28 at para 39

¹⁵ *Pro-Financial Asset Management Inc (Re)*, 2018 ONSC 18 at para 56

¹⁶ *York Rio* at para 34

¹⁷ *Limelight Entertainment Inc (Re)*, 2008 ONSC 28 at para 47

¹⁸ *Limelight* at para 49

- [58] Staff submits that the respondents obtained \$10 million from investors, based on dishonest and fraudulent representations that investor funds would be used exclusively to finance the Bayview Creek project. For this reason, Staff submits that the appropriate disgorgement order is \$7.63 million, which includes a reduction resulting from the Settlement.
- [59] The respondents argue that Staff pursued an allegation that \$3.39 million of the \$10 million proceeds raised from investors was used in a manner contrary to what investors were told, and that Staff cannot now seek a disgorgement order based on \$10 million. The respondents further submit that the Settlement amount should be deducted from the \$3.39 million.

3.4.2.a.ii Seriousness of the misconduct and whether the misconduct caused serious harm

- [60] We discuss the seriousness of the misconduct in section 3.2.1. As we noted, while the fraud in this case is not amongst the most serious that has come before the Tribunal, it is nevertheless serious as investors were exposed to risks they did not bargain for and experienced significant losses.

3.4.2.a.iii Are those who suffered losses likely to be able to obtain redress?

- [61] The respondents argue that there is the potential for investors to recover additional funds depending on the outcome of a civil proceeding commenced by Feng against a former partner in the Mackenzie Creek project for actions taken that allegedly caused the value of the units of the Mackenzie Creek project, some of which were held by CIM as security for the CIM debentures, to be written down to a nominal value of \$1.
- [62] No evidence was produced with respect to the potential for investors to recover additional funds if Feng is successful in his civil proceeding. Accordingly, we do not provide a deduction relating to that proceeding.

3.4.2.a.iv Deterrent effect on the respondents and others

- [63] A disgorgement order is appropriate where it will ensure that the respondents do not benefit in any way from their breaches of the Act, and it deters others from similar misconduct, thereby protecting investors and restoring confidence in the capital markets.¹⁹
- [64] As noted above, the respondents argue that any undue emphasis on deterrence may result in a penalty that is disproportionate and punitive. We appreciate this concern. We must ensure that all of the sanctions we impose are proportionate to the misconduct at issue.

3.4.2.a.v Conclusion

- [65] As noted above, the parties disagree on what the appropriate disgorgement amount should be in this case. Staff proposes a disgorgement order of the total amount raised by the respondents, while the respondents propose the amount found in the Merits Decision to be used in a manner contrary to what investors were told. Both parties propose the Settlement amount be deducted from any disgorgement ordered, and we agree. Therefore, we must decide whether the appropriate order is at the high end of \$7,630,000 or low end of just over \$1 million.
- [66] Even though a central purpose of disgorgement orders is to deprive wrongdoers of ill-gotten gains, a respondent wrongdoer who benefits only indirectly rather than directly cannot raise the indirect nature of the benefit as a shield to a disgorgement order.²⁰ Feng was a director and officer of CIM and a directing mind of CIM, and he also controlled Bayview Creek and the other projects in which CIM had an interest. Feng, indirectly through CIM, obtained the investor funds in connection with the debenture offering.
- [67] It has also been found that disgorgement orders should be based on gross amounts obtained, rather than net amounts,²¹ recognizing however that disgorgement of the full amount is not mandatory, and the Tribunal has the discretion to order a lower amount.²²
- [68] The respondents rely upon the decision in *Money Gate* where the Tribunal decided to exercise its discretion to reduce the disgorgement order by the amounts found to be loaned in conformance with the promises made to investors, based on the specific circumstances of that case.²³
- [69] Every case is different. In this case, we decide not to exercise our discretion to lower the disgorgement amount except for the Settlement amount. Our focus is on how the funds were obtained. Unlike *Money Gate* where the

¹⁹ *Al-Tar Energy Corp (Re)*, 2011 ONSC 1 at para 71

²⁰ *Solar Income Fund* at para 93

²¹ *Bradon Technologies* at para 85

²² *Quadrex* at para 47

²³ *Money Gate* at para 57

misrepresentations were of a general nature,²⁴ in the case before us funds were obtained through the specific misrepresentation that funds would be used exclusively to finance the Bayview Creek project.

[70] For these reasons, we conclude that it is in the public interest to order disgorgement of \$7,630,000 to be paid jointly and severally by CIM and Feng.

3.4.3 Administrative penalty

[71] Staff seeks an administrative penalty of \$750,000 for each of Feng and CIM.

[72] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.

[73] Determining the amount of an administrative penalty is not a science.²⁵ There are, however, factors to be considered in determining an appropriate administrative penalty, including:

- a. the scope of the seriousness of a respondent's conduct;
- b. whether there were multiple repeated breaches of the *Act*;
- c. whether the respondent realized any profit as a result of his misconduct;
- d. the amount of money raised from investors;
- e. the harm caused to investors; and
- f. the level of administrative penalties imposed in other cases.²⁶

[74] We have addressed a number of these factors already in these reasons. In our analysis below, we will consider relevant precedents in the context of our earlier discussion.

[75] Staff submits that a \$750,000 administrative penalty against each respondent is appropriate given the significant amount of investor funds that were lost and diverted by Feng. A higher administrative penalty will send a strong message to market participants that this type of misconduct will not be tolerated.

[76] Staff points us to the following precedent decisions in support of its request:

- a. *Money Gate*, a 2021 decision in which administrative penalties of \$750,000 and \$600,000 were ordered against the two individual respondents, who had perpetrated a fraud on more than 150 investors, and diverted over \$8.7 million of investor funds for the benefit of the respondents and their related entities;
- b. *Meharchand (Re)*,²⁷ a 2019 decision in which the individual respondent was ordered to pay an administrative penalty of \$550,000 following a fraud of C\$1.5 million and US\$140,000 involving more than 100 investors;
- c. *Quadrex*, a 2018 decision in which the Tribunal ordered administrative penalties of \$600,000 against each individual respondent for three separate frauds totalling \$3.4 million and involving at least 37 investors; and
- d. *North American Financial Group (Re)*,²⁸ a 2014 decision in which investors lost approximately 50% of the principal in a \$4 million car lease financing scheme, resulting in administrative penalties of \$600,000 on each of the individual respondents, who were the directing minds of the corporate respondents.

[77] The respondents submit that in the context of these precedents and in light of the particular facts of this case, a \$750,000 administrative penalty against each of the respondents is excessive. In the decisions cited by Staff, the misconduct was more egregious than what was found in this case, in each case the Tribunal ordered monetary penalties far below Staff's recommendation (for all but one respondent) and involved additional contraventions of the *Act*.

[78] The respondents also submit that a lower amount is appropriate given that Feng's conduct was not motivated by personal profit.

²⁴ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSC 40 at para 306

²⁵ *Solar Income Fund* at para 112

²⁶ *Money Gate* at para 67

²⁷ 2019 ONSC 7

²⁸ 2014 ONSC 28

- [79] The respondents submit that an administrative penalty of approximately half the amount requested by Staff is appropriate and point us to two additional Tribunal decisions in support:
- a. *Rezwealth Financial Services Inc (Re)*,²⁹ a 2014 decision in which the Tribunal ordered one of the individual respondents to pay an administrative penalty of \$500,000 as a result of his involvement in a Ponzi scheme. The respondent raised over \$3 million from at least 56 investors over a number of years and used \$1 million for personal purposes; and
 - b. *Lyndz Pharamaceuticals (Re)*,³⁰ a 2012 decision in which the Tribunal imposed administrative penalties of \$500,000 and \$600,000 on each of the individual respondents. The individual respondents were found to have, among other things, used \$655,000 and \$700,000, respectively, of investor funds for personal expenses unrelated to the business of Lyndz Pharmaeuticals Inc.
- [80] As we have stated above, the conduct at issue here is serious but not one of the most egregious fraud cases that has come before the Tribunal. After reviewing the decisions above, we agree that an administrative penalty of \$750,000 against each respondent is excessive. Such amounts may reasonably be viewed as punitive when viewing all of the sanctions globally. However, a 50% reduction would fall short of achieving the necessary deterrent effect of an administrative penalty.
- [81] We find that an administrative penalty of \$500,000 against each of Feng and CIM is in the public interest and more in line with previous decisions of this Tribunal, as well as the seriousness of the misconduct at issue. We believe this amount will still achieve both general and specific deterrence.

3.4.4 Ability to pay financial sanctions

- [82] The respondents submit that Feng does not have the financial resources to satisfy the monetary sanctions and costs being sought against him. However, they have not provided any evidence to support this claim.
- [83] Ability to pay is a relevant factor for financial sanctions, although it is generally not the predominant or determining factor.³¹
- [84] The respondents have not demonstrated that their ability to pay is a factor we should consider in our analysis because they have not provided any evidence to support their claim. Without sufficient evidence, we cannot meaningfully entertain the possibility of reducing any of the monetary sanctions we will be imposing on the respondents and decline to do so.

3.5 Costs

- [85] We turn now to Staff's request that the respondents pay a portion of the costs incurred by the Commission in this proceeding and in the investigation of this matter.
- [86] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law.
- [87] Staff seeks costs totaling \$265,153.09 against the respondents, to be paid on a joint and several basis.
- [88] Staff provided an affidavit regarding costs and disbursements, which shows Staff's costs of the investigation, pre-hearing activities and merits hearing. The affidavit lists members of Staff who participated in each phase, the hourly rates for their positions (which have been previously approved by the Tribunal), and the time spent by them. The total costs incurred were \$336,875.34, comprised of fees of \$325,265.00 and disbursements of \$11,610.34.
- [89] The fees excluded were:
- a. the time spent by law clerks, students-at-law, employees in the case assessment and E-Discovery & Analytics teams, assistant investigators and junior litigators;
 - b. the time spent by employees who recorded 35 or fewer hours on the matter;
 - c. the time incurred in connection with changing the primary investigator in the matter; and
 - d. the time incurred in connection with the sanctions and cost hearing.
- [90] Staff then reduced the total costs by 21.29% from \$336,875.34 to \$265,153.09.

²⁹ 2014 ONSC 18 (*Rezwealth*)

³⁰ 2012 ONSC 25

³¹ *Rezwealth* at para 69; *Solar Income Fund* at para 70

- [91] The respondents submit that the costs sought by Staff are excessive and not in line with the Tribunal's jurisprudence, having regard to the complexity of the investigation and the length of the proceeding.
- [92] The respondents argue that the total costs awarded against the respondents should be half of the total costs incurred by Staff, or approximately \$168,000, and cited two decisions of the Tribunal in support.
- [93] In *Solar Income Fund*, following a 15-day hearing, the respondents were found to have committed fraud. The merits hearing was lengthy but did not involve any novel issues, and Staff and the respondents each asserted arguments that did not succeed. The Tribunal awarded costs of \$150,000, less than half of what Staff were seeking in costs.³²
- [94] In *Doulis (Re)*,³³ following a 10-day hearing, in which no novel issues were involved and the respondents asserted allegations of wrongdoings by Staff, which did not succeed, the Tribunal awarded costs of \$198,619.78, an approximate 33% reduction from Staff's request.³⁴
- [95] When determining costs, the Tribunal should apply a balanced approach that takes into account various factors.
- [96] A respondent found to have contravened Ontario securities law should expect to contribute to the costs, with a view to reducing the burden on market participants to pay for investigations and enforcement proceedings. However, a large costs award can reasonably be viewed as punitive. The potential for such an award may adversely affect a respondent's willingness, and ability, to pursue a full defence.
- [97] In this case, we begin with total costs of \$336,875.34. We must consider the length of the hearing, which was six days, the complexity of the issues, Staff's degree of success in establishing its allegations (Staff was successful in proving its main allegation on the merits), the time spent by Staff on the matter, and the financial sanctions imposed on the respondents.
- [98] We do not question the factual basis behind the total costs accrued or the total costs sought by Staff, but we do consider the reduced number to be at the high end of what we would expect for a case of this nature, including in relation to the cases cited by the respondents.
- [99] We agree that the costs award in this case should be lowered, but by 40% rather than 21.29% as Staff has proposed. Not including disbursements, this brings us to \$195,159. With disbursements, we arrive at the amount of \$206,769.34. We find it to be fair and reasonable in the circumstances that the respondents should be liable for total costs, including fees and disbursements, of \$206,769.34, on a joint and several basis.

4. CONCLUSION

- [100] For the reasons set out above, we will issue an order as follows:

- a. with respect to Feng:
 - i. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, Feng is permanently prohibited from trading in any securities or derivatives, or from acquiring any securities, except that after he has fully paid the amounts in subparagraphs (vi), (vii) and (viii) below, he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*³⁵ of which only he is the sole legal and beneficial owner, through a registered dealer in Canada to whom he has given both a copy of our order and a certificate from the Commission confirming that he has paid the required amounts;
 - ii. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario Securities law shall not apply to Feng permanently;
 - iii. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*, Feng shall resign any positions that he holds as a director or officer of an issuer or registrant;
 - iv. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*, Feng is permanently prohibited from acting as a director or officer of an issuer or registrant;

³² *Solar Income Fund* at para 112

³³ 2014 ONSC 40 (*Doulis*)

³⁴ *Doulis* at paras 3, 82, 91

³⁵ RSC, 1985, c 1 (5th Supp)

- v. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, Feng is permanently prohibited from becoming or acting as a registrant or promoter;
 - vi. pursuant to paragraph 9 of s. 127(1) of the *Act*, Feng shall pay an administrative penalty of \$500,000;
 - vii. pursuant to paragraph 10 of s. 127(1) of the *Act*, Feng shall, jointly and severally with CIM, disgorge to the Commission the amount of \$7,630,000; and
 - viii. pursuant to s. 127.1 of the *Act*, Feng shall, jointly and severally with CIM, pay to the Commission \$206,769.34 for the costs of the investigation and proceeding; and
- b. with respect to CIM:
- i. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, CIM is permanently prohibited from trading in any securities or derivatives, or from acquiring any securities;
 - ii. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario Securities law shall not apply to CIM permanently;
 - iii. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, CIM is permanently prohibited from becoming or acting as a registrant or promoter;
 - iv. pursuant to paragraph 9 of s. 127(1) of the *Act*, CIM shall pay an administrative penalty of \$500,000;
 - v. pursuant to paragraph 10 of s. 127(1) of the *Act*, CIM shall, jointly and severally with Feng, disgorge to the Commission the amount of \$7,630,000; and
 - vi. pursuant to s. 127.1 of the *Act*, CIM shall, jointly and severally with Feng, pay to the Commission \$206,769.34 for the costs of the investigation and proceeding.

Dated at Toronto this 14th day of November, 2023

“Cathy Singer”

“Sandra Blake”

“Russell Juriansz”

This page intentionally left blank

B. Ontario Securities Commission

B.2 Orders

B.2.1 BevCanna Enterprises 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.

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

Citation: 2022 BCSECOMM 323

REVOCATION ORDER
BEVCANNA ENTERPRISES INC.
UNDER THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA
AND
ONTARIO
(the Legislation)

Background

- ¶ 1 BevCanna Enterprises Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator of British Columbia (the Principal Regulator) and Ontario (each, a Decision Maker) on August 3, 2022.
- ¶ 2 The Issuer has applied to each Decision Maker 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.
- ¶ 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 National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

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 Makers to make the decision.
- ¶ 6 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked.

November 3, 2023

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

OSC File #: 2023/0425

B.2.2 Osisko Green Acquisition Limited

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that a SPAC is not a reporting issuer under applicable securities laws – SPAC not eligible to use simplified procedure under NP 11-206 – relief granted.

Applicable Legislative Provisions

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

November 21, 2023

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

AND

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

AND

IN THE MATTER OF
OSISKO GREEN ACQUISITION LIMITED
(the "Filer")

ORDER

Background

The securities regulator in the Jurisdiction ("**Decision Maker**") has received an application from the Filer for an order under the securities legislation of the Jurisdiction (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 National Policy 11-206 – *Process for Cease to be a Reporting Issuer Applications* (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 – Passport System ("**MI 11-102**") is intended to be relied upon in Ontario, British Columbia, Alberta, Québec, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut; and
- (c) this order is the order of the principal regulator that evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

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

1. The Filer is a special purpose acquisition corporation governed by the *Business Corporations Act* (British Columbia) with its head office located at 155 University Avenue, Suite 1440, Toronto, Ontario, M5H 3B7 and its registered office located at 666 Burrard Street, Suite 2500, Vancouver, British Columbia, V6C 2X8.
2. The Filer is a special purpose acquisition corporation incorporated for the purpose of effecting, directly or indirectly, a qualifying transaction within a specified period of time.

3. The board of directors of the Filer has determined that an appropriate qualifying transaction cannot be identified and completed within the Filer's permitted timeline.
4. The Filer will be wound-up in accordance with its articles and the policies of the TSX.
5. In connection with the Filer's wind-up, the Filer's Class A Restricted Voting Shares were automatically redeemed in accordance with the Filer's constating documents on September 8, 2023 (the "**Redemption**") and concurrently delisted from the TSX.
6. In addition, on September 8, 2023, being the last day of the Filer's permitted timeline to complete a qualifying acquisition, all of the outstanding warrants of the Filer (the "**Warrants**") automatically terminate in accordance with their terms.
7. As of the date hereof, the Class A Restricted Voting Shares and Warrants are no longer available for trading on the TSX.
8. Following the Redemption and as of the date hereof, the Filer has no other outstanding securities, except for 6,454,250 Class B shares (the "**Class B Shares**") which are held by the Filer's sponsor, Osisko Green Sponsor Corp., and certain founding securityholders of the Filer (collectively, the "**Founders**").
9. The Class B Shares were subscribed by the Founders for a nominal value on per share basis with an aggregate subscription amount of \$25,000, forming the initial investment required for a special purpose acquisition corporation in accordance with the policies of the TSX.
10. In accordance with the rules of the TSX and the agreements entered into between the Filer and each Founder, the Class B Shares are subject to restrictions on transfers and may not participate in the Redemption. Furthermore, in accordance with the Filer's constating documents, no additional Class B Shares may be issued.
11. As a special purpose acquisition corporation, the Filer has no active operations or business and following the Redemption, possesses nominal assets.
12. The number of holders, number of outstanding Class B Shares held in each jurisdiction, and percentage of the outstanding Class B Shares held in each jurisdiction are as follows (all held by the Founders):

Jurisdiction	Number of Holders	Number of Class B Shares Held	Percentage of Outstanding Securities
Alberta	2	521,952	8.1%
British Columbia	2	42,654	0.7%
Ontario	30	2,903,850	45.0%
Québec	9	1,578,206	24.5%
Cayman Islands	4	168,372	2.6%
Hong Kong	1	597,158	9.3%
United States	2	642,058	9.9%
TOTAL	50	6,454,250	100%

13. As of the date hereof, no securities of the Filer are listed on any exchange.
14. The Filer is a reporting issuer under the securities legislation in the Jurisdictions.
15. The Filer is not eligible to surrender its status as a reporting issuer pursuant to the simplified procedure in NP 11-206 because its outstanding Class B Shares are not beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdiction of Canada. The outstanding Class B Shares are beneficially owned, directly or indirectly, by fewer than 51 securityholders in total worldwide.
16. The Filer is a reporting issuer under the securities legislation in the Jurisdictions.
17. Upon the Order Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.
18. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

B.2: Orders

19. No securities of the Filer are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.
20. The Filer has no intention to seek public financing by way of an offering of securities.
21. The Filer is not in default of any of its obligations under securities legislation in any jurisdiction.

Order

The Decision Maker 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 Maker under the Legislation is that the Order Sought is granted.

“Marie-France Bourret”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0522

B.2.3 Terra Firma Capital Corporation

Headnote

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

Applicable Legislative Provisions

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

November 20, 2023

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

AND

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

AND

**IN THE MATTER OF
TERRA FIRMA CAPITAL CORPORATION
(the Filer)**

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (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 passport application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 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 National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

“Lina Creta”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0531

This page intentionally left blank

B.3 Reasons and Decisions

B.3.1 McEwen Mining Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101.

The Multijurisdictional Disclosure System so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that any road shows, standard term sheets and marketing materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1)2.

National Instrument 71-101 The Multijurisdictional Disclosure System, s. 11.3.

November 17, 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
MCEWEN MINING INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**), pursuant to

paragraph 74(1)2 of the *Securities Act* (Ontario), for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use Standard Term Sheets (as defined below) and Marketing Materials (as defined below), and (ii) conduct Road Shows (as defined below) in connection with future offerings under a Final Canadian MJDS Shelf Prospectus (as defined below), together with applicable supplements as filed by the Filer in each of the provinces of Canada, other than the province of Québec (the **Exemption Sought**).

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 71-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the laws of the state of Colorado.
2. The head office of the Filer is located at 150 King Street West, Suite 2800, P.O. Box 24, Toronto, Ontario (Canada), M5H 1J9.
3. As of the date hereof, the Filer is a reporting issuer in each of the Jurisdictions and is an "SEC foreign issuer" as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of the securities legislation in any of the Jurisdictions.

4. The Filer filed a registration statement on Form S-3 with the U.S. Securities and Exchange Commission (the **SEC**) on November 3, 2023 (the **Registration Statement**). The Registration Statement contains a shelf prospectus (the **U.S. Shelf Prospectus**) and may register for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of the Filer's common stock, debt securities, warrants, subscription rights, subscription receipts and units.
5. The Filer has also filed a preliminary multijurisdictional disclosure system (**MJDS**) prospectus dated November 3, 2023, and, upon the Registration Statement going effective with the SEC, intends to file a final MJDS prospectus (the **Final Canadian MJDS Shelf Prospectus**) in each of the Jurisdictions pursuant to NI 71-101, which includes the final U.S. Shelf Prospectus and will qualify the distribution in each of the Jurisdictions, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of the Filer's common stock, debt securities, warrants, subscription rights, subscription receipts and units.
6. National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) sets out the requirements for a distribution under a (non-MJDS) shelf prospectus in Canada, including requirements with respect to advertising and marketing activities. In particular, Part 9A of NI 44-102 entitled *Marketing In Connection with Shelf Distributions* permits the conduct of "road shows" and the use of "standard term sheets" and "marketing materials" (as such terms are defined in National Instrument 41-101 *General Prospectus Requirements*) following the issuance of a receipt for a final base shelf prospectus provided the approval, content, use and other applicable conditions and requirements of Part 9A are complied with. NI 71-101 does not contain provisions that are equivalent to those of Part 9A of NI 44-102.
7. In connection with marketing an offering in Canada under the Final Canadian MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer may wish to conduct road shows (**Road Shows**) and utilize one or more standard term sheets (**Standard Term Sheets**) and marketing materials (**Marketing Materials**), as such terms are defined in NI 41-101. Any such Road Shows, Standard Term Sheets and Marketing Materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.
8. Canadian purchasers, if any, of securities offered under the Final Canadian MJDS Shelf Prospectus

will only be able to purchase those securities through an investment dealer registered in the Jurisdiction of residence of the purchaser.

Decision

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

The decision of the principal regulator is that the Exemption Sought is granted, provided that the conditions and requirements set out in Part 9A of NI 44-102 for Standard Term Sheets, Marketing Materials and Road Shows are complied with for any future offering under the Final Canadian MJDS Shelf Prospectus in the manner in which those conditions and requirements would apply if the Final Canadian MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0543

B.3.2 TD Asset Management Inc. and The Funds

Headnote

National Policy 11-203, Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from conflict of interest provisions to allow mutual funds to purchase equity securities pursuant to offerings made in Foreign Jurisdictions in which a related dealer acts as underwriter – relief required as growing status of filer’s related dealers in equity underwriting activities in these jurisdictions was limiting ability of funds to acquire securities in these jurisdictions pursuant to a distribution – impact of this created a “market necessity” for relief – all purchases subject to independent review committee approval and securities must be distributed pursuant to prospectus qualified in these jurisdictions or by private placement of securities of a public issuer in these jurisdictions – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 – Investment Funds, ss. 4.1 and 19.1.

November 16, 2023

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

AND

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

AND

IN THE MATTER OF
TD ASSET MANAGEMENT INC.
(TDAM)
(the Filer)

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the existing mutual funds and any future mutual funds to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies for which the Filer, or an affiliate of the Filer, acts as the investment fund manager and/or portfolio adviser (each, a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for relief from the restriction in subsection 4.1(1) of NI 81-102 (the **Restriction**) to permit the Funds to make an investment in a class of equity securities (**Securities**) of an issuer during the period of a distribution (a **Distribution**) of the securities or during the period of 60 days after the Distribution (the **60-Day Period**), notwithstanding that an associate or an affiliate of the Filer acts as an underwriter in the Distribution (the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for the Application; and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-202 Passport System (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (collectively, together with the Jurisdiction, the **Other Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 81-102, National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined. Certain other defined terms have the meanings given to them above or below under “Representations”.

Representations

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

1. The Filer is a corporation continued under the laws of the province of Ontario.
2. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank, a Schedule 1 Canadian chartered bank. The head office of the Filer is located in Toronto, Ontario.
3. The Filer is registered in: (i) each of the Jurisdictions as an adviser in the category of portfolio manager (**PM**) and as a dealer in the category of exempt market dealer; (ii) Ontario, Québec, Saskatchewan and Newfoundland and Labrador in the category of investment fund manager (**IFM**); (iii) Ontario in the category of commodity trading manager; and (iv) Québec as a derivatives portfolio manager.
4. The Filer, or an affiliate of the Filer, is or will be, the IFM and/or principal portfolio adviser of each of the Funds; the principal portfolio adviser of a Fund may, from time to time, hire one or more related or unrelated sub-advisers to provide investment advisory services to the Fund.
5. Each of the Funds is or will be an open-ended mutual fund trust or corporation established under the laws of the province of Ontario or another province or territory of Canada; certain of the Funds are or will be an "index mutual fund" pursuant to paragraph (a) of that definition in section 1.1 of NI 81-102 (each an **Index Fund** and, collectively, the **Index Funds**).
6. The securities of each of the Funds are or will be qualified for distribution in one or more of the Jurisdictions pursuant to a prospectus or a simplified prospectus prepared and filed in accordance with the securities legislation of one or more Jurisdictions; each of the Funds is or will be a reporting issuer in each of the Jurisdictions in which its securities are distributed.
7. The Filer is or will be a "dealer manager" (as such term is defined in NI 81-102) with respect to the Funds and each of the Funds is or will be a "dealer managed investment fund" (as such term is defined in NI 81-102).
8. The Filer and each of the existing Funds are not in default of securities legislation in any of the Jurisdictions, except with respect to non-compliance with s. 4.1(1) of NI 81-102 arising from past purchases by certain existing Funds of equity securities of non-reporting issuers underwritten by an affiliate of the Filer. In the past, the Filer's control processes did not distinguish between Canadian reporting issuers and non-Canadian public issuers. However, once the issue was self-identified by the Filer, applicable controls and trading restrictions were promptly enhanced and/or implemented to adequately address the matter, and the Filer initiated the process for the Exemption Sought.
9. An independent review committee (the **IRC**) has been or will be appointed for each of the Funds under NI 81-107.
10. The Filer is currently an associate or affiliate of a number of dealers that act as underwriters in Distributions (the **Current Related Dealers**). The Current Related Dealers are set out in Appendix A.
11. Each of the Filer, related sub-advisers and the Current Related Dealers is an associate or affiliate of The Toronto-Dominion Bank and its subsidiaries (collectively, the **TD Bank Group**). TD Bank Group serves more than 27 million customers in key financial markets around the globe.
12. Current Related Dealers carry on their investment banking businesses in Canada and in other countries. The Current Related Dealers have been expanding their investment banking businesses in the United States, United Kingdom, Europe and Israel, among other countries and regions (the **Foreign Jurisdictions**).
13. The Current Related Dealers are prominent underwriters, both in terms of the number of Distributions they underwrite, and the dollar value of the securities underwritten. In addition, certain Current Related Dealers may act as the sole underwriter in Distributions in certain Foreign Jurisdictions.
14. From time to time there may be additional dealers that are or become affiliates or associates of the Filer and act as underwriters in Distributions (each, a **Future Related Dealer** and, collectively with the Current Related Dealers, the **Related Dealers**).
15. In circumstances where a Related Dealer acts as an underwriter in a Distribution of Securities, the Restriction will generally prevent a Fund from investing in the Securities being offered during the Distribution and during the 60-Day Period; however, pursuant to subsection 4.1(4) of NI 81-102, the Funds will not be restricted by the Restriction from investing in the Securities if, in accordance with subsection 4.1(4) of NI 81-102, certain conditions are met, including that the Distribution is made pursuant to a prospectus filed with one or more securities regulatory authorities or regulators in one or more Jurisdictions and the IRC of the Funds has approved the transaction in accordance with subsection 5.2(2) of NI 81-107.

16. As a prospectus will not be filed in any province or territory of Canada in connection with a Distribution in a Foreign Jurisdiction, the Funds cannot rely on the exemption from the Restriction contained in subsection 4.1(4) of NI 81-102.
17. There have been numerous Distributions in Foreign Jurisdictions in which a Current Related Dealer acted as an underwriter and in which the Funds could not purchase Securities during the Distribution or during the 60-Day Period because the Distribution was not made by a prospectus filed with one or more securities regulatory authorities or regulators in Canada and the issuer of the securities was not a reporting issuer and, accordingly, subsection 4.1(4) of NI 81-102 could not be relied upon.
18. The issue for the Funds is significant. The global footprint of the TD Bank Group, including the significant number of Related Dealers and the growing prominence of their investment banking activities in Foreign Jurisdictions, has significantly hindered the ability of the Funds to participate in Distributions in Foreign Jurisdictions.
19. In addition, the assets under management for the Funds that are classified as U.S., global or international funds have grown significantly in recent years; for example, since December 31, 2018, assets under management for these Funds have grown by at least 115%. This growth has had a direct impact on the Funds since there are a limited number of Distributions in Foreign Jurisdictions where no Related Dealer is participating as an underwriter. As a result, the Funds are competing with each other for these investment opportunities, as well as with other competitor retail investment funds that have obtained relief similar to the Requested Relief.
20. The Funds would be negatively impacted by not being able to purchase Securities, during a Distribution or in the 60-Day Period, in a Foreign Jurisdiction; forgoing participation in these investment opportunities represents a significant opportunity cost for the relevant Funds, as they are unable to access certain investment opportunities as a result of the coincidental participation of a Related Dealer in the relevant transaction, particularly when there is a regulatory and governance framework in place to oversee participation in similar transactions.
21. The significant opportunity cost referred to above is two-fold; first, Securities issued in a Distribution are frequently “underpriced” to ensure that all Securities are sold in the Distribution and the Securities often trade at a significantly higher price shortly after public trading begins. Because the Funds are prevented from purchasing Securities in the Distribution and during the 60-Day Period, they are not able to profit from any price increases during that period; second, Distributions are a source of liquidity for the Funds; a portfolio manager of a Fund may obtain a block of Securities in a Distribution in one trade, at a competitive price; if a portfolio manager were to purchase a similar size block of Securities in the secondary market, this may take time (often several trades over several days) and prices may rise in the process (often solely due to limited liquidity in the market and the trading activity undertaken by the portfolio manager to purchase a large block of Securities).
22. The Restriction is also detrimental for the Funds as their position in an issuer will be diluted if the Funds are prevented from supplementing existing positions when issuers whose securities the Funds already hold are raising capital by distributing additional securities (for instance, pursuant to a rights offering); in addition, while Funds that are not “index mutual funds” as defined in NI 81-102 do not have investment objectives that require those Funds to track the performance of an index, the performance of those Funds is benchmarked against an index; the Restriction may prevent those Funds from maintaining either their strategic percentage holdings in a given issuer relevant to their overall portfolio holdings or their percentage holdings in a given issuer relevant to the benchmark index holdings.
23. Further, the Index Funds have investment objectives that require the Funds to track the performance of an index; the Index Funds achieve their investment objective by investing directly in Securities that are represented by the applicable index in substantially the same proportion as those securities are represented in the index; the Restriction will almost certainly prevent the Index Funds from investing directly in Securities that are represented by the applicable index in substantially the same proportion as those securities are represented in the index and impede the ability of the Index Fund to meet its investment objective when the related Distribution occurs in a Foreign Jurisdiction.
24. The prejudice that results for a Fund that is restricted from purchasing Securities is that the portfolio manager’s discretion with respect to managing the portfolio is negatively impacted. If the portfolio manager cannot make appropriate commitments or expressions of interest in respect of Securities due to the participation of a Related Dealer in the Distribution, the portfolio manager is delayed in making appropriate decisions with respect to other Securities of a Fund. The portfolio manager would be delayed in that purchases may not be made in the 60-Day Period even though the Filer would want to immediately acquire such Securities. The portfolio manager would then have to decide whether to make an investment in another issuer altogether until the 60-Day Period expires in respect of the Securities.
25. The Restriction also puts the Funds at a competitive disadvantage to most other Canadian funds since the Filer is among the few firms in Canada that have related party dealers that are active in the Distribution of equity securities in Foreign Jurisdictions.
26. Further, since the Funds are dealer managed investment funds, the Restriction is applicable even in circumstances where an unrelated sub-adviser is exercising discretion with respect to a purchase if a Related Dealer underwrites a Distribution of Securities in Foreign Jurisdictions.

27. When the Filer or its sub-advisers make a decision to purchase Securities in a Distribution, it is based only on factors unrelated to any involvement of a Related Dealer in the Distribution and free from any influence from a third-party dealer or Related Dealer; these factors generally include the Filer's or its sub-adviser's view of the issuer, the investment merits of the Distribution and the proposed use of the capital raised in the Distribution by the issuer; for certain Funds, investment decisions are made based on fundamental issuer valuation models; in addition, investment decisions are also made to ensure consistency with the overall investment objectives and investment strategies of the Funds; for certain Funds, investment decisions are based on quantitative investment methodologies, such strategies involve rules based investment decisions.
28. The Filer has generally, to date, been made aware of a Distribution in a Foreign Jurisdiction and been invited to participate on behalf of a Fund by an underwriter that is not a Related Dealer; however, the Filer, upon learning about the involvement of a Related Dealer in the underwriting, is nonetheless unable to participate in Distributions even in cases where the Filer's intention was to supplement existing positions on behalf of certain Funds.
29. In almost all Distributions in respect of which a Related Dealer acts as an underwriter, the Related Dealer's involvement as an underwriter in the Distribution will not be known by the portfolio adviser or sub-adviser making a particular investment decision sufficiently long enough in advance to make an application for exemptive relief on a case-by-case basis; this is a particular issue where the sub-adviser is unrelated to the Filer.
30. The Filer and its sub-advisers generally engage with Related Dealers and third-party dealers equally; despite the affiliation between the Filer and each Related Dealer, they operate independently of each other; in particular, the investment banking and related dealer activities of the Related Dealer and the investment portfolio management activities of the Filer on behalf of the Funds are separated by information barriers or "ethical" walls; accordingly, no information flows from one to the other concerning the above activities generally, except in the following or similar circumstances:
- (a) in respect of compliance matters (for example, the Filer and a Related Dealer may communicate to enable the Filer to maintain an up to date list of Securities underwritten by a Related Dealer to ensure that the Filer complies with applicable securities laws);
 - (b) in respect of normal-course dealer activities (for example, a Related Dealer is on the list of brokers that may execute normal course trades in securities in the secondary market);
 - (c) the Filer or its sub-advisers, on behalf of the Funds as investors in The Toronto-Dominion Bank securities, may meet with The Toronto-Dominion Bank in respect of The Toronto-Dominion Bank securities in accordance with policies and procedures that govern such meetings; and
 - (d) the Filer or its sub-advisers and a Related Dealer may share general market information such as discussion on general economic conditions, etc.
31. Further, in circumstances where an unrelated sub-adviser has been appointed, there is clear separation between the investment decisions being made on behalf of the Funds and the investment banking and related dealer activities of the Related Dealers.
32. Each of the Funds relying on the Exemption Sought will follow the following policies and procedures:
- (a) the IRC will determine, after reasonable inquiry, whether the Securities purchased in a Distribution or during the 60-Day Period met the requirements of subsection 5.2(2) of NI 81-107;
 - (b) for actively managed Funds, the IRC will receive a written analysis with respect to each issuer of Securities purchased in a Distribution or during the 60-Day Period. Each written analysis will include: a description of the business of the issuer; the reason for investing in the issuer; the particular Funds involved; the number of Securities purchased or sold; and Fund holdings and weight of the issuer relative to the overall holdings in the Fund at the start and the end of each reporting period;
 - (c) for Index Funds, the IRC will receive confirmation that the Securities purchased in a Distribution or during the 60-Day Period are represented in the Index Fund's permitted index (as defined in NI 81-102) and the acquisition was necessary for the Index Fund to continue to meet its investment objectives;
 - (d) the IRC will receive confirmation that there were no material NI 81-102 compliance, valuation, trading or settlement issues for such purchases, and all transactions were effected in accordance with the standing instructions of the IRC;
 - (e) at the request of the IRC, the Filer will coordinate for the IRC to receive presentations from portfolio managers, or representatives thereof, to review and discuss Securities purchased in a Distribution or during the 60-Day Period; and

- (f) to the extent applicable, the Filer and the IRC of each Fund will comply with subsection 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the Exemption Sought.
33. The Funds will not be required or obligated to purchase any Securities under a Distribution or during the 60-Day Period.
34. The investment by a Fund in the Securities purchased in a Distribution or during the 60-Day Period will be made in furtherance of the Fund's investment objective(s) and will be consistent with its investment objectives and strategies.
35. At the time of purchase by a Fund, the Securities will be Securities of a public issuer in a Foreign Jurisdiction (or an entity that will become a public issuer in a Foreign Jurisdiction at the time of purchase of the Securities by the Fund).
36. A Distribution in respect of which the Exemption Sought is requested will be made by means of a prospectus, or similar public offering document, or by means of a private placement in the Foreign Jurisdiction in which the Distribution is taking place; the Securities issued in the Distribution will be listed on a stock exchange.
37. The Filer has implemented policies and procedures and obtained the approval of or standing instructions from the IRC of the Funds in order to rely on subsection 4.1(4) of NI 81-102.
38. The Filer has discussed this matter with the IRC in anticipation of the Funds receiving the Exemption Sought and the IRC has indicated that it would give its approval (subject to complying with the terms and conditions of the Exemption Sought imposed by the principal regulator) to permit the Funds to make investment in reliance on the Exemption Sought in accordance with policies and procedures similar to those applicable to situations where investments are made in reliance on subsection 4.1(4) of NI 81-102.

Decision

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

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

- (a) the investment by a Fund in Securities purchased in a Distribution or during the 60-Day Period is made in furtherance of the Fund's investment objective(s) and is consistent with its investment objective(s) and strategies;
- (b) the IRC of the Fund must approve the transaction in accordance with the requirements of subsection 5.2(2) of NI 81-107;
- (c) the Securities purchased by the Fund are distributed by means of a prospectus or similar public offering document or a private placement in the Foreign Jurisdiction in which the Distribution is taking place;
- (d) any Related Dealer that is involved as an underwriter in a Distribution is regulated in respect of its underwriting activities in the Foreign Jurisdiction in which the Distribution is taking place;
- (e) the Securities issued in the Distribution are listed on a stock exchange;
- (f) if the Securities are acquired during the 60-Day Period, they are acquired on a stock exchange; and
- (g) no later than the time the Funds file their annual financial statements, the Filer includes the particulars of each investment made by the Funds in reliance on the Exemption Sought during their most recently completed financial year in the report of purchases of securities underwritten by a related party in accordance with subsection 4.1(4)(c) of NI 81-102 filed on SEDAR+.

"Darren McKall"

Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

Application File #: 2023/0451
SEDAR+ File #: 6030188

Appendix A

List of Related Dealers

Cowen and Company, LLC

Cowen Execution Services Limited

TD Bank Europe Limited

TD Global Finance unlimited company

TD Securities Inc.

TD Securities (USA) LLC

B.3.3 Brandes Investment Partners & Co. and Nuveen Global Green Bond Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit the extension of a prospectus lapse date by 86 days to facilitate the consolidation of the funds' prospectus with the prospectus of different funds under common management – no conditions.

Applicable Legislative Provisions

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

November 16, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

IN THE MATTER OF
BRANDES INVESTMENT PARTNERS & CO.
(the Filer)

AND

IN THE MATTER OF
NUVEEN GLOBAL GREEN BOND FUND
(the Fund)

DECISION

Background

The principal regulator in Ontario has received an application from the Filer, on behalf of the Fund, for a decision under the securities legislation of Ontario (the **Legislation**) that the time limits for the renewal of the simplified prospectus of the Fund dated February 28, 2023 (the **Current Prospectus**), be extended to the time limits that would apply as if the lapse date of the Current Prospectus was May 24, 2024 (the **Exemption Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

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

Interpretation

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

Representations

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

The Filer and the Funds

1. The Filer is a corporation incorporated under the laws of Nova Scotia with its registered head office located in Toronto, Ontario. The Filer operates under the retail trade name Bridgehouse Asset Managers.
2. The Filer is registered as an investment fund manager in the provinces of Ontario, Quebec and Newfoundland and Labrador, as a portfolio manager and as an exempt market dealer in each of the Jurisdictions, and as a commodity trading manager in the province of Ontario.

3. The Filer is the trustee and manager of the Fund. The Filer is also the trustee and the manager of multiple other mutual funds listed in Schedule A (the **Other Funds**) that currently distribute their securities to the public in each of the Jurisdictions under a simplified prospectus with a lapse date of May 24, 2024.
4. Neither the Filer nor the Fund is in default of securities legislation in any of the Jurisdictions.
5. The Fund is (a) an open-ended mutual fund trust established under the laws of Ontario, (b) a reporting issuer as defined in the securities legislation of each of the Jurisdictions, and (c) subject to NI 81-102.
6. Securities of the Fund are currently qualified for distribution in each of the Jurisdictions under the Current Prospectus.

Reasons for the Exemption Sought

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date for the Current Prospectus is February 28, 2024 (the **Current Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of the Fund would have to cease on the Current Lapse Date unless: (i) the Fund files a *pro forma* simplified prospectus at least 30 days prior to its Current Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after its Current Lapse Date; and (iii) a receipt for the final simplified prospectus is obtained within 20 days after its Current Lapse Date.
8. The Filer wishes to combine the Current Prospectus with the simplified prospectus of the Other Funds in order to reduce renewal, printing and related costs and intends to file the *pro forma* simplified prospectus and final simplified prospectus of both the Fund and the Other Funds as though the lapse date of both such funds is May 24, 2024. Offering the Fund under the same renewal simplified prospectus as the Other Funds would facilitate the distribution of the Fund in the Jurisdictions under the same prospectus document and enable the Filer to streamline disclosure across the Filer's fund platform. The Fund shares many common operational and administrative features with the Other Funds and combining them in the same simplified prospectus will allow investors to compare their features more easily.
9. The Filer may make changes to the features of the Other Funds as part of the process of renewing the Other Funds' simplified prospectus. The ability to renew the Current Prospectus with the simplified prospectus of the Other Funds will ensure that the Filer can make the operational and administrative features of the Fund and the Other Funds consistent with each other, if necessary.
10. If the Exemption Sought is not granted, it will be necessary to renew the Current Prospectus twice within a short period of time in order to consolidate the Current Prospectus with the simplified prospectus of the Other Funds, and it would be unreasonable for the Filer to incur the costs and expenses associated therewith, given investors would not be prejudiced by the Exemption Sought.
11. There have been no material changes in the affairs of the Fund since the date of the Current Prospectus. Accordingly, the Current Prospectus and current fund facts document(s) of the Fund continue to provide accurate information regarding the Fund.
12. Given the disclosure obligations of the Filer and the Fund, should any material change in the business, operations or affairs of the Fund occur, the Current Prospectus and current fund facts document(s) of the Fund will be amended as required under the Legislation.
13. New investors of the Fund will receive delivery of the most recently filed fund facts document(s) of the Fund. The Current Prospectus of the Fund will remain available to investors upon request.
14. The Exemption Sought will not affect the accuracy of the information contained in the Current Prospectus or the respective fund facts document(s) of the Fund, and therefore 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 Exemption Sought is granted.

"Darren McKall"

Manager, Investment Funds and Structured Products
Ontario Securities Commission

Application File #: 2023/0510
SEDAR+ File #: 6037039

SCHEDULE A
THE OTHER FUNDS

Brandes Canadian Equity Fund

Brandes Canadian Money Market Fund

Brandes Corporate Focus Bond Fund

Brandes Emerging Markets Value Fund

Brandes Global Equity Fund

Brandes Global Opportunities Fund

Brandes Global Small Cap Equity Fund

Brandes International Equity Fund

Brandes U.S. Equity Fund

Bridgehouse Canadian Bond Fund

GQG Partners Global Quality Equity Fund

GQG Partners International Quality Equity Fund

GQG Partners U.S. Quality Equity Fund

Lazard Defensive Global Dividend Fund

Lazard Global Balanced Income Fund

Lazard Global Compounders Fund

Lazard International Compounders Fund

Sionna Canadian Equity Fund

Sionna Strategic Income Fund

Sionna Opportunities Fund

T. Rowe Price Global Allocation Fund (formerly, Morningstar Balanced Portfolio)

This page intentionally left blank

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
Liquid Meta Capital Holdings Ltd.	September 12, 2023	November 14, 2023
Halo Collective Inc.	November 20, 2023	
MAV Beauty Brands Inc.	November 20, 2023	
LXRandCo, Inc.	November 20, 2023	
CohBar Inc.	November 20, 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	

B.4: Cease Trading Orders

Company Name	Date of Order	Date of Lapse
HAVN Life Sciences Inc.	August 30, 2023	
Falcon Gold Corp.	November 1, 2023	

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:

Primerica Balanced Yield Fund
Primerica Canadian Balanced Growth Fund
Primerica Canadian Money Market Fund
Primerica Global Balanced Growth Fund
Primerica Global Equity Fund
Primerica Income Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 15, 2023
NP 11-202 Final Receipt dated Nov 16, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #6034914

Issuer Name:

Fidelity All-American Equity ETF
Fidelity All-Canadian Equity ETF
Fidelity All-International Equity ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Nov 20, 2023
NP 11-202 Preliminary Receipt dated Nov 20, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06050069

Issuer Name:

Fidelity U.S. High Dividend Currency Neutral Index ETF Fund
Fidelity U.S. High Dividend Index ETF Fund
Fidelity U.S. High Quality Currency Neutral Index ETF Fund
Fidelity U.S. High Quality Index ETF Fund
Fidelity U.S. Low Volatility Currency Neutral Index ETF Fund
Fidelity U.S. Low Volatility Index ETF Fund
Fidelity U.S. Money Market Fund
Fidelity U.S. Money Market Investment Trust
Fidelity U.S. Monthly Income Currency Neutral Fund
Fidelity U.S. Monthly Income Fund
Fidelity U.S. Small/Mid-Cap Equity Multi-Asset Base Fund
Fidelity Women's Leadership Fund
Fidelity Women's Leadership Systematic Currency Hedged Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023
NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030509

Issuer Name:

Fidelity Concentrated Canadian Equity Multi-Asset Base Fund
Fidelity Concentrated Value Investment Trust
Fidelity Conservative Income Fund
Fidelity Conservative Income Private Pool
Fidelity Conservative Managed Risk Portfolio
Fidelity Convertible Securities Multi-Asset Base Fund
Fidelity Corporate Bond Fund
Fidelity Dividend Fund
Fidelity Dividend Multi-Asset Base Fund
Fidelity Dividend Plus Fund
Fidelity Dividend Plus Multi-Asset Base Fund
Fidelity Emerging Markets Debt Multi-Asset Base Fund
Fidelity Emerging Markets Equity Multi-Asset Base Fund
Fidelity Emerging Markets Fund
Fidelity Emerging Markets Local Currency Debt Multi-Asset Base Fund
Fidelity Europe Fund
Fidelity Far East Fund
Fidelity Floating Rate High Income Currency Neutral Fund
Fidelity Floating Rate High Income Currency Neutral Multi-Asset Base Fund
Fidelity Floating Rate High Income Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030324

Issuer Name:

Fidelity Canadian Balanced Fund
Fidelity Canadian Bond Fund
Fidelity Canadian Core Equity Fund
Fidelity Canadian Disciplined Equity Fund
Fidelity Canadian Equity Multi-Asset Base Fund
Fidelity Canadian Focused Equity Multi-Asset Base Fund
Fidelity Canadian Fundamental Equity Multi-Asset Base Fund
Fidelity Canadian Government Long Bond Index Multi-Asset Base Fund
Fidelity Canadian Growth Company Fund
Fidelity Canadian High Dividend Index ETF Fund
Fidelity Canadian High Quality Index ETF Fund
Fidelity Canadian Large Cap Fund
Fidelity Canadian Large Cap Multi-Asset Base Fund
Fidelity Canadian Low Volatility Index ETF Fund
Fidelity Canadian Money Market Fund
Fidelity Canadian Money Market Investment Trust
Fidelity Canadian Monthly High Income ETF Fund
Fidelity Canadian Opportunities Fund
Fidelity Canadian Real Return Bond Index Multi-Asset Base Fund
Fidelity Canadian Short Term Bond Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030233

Issuer Name:

Fidelity Technology Innovators Fund
Fidelity Total Metaverse Index ETF Fund
Fidelity True North Fund
Fidelity U.S. All Cap Fund
Fidelity U.S. Bond Currency Neutral Multi-Asset Base Fund
Fidelity U.S. Bond Multi-Asset Base Fund
Fidelity U.S. Core Equity Fund
Fidelity U.S. Dividend Currency Neutral Fund
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF Fund
Fidelity U.S. Dividend for Rising Rates Index ETF Fund
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Investment Trust
Fidelity U.S. Dividend Private Pool
Fidelity U.S. Dividend Registered Fund
Fidelity U.S. Dividend Systematic Currency Hedged Fund
Fidelity U.S. Equity Investment Trust
Fidelity U.S. Focused Stock Fund
Fidelity U.S. Focused Stock Systematic Currency Hedged Fund
Fidelity U.S. Growth and Income Private Pool
Fidelity U.S. Growth Opportunities Investment Trust
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030529

Issuer Name:

CI U.S. Enhanced Momentum Index ETF
CI U.S. Enhanced Value Index ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Nov 20, 2023

NP 11-202 Preliminary Receipt dated Nov 20, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06049733

Issuer Name:

Fidelity International Growth Currency Neutral Multi-Asset Base Fund
Fidelity International Growth Fund
Fidelity International Growth Multi-Asset Base Fund
Fidelity International High Dividend Index ETF Fund
Fidelity International High Quality Index ETF Fund
Fidelity International Low Volatility Index ETF Fund
Fidelity Investment Grade Total Bond Currency Neutral Fund
Fidelity Investment Grade Total Bond Fund
Fidelity Japan Fund
Fidelity Long-Term Leaders Currency Neutral Fund
Fidelity Long-Term Leaders Fund
Fidelity Long/Short Alternative Fund
Fidelity Market Neutral Alternative Fund
Fidelity Monthly Income Fund
Fidelity Multi-Asset Innovation Fund
Fidelity Multi-Sector Bond Currency Neutral Fund
Fidelity Multi-Sector Bond Fund
Fidelity Multi-Sector Bond Hedged Multi-Asset Base Fund
Fidelity North American Equity Investment Trust
Fidelity NorthStar Balanced Currency Neutral Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030493

Issuer Name:

Mackenzie Emerging Markets ex-China Equity Fund
Mackenzie Shariah Global Equity Fund
Mackenzie World Low Volatility Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Nov 20, 2023

NP 11-202 Preliminary Receipt dated Nov 17, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06049159

Issuer Name:

RP Target 2026 Discount Bond Fund

Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated Nov 20, 2023

NP 11-202 Preliminary Receipt dated Nov 20, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06049696

Issuer Name:

Fidelity Global Equity Investment Trust

Fidelity Global Equity Portfolio

Fidelity Global Financial Services Fund

Fidelity Global Fund

Fidelity Global Growth and Value Investment Trust

Fidelity Global Growth Portfolio

Fidelity Global Health Care Fund

Fidelity Global High Yield Multi-Asset Base Fund

Fidelity Global Income Portfolio

Fidelity Global Inflation-Linked Bond Index Hedged Multi-Asset Base Fund

Fidelity Global Innovators Investment Trust

Fidelity Global Intrinsic Value Fund

Fidelity Global Intrinsic Value Investment Trust

Fidelity Global Investment Grade Bond ETF Fund

Fidelity Global Large Cap Fund

Fidelity Global Monthly High Income ETF Fund

Fidelity Global Monthly Income Currency Neutral Fund

Fidelity Global Monthly Income Fund

Fidelity Global Natural Resources Fund

Fidelity Global Real Estate Fund

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030383

Issuer Name:

Fidelity Floating Rate High Income Multi-Asset Base Fund

Fidelity Founders Investment Trust

Fidelity Global Asset Allocation Currency Neutral Private Pool

Fidelity Global Asset Allocation Fund

Fidelity Global Asset Allocation Private Pool

Fidelity Global Balanced Portfolio

Fidelity Global Bond Currency Neutral Fund

Fidelity Global Bond Currency Neutral Multi-Asset Base Fund

Fidelity Global Bond Fund

Fidelity Global Bond Multi-Asset Base Fund

Fidelity Global Concentrated Equity Currency Neutral Fund

Fidelity Global Concentrated Equity Fund

Fidelity Global Consumer Industries Fund

Fidelity Global Core Plus Bond ETF Fund

Fidelity Global Credit Ex-U.S. Currency Neutral Multi-Asset Base Fund

Fidelity Global Credit Ex-U.S. Investment Trust

Fidelity Global Developed Markets Sovereign Bond Index

Hedged Multi-Asset Base Fund

Fidelity Global Disciplined Equity Fund

Fidelity Global Dividend Fund

Fidelity Global Dividend Investment Trust

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023

NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030348

Issuer Name:

Fidelity Advantage Bitcoin ETF Fund
Fidelity Advantage Ether ETF Fund
Fidelity All-in-One Balanced ETF Fund
Fidelity All-in-One Conservative ETF Fund
Fidelity All-in-One Equity ETF Fund
Fidelity All-in-One Growth ETF Fund
Fidelity American Balanced Currency Neutral Fund
Fidelity American Balanced Fund
Fidelity American Disciplined Equity Fund
Fidelity American Equity Fund
Fidelity American Equity Systematic Currency Hedged Fund
Fidelity American High Yield Currency Neutral Fund
Fidelity American High Yield Fund
Fidelity AsiaStar Fund
Fidelity Asset Allocation Private Pool Trust
Fidelity Balanced Income Private Pool Trust
Fidelity Balanced Managed Risk Portfolio
Fidelity Balanced Portfolio
Fidelity Balanced Private Pool Trust
Fidelity Canadian Asset Allocation Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023
NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030240

Issuer Name:

Fidelity Global Real Estate Multi-Asset Base Fund
Fidelity Global Small Cap Fund
Fidelity Global Small Cap Opportunities Fund
Fidelity Global Value Long/Short Fund
Fidelity Greater Canada Fund
Fidelity Growth Portfolio
Fidelity High Income Commercial Real Estate Currency Neutral Multi-Asset Base Fund
Fidelity High Income Commercial Real Estate Multi-Asset Base Fund
Fidelity Income Allocation Fund
Fidelity Income Portfolio
Fidelity Inflation-Focused Fund
Fidelity Insights Currency Neutral Multi-Asset Base Fund
Fidelity Insights Investment Trust
Fidelity Insights Systematic Currency Hedged Fund
Fidelity International Concentrated Equity Currency Neutral Fund
Fidelity International Concentrated Equity Fund
Fidelity International Disciplined Equity Fund
Fidelity International Equity Currency Neutral Investment Trust
Fidelity International Equity Investment Trust
Fidelity International Equity Multi-Asset Base Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023
NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030445

Issuer Name:

Mackenzie World Low Volatility ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Nov 20, 2023
NP 11-202 Preliminary Receipt dated Nov 17, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06049223

Issuer Name:

Fidelity Canadian Short Term Corporate Bond ETF Fund
Fidelity Canadian Short Term Fixed Income Multi-Asset
Base Fund
Fidelity China Fund
Fidelity ClearPath 2005 Portfolio
Fidelity ClearPath 2010 Portfolio
Fidelity ClearPath 2015 Portfolio
Fidelity ClearPath 2020 Portfolio
Fidelity ClearPath 2025 Portfolio
Fidelity ClearPath 2030 Portfolio
Fidelity ClearPath 2035 Portfolio
Fidelity ClearPath 2040 Portfolio
Fidelity ClearPath 2045 Portfolio
Fidelity ClearPath 2050 Portfolio
Fidelity ClearPath 2055 Portfolio
Fidelity ClearPath Income Portfolio
Fidelity ClearPath® 2060 Portfolio
Fidelity ClearPath® 2065 Portfolio
Fidelity Climate Leadership Balanced Fund
Fidelity Climate Leadership Bond Fund
Fidelity Climate Leadership Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023
NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030295

Issuer Name:

Fidelity NorthStar Balanced Fund
Fidelity NorthStar Fund
Fidelity Premium Fixed Income Private Pool
Fidelity Premium Money Market Private Pool
Fidelity Premium Tactical Fixed Income Private Pool
Fidelity Small Cap America Fund
Fidelity Small Cap America Systematic Currency Hedged
Fund
Fidelity SmartHedge U.S. Equity Fund
Fidelity SmartHedge U.S. Equity Multi-Asset Base Fund
Fidelity Special Situations Fund
Fidelity Strategic Income Currency Neutral Fund
Fidelity Strategic Income Fund
Fidelity Sustainable World ETF Fund
Fidelity Systematic Canadian Bond Index ETF Fund
Fidelity Tactical Credit Fund
Fidelity Tactical Fixed Income Fund
Fidelity Tactical Global Dividend ETF Fund
Fidelity Tactical High Income Currency Neutral Fund
Fidelity Tactical High Income Fund
Fidelity Tactical Strategies Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Nov 9, 2023
NP 11-202 Final Receipt dated Nov 15, 2023

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06030505

NON-INVESTMENT FUNDS

Issuer Name:

Coco Pool Corp.
Principal Regulator – British Columbia

Type and Date:

Final CPC Prospectus dated Nov 8, 2023
NP 11-202 Final Receipt dated Nov 14, 2023

Offering Price and Description:

\$300,000.00
3,000,000 Common Shares
Price: \$0.10 per Common Share
Filing# 3534263

Issuer Name:

Else Nutrition Holdings Inc.
Principal Regulator – British Columbia

Type and Date:

Final Short Form Base Shelf Prospectus dated Nov 10, 2023
NP 11-202 Final Receipt dated Nov 14, 2023

Offering Price and Description:

\$75,000,000.00
Common Shares, Warrants, Subscription Receipts, Units,
Debt Securities
Filing# 3537986

Issuer Name:

Freehold Royalties Ltd.
Principal Regulator – Alberta

Type and Date:

Final Short Form Base Shelf Prospectus dated Nov 13, 2023
NP 11-202 Final Receipt dated Nov 13, 2023

Offering Price and Description:

Common Shares, Preferred Shares, Subscription Receipts,
Debt Securities, Warrants, Units
Filing# 06047008

Issuer Name:

Galloper Gold Corp.
Principal Regulator – British Columbia

Type and Date:

Preliminary Long Form Prospectus dated Nov 8, 2023
NP 11-202 Preliminary Receipt dated Nov 14, 2023

Offering Price and Description:

No securities are being offered pursuant to this non-offering prospectus
Filing# 06046684

Issuer Name:

Generation Mining Limited.
Principal Regulator – Ontario

Type and Date:

Final Short Form Prospectus dated Nov 16, 2023
NP 11-202 Final Receipt dated Nov 16, 2023

Offering Price and Description:

\$15,097,200.00
42,858,000 Units
9,678,000 Flow-Through Units
Filing# 06039851

Issuer Name:

Thinkific Labs Inc.
Principal Regulator – British Columbia

Type and Date:

Final Short Form Base Shelf Prospectus dated Nov 14, 2023
NP 11-202 Final Receipt dated Nov 14, 2023

Offering Price and Description:

\$300,000,000.00
Subordinate Voting Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing# 06040263

Issuer Name:

Troilus Gold Corp.
Principal Regulator – Quebec

Type and Date:

Final Short Form Prospectus dated Nov 13, 2023
NP 11-202 Final Receipt dated Nov 14, 2023

Offering Price and Description:

\$15,008,000.00
28,580,000 Units
7,150,000 Traditional Flow-Through Shares
4,550,000 Québec Flow-Through Shares
Filing# 06040064

Issuer Name:

Verses AI Inc.
Principal Regulator – British Columbia

Type and Date:

Preliminary Short Form Base Shelf Prospectus dated Nov 10, 2023
NP 11-202 Preliminary Receipt dated Nov 14, 2023

Offering Price and Description:

\$100,000,000.00
Subordinate Voting Shares, Warrants, Units, Subscription Receipts, Debt Securities
Filing# 06046727

This page intentionally left blank

B.10 Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	GUARDIAN ETHICAL MANAGEMENT INC.	Investment Fund Manager	November 14, 2023
Consent to Suspension	Galaxy Placements Inc.	Exempt Market Dealer	November 13, 2023
New Registration	Webull Securities (Canada) Limited	Investment Dealer	November 15, 2023
New Registration	Sun Life Canada Securities Inc./ Valeurs mobilières Sun Life Canada inc.	Investment Dealer	November 16, 2023
New Registration	42KM Investment Partners Ltd.	Exempt Market Dealer and Investment Fund Manager (in addition to Portfolio Manager granted on October 23, 2023)	November 17, 2023
Consent to Suspension	Axia Real Assets LP	Portfolio Manager and Exempt Market Dealer	November 20, 2023
Voluntary Surrender	Vertex One Asset Management Inc.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	November 16, 2023

This page intentionally left blank

B.11

CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 EquiLend, LLC – Application for an Exemption from the Marketplace Rules – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION FOR AN EXEMPTION FROM THE MARKETPLACE RULES

EQUILEND, LLC

A. Background

EquiLend, LLC (**EquiLend**) has applied for an exemption from National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), National Instrument 23-101 *Trading Rules* (**NI 23-101**), and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**), in their entirety.

EquiLend is registered as an alternative trading system (**ATS**) with the Securities and Exchange Commission (**SEC**) and is an SEC-registered broker-dealer, as well as a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation.

EquiLend operates an electronic communications platform (**NGT Platform**) that facilitates the negotiation of securities borrow and loan transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (**SFTs**). Currently, the NGT Platform is operated in Canada through EquiLend Canada Corp. (**EquiLend Canada**), a registered investment dealer in Ontario and Québec and a member of the Canadian Investment Regulatory Organization (formerly known as the Investment Industry Regulatory Organization of Canada) for the purposes of operating as an ATS in Ontario and Québec.

B. Requested Relief

EquiLend will enable its users to negotiate SFTs on the NGT Platform, primarily involving “foreign exchange-traded securities” within the meaning of NI 21-101 and non-Canadian debt securities. In addition, EquiLend will enable referencing of Canadian exchange-traded securities, corporate debt securities and government debt securities (**Canadian Securities**) in SFTs negotiated on the NGT Platform, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

Where EquiLend may be subject to dealer registration under applicable Canadian securities legislation, with respect to “foreign securities” as defined in subsection 8.18(1) of NI 31-103, EquiLend will rely on the “international dealer exemption” under section 8.18 of NI 31-103; with respect to Canadian federal or provincial government debt securities, EquiLend will rely on the “specified debt exemption” under subsection 8.21(2)(a) of NI 31-103; and with respect to corporate debt securities, EquiLend will rely on the “trades through or to a registered dealer exemption” under section 8.5 of NI 31-103.

C. Application and Draft Exemption Order

In its application, EquiLend has described how it meets criteria for exemption from the Marketplace Rules. These criteria are consistent with those described in CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities*. The application and draft exemption order with terms and conditions are attached to this Notice at Appendices A and B respectively.

D. Comment Process

We are seeking public comment on EquiLend's application. Please provide your comments via email to marketregulation@osc.gov.on.ca on or before **December 27, 2023**.

Questions may be referred to:

Christopher Byers

Senior Legal Counsel, Market Regulation
Ontario Securities Commission
Email: cbyers@osc.gov.on.ca

Yuliya Khraplyva

Legal Counsel, Market Regulation
Ontario Securities Commission
Email: ykhraplyva@osc.gov.on.ca

APPENDIX A

November 16, 2022

Terry Doherty
Direct Dial: 212.991.2545
tdoherty@osler.com
Our Matter Number: 1207233

SENT BY OSC PORTAL AND EMAIL

Ontario Securities Commission
20th Floor, 20 Queen Street West
Toronto, Ontario M5H 3S8

Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec, Québec G1V 5C1

Nova Scotia Securities Commission
Ste. 400, Duke Tower, 5251 Duke St.
Halifax, NS B3J 1P3

Dear Sirs/Mesdames:

RE: Application by EquiLend LLC (“EquiLend”) for an exemption pursuant to subsection 15.1(1) of National Instrument 21-101 *Marketplace Operation* (“NI 21-101”) in the Jurisdictions (defined below) other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario from NI 21-101 in whole, pursuant to subsection 12.1(1) of National Instrument 23-101 *Trading Rules* (“NI 23-101”) in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole, and pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (“NI 23-103” and, together with NI 21-101 and NI 23-101, the “Marketplace Rules”) in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole, in accordance with the requirements of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (“NP 11-203”)

We are counsel to EquiLend. This is a coordinated review application (“**Application**”) on behalf of EquiLend, pursuant to section 3.4 of NP 11-203. We are filing this application on behalf of EquiLend in Ontario, Québec and Nova Scotia (collectively, the “**Jurisdictions**”).

In accordance with the guidelines set out in section 3.6 of NP 11-203, the Ontario Securities Commission (the “**OSC**”) has been selected as the principal regulator for the purposes of this Application on the basis that EquiLend has the most significant connection to Ontario. In accordance with subsection 5.2(3) of NP 11-203, this Application is being filed with each of the securities regulatory authorities in the Jurisdictions (“**ATS Relief Decision Makers**”) for relief from the securities legislation of each of those Jurisdictions (the “**Legislation**”). In accordance with section 3.4 of NP 11-203, EquiLend is filing a coordinated review application with, and paying fees to, each of the ATS Relief Decision Makers.

Relief Requested

On behalf of EquiLend, we hereby request that the ATS Relief Decision Makers grant a decision under the Legislation for the following decisions with respect to EquiLend (collectively, the “**Requested Relief**”) in relation to its operation of an alternative trading system (“**ATS**”) in the Jurisdictions:

- (a) Pursuant to subsection 15.1(1) of NI 21-101 in the Jurisdictions other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario for an exemption from NI 21-101 in whole;
- (b) Pursuant to subsection 12.1(1) of NI 23-101 in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole; and
- (c) Pursuant to subsection 10(1) of NI 23-103 in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole.

EquiLend is not in default of securities legislation in any of the Jurisdictions nor in its home jurisdiction, the United States of America (“**U.S.**”). The exemption sought is not novel and similar relief has been previously granted to GLMX Technologies, LLC¹ (“**GLMX**”).

¹ In the Matter of GLMX Technologies, LLC (2021), 44 OSCB 8481, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/glmx-technologies-llc>.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NP 11-203 and NI 21-101 have the same meaning if used in this Application, unless otherwise defined.

Overview of the Application

For convenience, this Application is divided into the following Parts:

PART I BACKGROUND

1. **Description of EquiLend and its Business**

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

1. **Regulation of the ATS**
2. **Governance**
3. **Regulation of Products**
4. **Access**
5. **Regulation of Participants on the Alternative Trading System**
6. **Clearing and Settlement**
7. **Systems and Technology**
8. **Financial Viability and Reporting**
9. **Recordkeeping**
10. **Outsourcing**
11. **Fees**
12. **Information Sharing and Oversight Arrangements**

PART III SUBMISSIONS BY EQUILEND

1. **Submissions Concerning the ATS Relief**

PART IV FEES

1. **Fees**

PART V OTHER MATTERS

1. **Other Matters**

Appendix A – Draft Decision

Appendix B – Authorization and Verification Statement

PART I BACKGROUND

1. **Description of EquiLend and its Business**
 - 1.1 EquiLend is a private limited liability company incorporated under the laws of the State of Delaware whose head office is located at 225 Liberty Street, 10th Floor, Suite 1020, New York, New York, 10281, U.S.
 - 1.2 EquiLend is a wholly-owned direct subsidiary of EquiLend Holdings LLC (“**EquiLend Holdings**”). EquiLend Holdings is a holding company for various direct and indirect wholly-owned or majority-controlled regulated and unregulated entities that provide electronic platform communication functionality between counterparties in the securities borrow and loan (“**SBL**”) market, as well as financial technology (FinTech), regulatory technology (RegTech) and data analytical products and services.
 - 1.3 EquiLend was formed in October 2001. EquiLend is registered as an ATS and a broker-dealer with the U.S. Securities and Exchange Commission (“**SEC**”) pursuant to section 15 of the U.S. *Securities Exchange Act of 1934*, as amended, (the “**Exchange Act**”). EquiLend is also a member of the Financial Industry Regulatory Authority (“**FINRA**”) and the Securities Investor Protection Corporation. EquiLend operates one (1) ATS that is registered with the SEC.
 - 1.4 Pursuant to its ATS registration, EquiLend operates an electronic negotiation platform (the “**NGT Platform**”) that facilitates the negotiation of SBL transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (“**SFTs**”).

- 1.5 The NGT Platform is operated through EquiLend Holdings and its authorized subsidiary entities (collectively, the “**Subsidiaries**”), each of which being separately regulated or otherwise exempt from registration in their respective jurisdictions, including (a) in the U.S., through EquiLend, (b) in Canada, through EquiLend Canada Corp. (“**EquiLend Canada**”), (c) in the United Kingdom (“**UK**”), through EquiLend Europe Limited (“**EquiLend Europe**”), a Multi-Lateral Trading Facility (“**MTF**”) authorized by the UK Financial Conduct Authority, (d) in the Republic of Ireland and the European Union, through EquiLend Limited, an MTF authorized by the Central Bank of Ireland, (e) in Australia, through EquiLend, under a Foreign Financial Institution and Australian Market License authorized by the Australian Securities and Investments Commission, and (f) in Hong Kong and certain other jurisdictions in Asia, through EquiLend Europe and EquiLend, respectively.
- 1.6 EquiLend Canada operates the NGT Platform in Canada providing access to “foreign exchange-traded securities” and exchange-traded securities within the meaning of NI 21-101 and non-Canadian debt securities described in Schedule 1 of *In the Matter of EquiLend Canada Corp.* (December 19, 2019) (and set out in paragraph 1.1.12 below). EquiLend Canada is registered as an investment dealer in Ontario and Québec and is also a member of the Investment Industry Regulatory Organization of Canada(Ontario District) (“**IIROC**”) for the purposes of operating as an ATS in Ontario and Québec.

SFTs and the Parties to SFTs

- 1.7 SFTs are transactions where cash or securities, or both, are used to borrow cash or other securities, or both, and vice versa. This includes SBL arrangements. The principal participants in these markets are broker-dealers acting as intermediaries and their diverse institutional clients. In these transactions, securities are exchanged for collateral which can be in the form of cash or different securities. Transactions are driven by a need to borrow/lend specific securities or to borrow/lend cash, or both.
- 1.8 Borrowers in the SFT market generally use SBL transactions for the purpose of borrowing securities for a specific purpose. Typical borrowers include investment banks, broker-dealers, hedge funds and other institutional investors. Securities lenders in the SFT market generally enter into SBL transactions to finance their securities positions, to obtain leverage and to generate yield from their long portfolios. Typical cash borrowers/securities lenders are hedge funds, mortgage REITs, pension funds, asset managers, insurance companies and sovereign wealth funds.

SFTs negotiated on the NGT Platform

- 1.9 The NGT Platform facilitates the negotiation of potential SFTs in equities and fixed income securities by providing secure access and connectivity between potential borrowers and lenders through a private network or the internet. All SFTs communicated through the NGT Platform are “potential SFTs” as the counterparties to a potential SFT must migrate off of the NGT Platform to complete or reject the prospective transaction under their respective bilateral or global securities lending agreements.
- 1.10 There is no obligation on the part of any counterparty to a potential SFT communicated on the NGT Platform to ultimately settle the prospective transaction under the terms by which it was communicated and matched on the NGT Platform. Rather, the counterparties may ultimately settle the prospective transaction in the OTC market under those terms or the counterparties may cancel the prospective transaction.
- 1.11 EquiLend is informed of the ultimate status of the prospective transaction (i.e., whether the counterparties settle the prospective transaction under the terms through which it was communicated and matched on the NGT Platform or cancel the prospective transaction) through a feedback function in which the counterparties report back to EquiLend on the status of the potential SFT after they have migrated off of the NGT Platform.
- 1.12 In this way, the NGT Platform does not does not operate as a traditional cash execution marketplace, nor does it accommodate the universal simultaneous publication of bid/offer/inventory information pertaining to potential SFTs across the entire NGT Platform of users. Prospective SFT bid/offer/inventory information does not interact with all users on the NGT Platform to establish a clearing price for subsequent execution on the NGT Platform. Instead, users on the NGT Platform (e.g., lenders and borrowers) pre-select the universe of counterparties against whom to display the potential SFT transactional terms, with such information interacting solely amongst the agreed pre-selected universe of counterparties. Where there is a match of aligned bid/offer/inventory potential SFT transactional information between two paired counterparties, those paired counterparties migrate entirely off of the NGT Platform to settle, or cancel, the prospective transaction in the OTC market without any affirmative post-matched introduction, intermediation, direction or referral activity on the part of EquiLend.
- 1.13 Furthermore, the NGT Platform is not a cash transaction execution platform. EquiLend does not establish or maintain any funded client accounts, nor does EquiLend affirmatively act in an agency or principal capacity pertaining to any potential SFTs communicated on the NGT Platform. EquiLend does not maintain an MPID, does not maintain membership in any marketplace or exchange, nor does it introduce, intermediate, direct or refer users of the NGT Platform

to any marketplace or exchange. All terms and conditions of any final SFT are negotiated between the matched counterparties pursuant to their respective bilateral or global securities lending agreements.

- 1.14 The securities exchanged in the potential SFTs negotiated on the NGT Platform are as follows:
- (a) “foreign exchange-traded securities” within the meaning of NI 21-101;
 - (b) non-Canadian debt securities, including:
 - (i) high-grade and high-yield U.S. corporate bonds;
 - (ii) U.S. Government-sponsored agency bonds;
 - (iii) U.S. Government debt securities (e.g., Treasury Bonds, Treasury Notes, etc.);
 - (iv) emerging market bonds, which are defined as U.S. dollar or Euro-denominated bonds issued by sovereign entities or corporations domiciled in a developing country, including both high grade and non-investment grade debt;
 - (v) European high-grade and high-yield corporate bonds, which are defined as corporate bonds issued by entities domiciled in Europe; and
 - (vi) non-U.S. sovereign government bonds (e.g., UK gilts or German bundesbonds).
- 1.15 In addition, EquiLend currently enables NGT Platform communication and matching functionality involving potential SFTs referencing “exchange-traded securities”, “corporate debt securities” and “government debt securities” (collectively, “**Canadian Securities**”) with counterparties outside of Canada, and intends in the future to enable NGT Platform communication and matching functionality involving potential SFTs referencing such securities with Canadian subscribers located in the Jurisdictions, each within the meaning of NI 21-101, as an incidental part of its business, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

User Agreements with Subscribers to the NGT Platform

- 1.16 Prior to getting access to the NGT Platform, a subscriber (customer) must sign an EquiLend Global User Agreement (“**User Agreement**”) with EquiLend that covers, among other things, obligations of the subscriber, and termination events.
- 1.17 The subscriber identifies to EquiLend by name an authorized Administrator, who then permissions each employee or contractor of the subscriber to use the NGT Platform (“**Named Users**”). The Named Users are the only individuals within the subscriber licensed to access and use the NGT Platform. EquiLend at all times has access to and affirmatively monitors all authorized Named Users, and may restrict, rescind or prohibit access by any Named User consistent with the terms and conditions of the User Agreement and consistent with legal, regulatory and self-regulatory organization (“**SRO**”) rule requirements.
- 1.18 EquiLend will provide the subscriber access to the NGT Platform through a web-based interface that can only be accessed when EquiLend white-lists the subscriber’s IP addresses. EquiLend will provide each Named User a unique username and password to enable such Named User to access the NGT Platform. Subscribers may also connect to EquiLend and facilitate NGT Platform communications through real time or batch process messaging protocols.
- 1.19 Once a trade is mutually agreed and completed outside the NGT Platform by the counterparties, and EquiLend is informed of the completion by the counterparties through EquiLend’s feedback function, the NGT Platform will send trade details to the parties of the transaction, which are typically transmitted through direct subscriber messaging, but are also accessible and downloadable via direct NGT Platform screen utility access. Subscribers, independently, and in advance, notify EquiLend that they are properly documented with, and able to trade with, specific counterparties prior to engaging in NGT Platform communications and subsequent transactions with that counterparty. EquiLend is not a party to any potential SFT transaction, nor does EquiLend facilitate, refer, direct, intermediate or otherwise engage in any aspect of the execution, clearing or settlement process facing any potential SFT communicated and matched through the NGT Platform.
- 1.20 EquiLend proposes to offer direct access to the NGT Platform to prospective subscribers in the Jurisdictions (“**Canadian Subscribers**”) to facilitate potential transactions in SFTs. Access to the NGT Platform will be limited to Canadian Subscribers who meet EquiLend’s eligibility criteria. Subscribers generally fall into the following categories: “qualified institutional buyers”, as such term is defined in Rule 144A (“**Rule 144A**”) under the U.S. *Securities Act of 1933*, as amended (the “**U.S. Securities Act**”); “eligible contract participants”, as such term is defined in Section 1a(18) of the

U.S. *Commodity Exchange Act of 1936*, as amended (the “CEA”); large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million which can include pension funds and hedge funds.

- 1.21 Before being provided direct access to the NGT Platform, EquiLend will confirm that each Canadian Subscriber is a “permitted client” as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”). Retail and other non-institutional customers will not be provided with access to the NGT Platform.
- 1.22 Once a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute the User Agreement in which the prospective Canadian Subscriber represents to EquiLend that the Canadian Subscriber’s conduct of potential SFT transactions is subject to regulation and oversight under applicable securities, banking or other appropriate laws that impose upon the Canadian Subscriber a combination of requirements, such as audits, public disclosure of financial information, capital rules, collateral requirements, record keeping requirements or other similar safeguards, and where the Canadian Subscriber agrees to use the NGT Platform and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a “permitted client” as defined in NI 31-103.
- 1.23 Under the User Agreement, a Canadian Subscriber and its affiliates constitute a “Subscriber Group”. The Subscriber Group will authorize Named Users, who are the only persons authorized to use the NGT Platform. The Subscriber Group’s right to use the NGT Platform is conditioned upon the Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the NGT Platform, and may use the NGT Platform only in compliance with applicable law.
- 1.24 EquiLend will maintain a current list of all Canadian Subscribers. It is proposed that EquiLend will provide to its Canadian Subscribers disclosure that states that:
 - A. rights and remedies against EquiLend may only be governed by the laws of its home jurisdiction, rather than the laws of Canada, and may be required to be pursued in its home jurisdiction rather than in Canada;
 - B. the rules applicable to trading on the NGT Platform may be governed by the laws of EquiLend’s home jurisdiction, rather than the laws of Canada; and
 - C. EquiLend is regulated by the regulator in its home jurisdiction rather than the securities regulators in Canada.

Other Information about the NGT Platform

- 1.25 The NGT Platform operates six and a half days a week, 24 hours per day.
- 1.26 EquiLend intends to make available training for each person who has access to trade on the NGT Platform. EquiLend’s client services team provides training sessions to new users to learn the functionality of the NGT Platform.
- 1.27 EquiLend may, at any time, in its sole discretion and without incurring any liability to a subscriber, temporarily or permanently suspend, restrict or terminate the Subscriber Group’s use of the NGT Platform in the event of (a) any failures, malfunctions, faults or errors within the NGT Platform, (b) external events or circumstances affecting use of the NGT Platform, or (c) a request or requirement by any government or regulatory organization or body. As an SEC registered broker-dealer, FINRA-dealer member and operator of a registered ATS in the U.S., EquiLend is required to comply with applicable law with respect to the operation of its marketplaces and “observe high standards of commercial honor and just and equitable principles” in the conduct of its business (see FINRA Rule 2010 – *Standards of Commercial Honor and Principles of Trade*, “**FINRA Rule 2010**”), which includes ensuring that subscribers have the capacity and the ability to meet their commitments when trading on the NGT Platform.
- 1.28 EquiLend seeks to ensure that trading on the NGT Platform is consistent with the requirements of U.S. law by monitoring the trading activity occurring on its marketplace primarily by looking for unusual activity in negotiations.
- 1.29 Suspected material breaches of rules promulgated by applicable regulatory authorities related to fair and orderly trading on the NGT Platform will be reviewed by EquiLend primarily based on information gleaned by EquiLend from monitoring electronic SFT negotiations. If necessary, the information from such review may be reported to the regulatory authorities and other appropriate regulatory organizations in a timely manner. EquiLend is committed to fully cooperating with its regulators in investigating any suspected breach or suspected market abuse.
- 1.30 EquiLend may immediately deny NGT Platform access privileges to any subscriber or any individual user where, without limitation, there is a suspected breach of law, regulatory requirements, SRO rules or its marketplace guidelines.

- 1.31 It is proposed that EquiLend will maintain the following information for each product traded on the NGT Platform:
- (a) the total trading volume and value originating from Canadian Subscribers and as attributed to each applicable Canadian province, and
 - (b) the proportion of aggregate global trading volume and value communicated on the NGT Platform as conducted by Canadian Subscribers and as attributed to each applicable Canadian province.

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

1. Regulation of the ATS

1.1 Regulation of the ATS – The ATS is regulated in an appropriate manner in another jurisdiction by a foreign regulator (the “Foreign Regulator”)

- 1.1.1 In the U.S., an ATS is defined in Rule 300(a) of Regulation ATS under the Exchange Act (“**Regulation ATS**”) as “any organization, association, person, group of persons, or system:
- (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange; and
 - (2) That does not:
 - (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or
 - (ii) Discipline subscribers other than by exclusion from trading.”
- 1.1.2 An ATS is a trading system that meets the definition of “exchange” under federal securities laws of the U.S., but is not required to register as a national securities exchange if the ATS operates under the exemption provided under Rule 3a1-1(a)(2) of the Exchange Act.² To operate under this exemption, an ATS must comply with the requirements set forth in Rules 300-303 of Regulation ATS, which include, among other things, registering as a broker-dealer under section 15 of the Exchange Act. Regulation ATS establishes a regulatory framework for ATSs. Under the Rule 3a1-1 exemptions and Regulation ATS, ATSs are allowed to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume. EquiLend is operating as an ATS, is registered as a broker-dealer pursuant to section 15 of the Exchange Act, and is a member of FINRA, the SRO that governs broker-dealers in the U.S. As such, EquiLend is subject to the compulsory regulatory supervision of both the SEC and FINRA.
- 1.1.3 In the Jurisdictions, an ATS is required by section 6.1 of NI 21-101 to be registered as an investment dealer and be a member of the IIROC in order to operate a business as an ATS in each of the Jurisdictions.
- 1.1.4 In addition, an ATS is subject to registration requirements under applicable Canadian securities law when engaging in the business of trading. Similarly, in the U.S., all broker-dealers and their associated persons must be registered with the SEC (and FINRA in the case of associated persons) pursuant to section 15 of the Exchange Act and are subject to its regulations. They must as well be a member of at least one authorized securities SRO, which is further delegated certain regulatory supervisory authority. Most broker-dealers in the U.S. are members of FINRA.
- 1.1.5 The SEC approved EquiLend’s initial registration as a broker-dealer on June 21, 2002, and as an ATS in 2010. EquiLend remains compliant with its regulatory requirements as demonstrated by its continued status as an SEC registered broker-dealer and ATS.
- 1.1.6 As a registered broker-dealer and ATS, EquiLend is subject to a comprehensive regulatory regime in the U.S. In such capacity, EquiLend is registered with and regulated by the SEC and FINRA. EquiLend is also subject to registration with and regulation by the New York State Department of Law and the Office of the Attorney General, and by other applicable U.S. state regulators pursuant to state “blue sky” laws, regulations and rules (collectively, the “**U.S. Regulators**”). The U.S. Regulators set rules, conduct compliance reviews and perform surveillance and enforcement. The U.S. regulatory structure for broker-dealers such as EquiLend includes: financial and other fitness criteria; reporting and record-keeping requirements; procedures governing the treatment of customer funds and property and business conduct standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse and market manipulation.

² 17 CFR Parts 202, 240, 242 and 249 Release No. 34-40760 -- *Regulation of Exchanges and Alternative Trading Systems* (“**Rule 3a1-1**”); <https://www.sec.gov/rules/final/34-40760.txt>.

- 1.1.7 In the U.S., broker-dealers are primarily governed by the Exchange Act, and the regulations and rules promulgated thereunder. Section 4 of the Exchange Act provides for the creation of the SEC, which was established in 1934. The Exchange Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, oversee and supervise marketplaces, exchanges, broker-dealers, transfer agents and clearing agencies, as well as U.S. SROs, including FINRA. The Exchange Act also identifies and prohibits certain types of conduct in the markets and provides the SEC with examination and disciplinary powers over regulated entities and their associated persons. FINRA has significant SEC-delegated authority over broker-dealers, that is consented to by its members, along with the authority to adopt and enforce member rules, impose fines and other sanctions, and conduct examinations and investigations.
- 1.1.8 In the U.S., investors are protected by comprehensive regulation that governs the conduct of broker-dealers, including EquiLend, and other market participants. These regulatory frameworks include, but are not limited to, the U.S. Securities Act, the Exchange Act (including Regulation ATS, as set forth in greater detail below), anti-money laundering (“AML”) and know-your-customer (“KYC”) law, rules and regulations of the U.S. Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”), and state securities law, rules and regulations.
- 1.1.9 With respect to the agencies and organizations that regulate broker-dealers and ATSs, the SEC and FINRA share common goals, including the common stipulated mission to “protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation.” In response to the 2008 financial crisis, the SEC and FINRA have imposed heightened responsibilities on key market participants and have used their examination and enforcement resources to bolster investor protections.
- 1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the ATS. This includes regular, periodic oversight reviews of the ATS by the Foreign Regulator.**
- 1.2.1 The SEC and FINRA have the appropriate supervisory, examination and enforcement authority and resources to ensure that broker-dealers and ATSs, such as EquiLend, comply with their regulatory requirements. The SEC and FINRA have the power to direct regulated firms that are failing, or have failed, to comply with any applicable rules or regulations to take specific actions to remedy any such non-compliance, and have the legal authority to suspend or revoke a firm’s registration and regulatory authorizations.

Scope of authority

- 1.2.2 The SEC has delegated certain of its day-to-day broker-dealer regulatory oversight responsibility to FINRA. FINRA’s rules, which are approved by the SEC, allow for disciplining member firms, including EquiLend, for improper conduct and for establishing measures to ensure market integrity and investor protection. FINRA conducts various ATS surveillance and examination programs pertaining to trading activities and other sensitive client information that are designed to detect abusive activities. FINRA’s ATS surveillance and examination programs also evaluate financial and operational fitness for continued registration.
- 1.2.3 As set forth in greater detail below, broker-dealers in the U.S. are subject to routine and for-cause examinations by the SEC and FINRA. Broker-dealers are also subject to periodic financial and operational reporting (monthly and annually) through the filing of Financial and Operational Combined Uniform Single (“FOCUS”) Reports, which are filed with FINRA.
- 1.2.4 Broker-dealers registered in the U.S. are subject to a number of self-reporting obligations imposed by both the SEC and FINRA, including the requirement to self-report certain events pursuant to FINRA Rule 4530 – *Reporting Requirements* (as discussed in greater detail below, “**FINRA Rule 4530**”), file and keep current certain information with respect to the broker-dealer’s business and operations on Form BD – *the Uniform Application for Broker-Dealer Registration* (“**Form BD**”), and file and keep current information with respect to registered representatives employed with, or terminated by, the broker-dealer (including with respect to certain reportable events, such as certain criminal charges or convictions) on Form U4 – *Uniform Application for Securities Industry Registration or Transfer* and Form U5 – *Uniform Termination Notice For Securities Industry Registration*.
- 1.2.5 Broker-dealers registered in the U.S. are typically, depending on the nature of their business, subject to market surveillance by the SEC and FINRA, which is largely accomplished through various trade-reporting forms and systems. Subject to certain exemptions, broker-dealers are also required to file quarterly reports with the SEC on Form 17-H (*Risk Assessment Reports for Brokers and Dealers*), which includes information with respect to the broker-dealer and the financial and securities activities of certain affiliates of a broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer.
- 1.2.6 Broker-dealers registered in the U.S. that operate a regulated ATS are subject to additional oversight and reporting under Regulation ATS (as discussed in greater detail below), including the requirements to file and keep current a Form ATS (*Initial Operation Report, Amendment To Initial Operation Report And Cessation Of Operations Report For Alternative Trading Systems*) (“**Form ATS**”) and quarterly marketplace transaction reporting pursuant to Form ATS-R (*Quarterly Report of Alternative Trading System Activities*) (“**Form ATS-R**”).

- 1.2.7 The SEC and the securities regulatory authorities in the Jurisdictions are parties to a memorandum of understanding (“MoU”) related to securities market oversight, enforcement and information sharing arrangements. The AMF and the OSC are each parties to a similar MoU with FINRA.

U.S. regulation of broker-dealers and ATSs – Source of its authority to supervise the ATS

- 1.2.8 Pursuant to subsection 15(a) of the Exchange Act, subject to certain exceptions, all persons that use the mails or any means or instrumentality of interstate commerce to effect securities transactions must register with the SEC and become members of a national securities association, of which there is only one for registered broker-dealers, that being FINRA. An ATS may only be operated by a registered broker-dealer. EquiLend is registered with the SEC as a broker-dealer and is subject to all applicable rules and regulations to which registered U.S. broker-dealers are subject, as well as specific rules and regulations applicable to the operation of an ATS.
- 1.2.9 ATSs are subject to a comprehensive regulatory framework in the U.S. Subject to certain limited exceptions, all U.S. ATSs must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSs are subject to extensive regulation and oversight by both the SEC and FINRA with respect to ATS operations and as to the broker-dealer’s operations as a whole. In becoming a member of FINRA, each broker-dealer must enter into a membership agreement that sets forth the parameters of the broker-dealer’s operations, not only with respect to business lines, but also with respect to minimum net capital requirements, number of offices, and number of client-facing registered representatives that the broker-dealer may employ.
- 1.2.10 In addition to the foregoing, to acquire and maintain its status as an ATS, EquiLend must satisfy several statutorily-prescribed requirements set out in Regulation ATS, which sets forth additional guidelines and requirements with respect to:
- A. Broker-dealer registration;
 - B. Notice;
 - C. Order display and execution access;
 - D. Fees;
 - E. Fair access;
 - F. Capacity, integrity, and security of automated systems;
 - G. Recordkeeping;
 - H. Reporting obligations;
 - I. Compliance and controls.
- 1.2.11 **Broker-dealer registration.** As noted in paragraph 1.2.8 above, pursuant to Exchange Act Rule 301(b)(1), an ATS is required to be registered as a broker-dealer under section 15 of the Exchange Act. When the SEC adopted Regulation ATS in 1998 it revised the definition of “exchange”³ to clarify that electronic communication networks (“ECNs”) are deemed to be exchanges. The SEC then provided flexibility to ECNs by permitting them to be regulated as a broker-dealer, rather than as a traditional stock exchange. Accordingly, the operator of an ATS is regulated as a broker-dealer, as described in greater detail in this application.
- 1.2.12 **Notice.** Form ATS requires EquiLend to provide the SEC with details relating to the operation of the ATS, including (but not limited to):
- A. The type of subscribers (e.g., broker-dealers, institutional clients, etc.) that will be permitted to access the ATS, and any differences in access that will be offered by the ATS to the different groups of subscribers, if applicable.
 - B. A list of the types of securities the ATS trades (e.g., debt, equity, etc.) and whether such securities will not be registered under subsection 12(a) of the Exchange Act.
 - C. A list of the securities (as opposed to the “categories” of securities) the ATS trades.

³ See 63 Fed. Reg. 70,844 (Dec. 22, 1998).

- D. The manner of operation of the ATS, procedures governing orders, means of access, procedures governing execution, clearing and settlement, and the reporting of securities transactions effected through the ATS, each as applicable.
 - E. The system guidelines, and any other manuals or other materials provided to the subscriber relating to the ATS.
 - F. The ATS' procedures for reviewing systems capacity, security and contingency planning.
- 1.2.13 Exchange Act Rule 301(b)(2)(ii) requires an amendment to Form ATS be filed with the SEC at least twenty (20) days prior to implementing a "material change" to the operation of its ATS.
- 1.2.14 Exchange Act Rule 301(b)(2)(iii) requires a quarterly filing be made with the SEC in the event that any information previously provided pursuant to Rules 301(b)(2)(i) and (ii) become inaccurate.
- 1.2.15 Exchange act Rule 301(b)(2)(iv) requires that a filing be made with the SEC promptly in order to correct information previously reported on Form ATS pursuant to Rules 301(b)(2)(i) and (ii) that has become inaccurate.
- 1.2.16 Exchange Act Rule 301(b)(2)(v) requires that a filing be made with SEC promptly in the event that the ATS ceases operations.
- 1.2.17 **Order display and execution access.** Sections 8.1 and 8.2 of NI 21-101 in the Jurisdictions imposes certain pre-trade and post-trade information transparency requirements on ATSS displaying orders of government debt securities and corporate debt securities, respectively. Similar mandated order display and reporting requirements have not been implemented in the U.S. and are not appropriate for SFTs of the nature communicated through the NGT Platform. EquiLend's proposed exemption order includes an exemption in this regard.
- 1.2.18 Section 10.1 of NI 21-101 requires disclosure by a marketplace (including an exchange and an ATS) on its website of certain information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including information related to the system's protocols and rulebook. Since the NGT Platform only offers participants the ability to communicate and negotiate potential SFTs, it is not standard practice, or otherwise appropriate in the context, to have a rulebook, although EquiLend does maintain Marketplace Guidelines describing the operational and interactive attributes for the access and use of the NGT Platform. Moreover, U.S. ATSS are not currently required to post their current fee schedules on public-facing company websites.
- 1.2.19 CSA Notice 21-328 – *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities* ("**CSA Notice 21-328**") requires that a foreign ATS provide information regarding its transparency of operations, including disclosure relating to order execution, fees and order priority. U.S. ATSS are not currently required to post their current fee schedules on public-facing company websites. Furthermore, the NGT Platform operates solely as a communications utility and does not directly or indirectly facilitate or effect the execution of trades in potential SFTs.
- 1.2.20 Exchange Act Rule 301(b)(3) imposes similar market transparency requirements. The rule requires ATSS with five (5) percent or more of trading volume in any covered security to publicly disseminate their best priced orders in those securities. EquiLend does not accommodate any trading volume per se on the NGT Platform and, therefore, does not meet this threshold, as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity. Moreover, the NGT Platform does not support active trading in the equities and debt securities that collateralize the potential SFT obligations communicated through the NGT Platform. With respect to the NGT Platform, the requirements under Exchange Act Rule 301(b)(3) are inapplicable, as the NGT Platform is not a National Market System ("**NMS**") stock ATS, nor does it support active trading in NMS stocks.
- 1.2.21 **Fees.** Exchange Act Rule 301(b)(4) is generally inapplicable to the NGT Platform. In practice, EquiLend is required to comply with the rules or standards of practice governing fees established by FINRA, including FINRA Rule 2010 and FINRA Rule 2121 - *Fair Prices and Commissions* (also known as the 5% Rule). While neither rule prescribes a specific limitation on the fees that may be charged to a client with respect to effecting a securities transaction either as agent or principal, each rule requires that EquiLend implement its fees in a manner that is fair and reasonable under the circumstances. EquiLend's standard fee schedule is provided to all clients at the time of onboarding and annually thereafter. Likewise, EquiLend reports any changes to its fee schedule directly to the SEC through ordinary course amended Form ATS filings.
- 1.2.22 **Fair access.** While the NGT Platform is not currently required to comply with the "Fair Access" requirements of Exchange Act Rule 301(b)(5), EquiLend monitors daily SBL activity that is communicated on its ATS to ensure that it complies with the relevant rules relating to "Fair Access". More specifically, Exchange Act Rule 301(b)(5) requires an ATS that meets the trading volume thresholds to establish written standards for granting access to its system and apply those standards fair and non-discriminatory manner. The operation of the NGT Platform does not implicate or otherwise meet the "Fair Access" trading volume thresholds as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity.

- 1.2.23 With respect to the NGT Platform, the “Fair Access” requirements will be triggered if during at least four (4) of the preceding six (6) calendar months, the ATS had with respect to municipal securities, five (5) percent or more of the average daily trading volume traded in the U.S., or with respect to corporate debt securities, five (5) percent or more of the average daily volume traded in the U.S. Where the volume thresholds are met, the ATS, pursuant to Exchange Act Rule 301(b)(5)(ii)(C), is required to make and keep records of all grants and denials of access, including for all subscribers, the reason for granting or denying such access to the ATS. Such information is required to be filed with the SEC on a quarterly basis on Form ATS-R. As EquiLend does not accommodate any trading volume per se on its NGT Platform, it does not meet this threshold, as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity. Moreover, the NGT Platform does not support active trading in the equities and debt securities that collateralize the potential SFT obligations communicated through the NGT Platform. Therefore, these reporting requirements are not well-suited to the SFT market generally or to EquiLend specifically. In any event, EquiLend does maintain updated information regarding Canadian Subscribers who are provided with direct access to the NGT Platform and would maintain updated information regarding any Canadian applicants for status as a Canadian Subscriber who were denied such status, and would submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis.
- 1.2.24 **Capacity, integrity, and security of automated systems.** Exchange Act Rule 301(b)(6) is triggered by a trading volume threshold that is currently not satisfied by the NGT Platform. However, EquiLend monitors on an ongoing basis the level of SFT activity that occurs on its ATS to ensure that it complies with the relevant requirements of Exchange Act Rule 301(b)(6). More specifically, Exchange Act Rule 301(b)(6) requires an ATS that meets the trading thresholds to establish reasonable capacity estimates (both current and future), develop and implement procedures to review system development and testing methodology, review system vulnerability from external and internal threats, physical hazards and natural disasters and establish adequate contingency and disaster recovery plans. With respect to the last two items, EquiLend, as a broker-dealer, is separately subject to such requirements. As EquiLend does not accommodate any trading volume per se on its NGT Platform, whether in respect of prospective SBL transactions or any underlying collateral, these thresholds are not relevant to EquiLend, the NGT Platform specifically and the SFT ATSS generally.
- 1.2.25 **Recordkeeping.** Pursuant to Exchange Act Rule 301(b)(8) as an ATS, EquiLend is required to make, keep and preserve certain records relating to the operation of its ATS, including those records required to be maintained pursuant to Exchange Act Rule 302 and in the manner provided in Exchange Act Rule 303. As a registered broker-dealer, EquiLend is required pursuant to Section 17(a)(1) of the Exchange Act to make, keep, furnish and disseminate records and reports as prescribed by the SEC. The SEC’s books and records rules applicable to broker-dealers, Exchange Act Rules 17a-3 and 17a-4, specify minimum requirements with respect to the records that broker-dealers must make, how long those records and other documents relating to a broker-dealer’s business must be kept and in what format they may be kept. The SEC requires that broker-dealers create and maintain certain records so that, among other things, the SEC and SROs can use such records in the conduct of their examinations.
- 1.2.26 **Reporting Obligations.** Pursuant to Exchange Act Rule 301(b)(9), an ATS is required to file with the SEC on a quarterly basis the information required by Form ATS-R.
- 1.2.27 Form ATS-R requires the submitter to provide the SEC with details relating to the operation of the ATS during the previous calendar quarter, including (but not limited to):
- A. The total unit and dollar volume of transaction in various categories of securities.
 - B. A list of all persons granted, denied, or limited access to the ATS during the period covered by the report.
- 1.2.28 **Written procedures to protect confidential trading information.** Pursuant to Exchange Act Rule 301(b)(10) as an ATS, EquiLend is required to establish adequate written safeguards and written procedures to protect subscribers’ confidential trading information. Such written safeguards and written procedures must include:
- A. Limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with these or any other applicable rules;
 - B. Implementing standards controlling employees of the ATS trading for their own accounts; and
 - C. Adopting and implementing adequate written oversight procedures to ensure that the written safeguards and procedures established are followed.
- 1.2.29 **Compliance and controls.** Broker-dealers that provide market access are subject to an additional layer of regulatory oversight under Exchange Act Rule 15c3-5 (17 C.F.R. §240.15c3-5) (the “**Market Access Rule**”), which imposes additional financial and regulatory risk management controls and supervisory procedure requirements on the ATS or broker-dealer. This includes the requirement to establish, maintain and ensure compliance with risk management and supervisory controls, policies, and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with market access or providing clients with market

access. These risk management and supervisory controls, policies and procedures are required to be reasonably designed to ensure that all orders are monitored and include pre-trade controls and regular post-trade review. Under the Market Access Rule, a broker-dealer must preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records obligations under SEC Rule 17a-4. Although the NGT Platform does not accommodate direct trading in securities per se, EquiLend has implemented controls and supervisory policies and procedures in compliance with the Market Access Rule.

- 1.2.30 Additionally, the risk management controls and supervisory procedures required pursuant to the Market Access Rule must be reasonably designed to systematically limit the financial exposure of the broker-dealer (e.g., preventing the entry of one or more orders that exceed pre-determined price or size parameters), ensure compliance with the broker-dealer's regulatory obligations (e.g., restricting access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer), and ensure that the entry of orders does not interfere with fair and orderly markets. Although EquiLend does not accommodate or establish any cash or securities funded "trading" accounts for its clients or otherwise as principal, and does not accommodate trading in securities per se, EquiLend has implemented reasonably designed controls and supervisory policies and procedures in compliance with the risk exposure requirements under the Market Access Rule.
- 1.2.31 A broker-dealer's risk management controls and supervisory procedures should be reasonably designed to:
- A. Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and
 - B. Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order by-order basis or over a short period of time, or that indicate duplicative orders.
- 1.2.32 Under the Market Access Rule, a broker-dealer must (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and (b) document any material deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy these deficiencies. Although EquiLend does not accommodate or establish any cash or securities funded "trading" accounts for its clients or otherwise as principal, and does not accommodate trading in securities per se, EquiLend has implemented reasonably designed controls and supervisory policies and procedures designed to monitor and assess, on a daily, weekly, monthly, annual and periodic basis, as applicable, NGT Platform client engagement and associated risks in compliance with the risk exposure requirements under the Market Access Rule.
- 1.2.33 Broker-dealers are also subject to the general supervision and monitoring requirements of FINRA Rule 3110 – *Supervision* ("**FINRA Rule 3110**"), which requires broker-dealers to establish and maintain a system to supervise the broker-dealer's business and the activities of each associated person employed by the broker-dealer that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.
- 1.2.34 EquiLend is required to comply with the above identified compliance and control obligations as a condition to maintaining its registration and ability to operate the NGT Platform under its broker-dealer and ATS licensing. Taking into account its SFT business model, EquiLend is required to:
- A. have systems and controls in place to monitor transactions on the NGT Platform;
 - B. retain sufficient financial resources for the performance of its functions as ATS operator;
 - C. operate its Platform with due heed to the protection of investors;
 - D. ensure that trading is conducted in an orderly and fair manner;
 - E. monitor compliance with the SEC, FINRA, and the rules of the NGT Platform;
 - F. investigate complaints with respect to its business;
 - G. maintain high standards of integrity and fair dealing; and
 - H. prevent abuse.
- 1.2.35 Regulation ATS was most recently amended in 2018, with such amendments enhancing operational transparency requirements and expanding the SEC's regulatory oversight function. The amendments also represent a significant tightening of the safeguards and requirements pertaining to client confidential trading information. More recently, the SEC has proposed to further expand the regulation of ATSs to include the registration of certain interdealer brokers (IDBs) in

the U.S. Treasury securities markets, demonstrating that the SEC continues to consider the regulation of ATSS a primary regulatory priority.

Rules and policy statements

- 1.2.36 As noted above, the primary regulatory frameworks governing broker-dealer activity in the U.S. include, the U.S. Securities Act and the Exchange Act (and the rules and regulations promulgated thereunder, including Regulation ATS), FINRA and Municipal Securities Rule-Making Board (“MSRB”) rules, FinCEN AML and Customer Identification Program (“CIP”) / KYC rules and regulations, and state securities rules and regulations (“**State Blue Sky Laws**”). SEC and FINRA also routinely publish regulatory guidance and interpretive notices, including through SEC no-action letters and FINRA regulatory notices.⁴

Financial protections afforded to customer funds

- 1.2.37 The NGT Platform operated by EquiLend does not hold customer funds or securities, or otherwise directly or indirectly accommodate any cash-based potential SFTs.

Authorization, licensure or registration of the NGT Platform

- 1.2.38 As noted above, ATSS, including EquiLend, are subject to a comprehensive regulatory framework in the U.S. Subject to certain limited exceptions, all U.S. ATSS must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSS are subject to extensive regulation and oversight by the SEC and FINRA, including in respect of both ATS and broker-dealer capital and operational requirements. Failure to comply with obligations pursuant to both the ATS and broker-dealer regulatory frameworks can lead to fines, the suspension of licensing and/or other sanctions, including the cessation of operations.
- 1.2.39 As described in greater detail below, broker-dealers in the U.S. are subject to routine and for-cause examinations by both the SEC and FINRA. Broker-dealers are also subject to periodic financial and operational reporting (monthly and annually) through the filing of FOCUS Reports, which are filed with FINRA. Further, a broker-dealer is subject to a number of self-reporting obligations imposed by the SEC and FINRA, including the requirement to self-report certain events pursuant to FINRA Rule 4530 (as discussed in greater detail below) and to file and keep current certain information with respect to the broker-dealer’s business and operations on Form BD and Form ATS. In addition, pursuant to FINRA Rule 3110 and FINRA Rule 3130 – *Annual Certification of Compliance and Supervisory Processes* (“**FINRA Rule 3130**”), a broker-dealer’s chief executive officer (or equivalent officer) must certify annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures that are reasonably designed to achieve compliance with applicable FINRA rules and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer’s chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer’s board of directors and audit committee.

The foreign regulator’s approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market

- 1.2.40 Pursuant to U.S. AML and anti-financial crime rules and regulations, broker-dealers are required to file with FinCEN a Suspicious Activity Report (“**SAR**”) pertaining to any suspicious transaction or pattern of transactions relevant to a possible violation of law or regulation. Instruments or mechanisms that may be used in suspicious activities and that are subject to SAR filings include, but are not limited to, transactions involving wire transfers, letters of credit and other trade instruments, correspondent accounts, shell companies, financial instruments, digital currency business services and other transactions involving suspected market manipulation and/or insider trading.
- 1.2.41 Additionally, broker-dealers and market participants are subject to a number of rules and regulations with respect to securities fraud, market manipulation, and abusive and/or insider trading practices. Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder prohibit any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries in the U.S.

- 1.2.42 The U.S. has a comprehensive financial services regulatory regime. The laws, regulations, rules and policies that govern the authorization and ongoing supervision and oversight of market intermediaries, include, but are not limited to, the U.S. Securities Act and the Exchange Act (and the rules and regulations promulgated thereunder), the U.S. *Investment Company Act of 1940*, as amended, the U.S. *Investment Advisers Act of 1940*, as amended, the rules of FINRA, the

⁴ For additional information with respect to FINRA regulatory notices, please see <https://www.finra.org/rules-guidance/notices>.

MSRB, and the National Futures Association (“NFA”), FinCEN AML and KYC rules and regulations, and State Blue Sky Laws.

- 1.2.43 The vast majority of subscribers with access rights to the NGT Platform and that could potentially face counterparties organized or located in the Jurisdictions are highly qualified institutional market intermediaries – participants legally formed in the U.S.

Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk for market intermediaries who may deal with members and other participants located in Canada

- 1.2.44 FINRA members, such as EquiLend, are required to maintain membership with the Securities Investor Protection Corporation (“SIPC”). SIPC was created under the U.S. *Securities Investor Protection Act of 1970* (“SIPA”) as a non-profit membership corporation. SIPC oversees the liquidation of member firms that close when the firm is bankrupt or in financial trouble, and customer assets are missing. In a liquidation under the SIPA, SIPC and a court-appointed trustee work to return customers’ funds and securities as quickly as possible.

Examination and reporting requirements

- 1.2.45 As described above, the SEC and FINRA exercise their supervisory authority by, among other methods, conducting periodic and ad hoc examinations. These examinations are designed to determine, among other things, whether an ATS and broker-dealer’s rules, supervisory policies and procedures and operational practices are adequate for the protection of investors and to ensure that the firm maintains an orderly market under the conditions of its ATS and broker-dealer authorizations.
- 1.2.46 As a registered broker-dealer in the U.S., EquiLend, is subject to periodic examinations by both the SEC and FINRA that include: (i) cause examinations, which are initiated in order to investigate some particular issue or event; (ii) sweep examinations, in which multiple firms receive, and must respond to, written inquiries regarding a particular issue; and (iii) cycle examinations, which occur periodically over the life of the broker-dealer. Both the SEC and FINRA conduct examinations of these types, and both have considerable staff and resources to conduct such examinations and implement and enforce conditional and remedial measures, where applicable.
- 1.2.47 During examinations, the examination staff seek to determine whether the entity being examined is (i) conducting its activities in accordance with the federal securities laws and rules adopted under such laws, as well as the rules of SROs, such as FINRA; (ii) adhering to the disclosures it has made to its clients, customers, the general public and/or the SEC and FINRA; and (iii) implementing and maintaining supervisory systems and/or compliance policies and procedures that are reasonably designed to ensure that the entity’s operations are in compliance with applicable legal requirements.
- 1.2.48 Pursuant to Regulation ATS, each ATS, including EquiLend, must file an initial operation report with the SEC on Form ATS prior to commencing operations. Form ATS requires detailed disclosures regarding a wide range of information concerning the ATS, its owners, its businesses and its operating procedures, including disclosure to the applicable regulators (the SEC and FINRA) as to terms and conditions of use, subscriber qualification and/or the filing of any ATS user guide(s). Form ATS serves as a supplement to Form BD, which is filed by firms seeking registration with the SEC as a broker-dealer, and the new membership application process, which is required for broker-dealers to become members of FINRA. Information required to be provided in these forms and applications include ownership and corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, trade reporting procedures, business contingency planning, and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2 *Information Statement - Alternative Trading System* (“Form 21-101F2”).
- 1.2.49 Form ATS and Form BD must be amended, as necessary, to correct any previously submitted information that becomes inaccurate for any reason. Amendments include changes to information regarding ownership, corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, trade reporting procedures, business contingency planning and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2.
- 1.2.50 Pursuant to FINRA Rules 3110 and 3130, a broker-dealer’s chief executive officer (or equivalent officer) must certify annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures that are reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules, and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer’s chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer’s board of directors and audit committee.
- 1.2.51 Pursuant to SEC and FINRA rules, broker-dealers are subject to periodic financial and operational reporting (monthly and annually) through the filing of FOCUS Reports, which are filed with FINRA. The net capital rule, Exchange Act Rule

15c3-1 (17 C.F.R. §240.15c3-1), is the principal rule by which the financial health of U.S. broker-dealers, including EquiLend, is regulated and monitored. The net capital rule requires U.S. broker-dealers to maintain “net capital” (i.e., capital in excess of liabilities) in specified amounts that are determined by the nature of the business conducted by the broker-dealer. The net capital rule requires broker-dealers to compute net capital based on U.S. generally accepted accounting principles (“GAAP”), as modified by the various provisions and interpretations of the rule.

- 1.2.52 Regulation ATS also requires EquiLend, as an ATS, to permit the examination and inspection of its premises, systems and records, and to cooperate with the examination, inspection or investigation of subscribers, whether such examination is being conducted by the SEC or by an SRO of which such subscriber is a member, such as FINRA.
- 1.2.53 Regulation ATS also requires that EquiLend, as an ATS, report information regarding marketplace activity to the SEC on a quarterly basis on Form ATS-R, including information as to the total unit volume of trading activity and aggregate unit value of trading activity by security type as conducted through the instrumentalities of the ATS, similar to certain information a Canadian ATS is required to provide in Form 21-101F3 *Quarterly Report of Marketplace Activities*.
- 1.2.54 FINRA Rule 4530 requires that a FINRA-member broker-dealer, including EquiLend, report to FINRA certain specified events, including any findings that the broker-dealer has discovered significant, widespread or systemic violations of securities and investment related laws by the broker-dealer or any of its associated persons. FINRA Rule 4530 not only requires self-reporting of violations of securities laws and regulations, but also of specified events, such as certain criminal convictions, customer complaints, and ongoing regulatory actions. Finally, FINRA reporting rules require that a broker-dealer report to FINRA certain statistical and summary information regarding written customer complaints on a quarterly basis.
- 1.2.55 Regulation ATS requires that an ATS, including EquiLend, that intends to cease carrying on business as an ATS, file a Form ATS cessation report with the SEC promptly upon ceasing to operate as an ATS. This requirement is similar to the requirement for a Canadian ATS to provide prior notice to the regulator of an intention to cease carrying on business as an ATS and the requirement to file a Form 21-101F4 *Cessation of Operations Report for Alternative Trading System*.

The protection of customer funds and securities by market intermediaries who may deal with Canadian Subscribers

- 1.2.56 Exchange Act Rule 15c3-3, which is commonly known as the “customer protection rule,” is intended to protect customers’ funds held by their broker-dealers and prohibit broker-dealers from using customer funds and securities to finance any part of their business that is unrelated to servicing securities customers. EquiLend does not hold customer funds, securities or other assets, and the NGT Platform does not accommodate cash trading activity. Accordingly, EquiLend is characterized as a “Non-Covered Firm” that engages in “Non-Covered Firm Activities” pursuant to SEC regulatory and interpretive guidance, is deemed, in effect, not to be subject to the various SEC Rule 15c3-3 requirements. EquiLend is eligible to file an annual exemption report, in contrast to a mandated compliance report, with each of the SEC and FINRA.

2. Governance

2.1 Governance – The governance structure and governance arrangements of the alternative trading system ensure:

(a) Effective oversight of the ATS operations,

- 2.1.1 EquiLend has independent departments handling product development, testing, change management (code deployment), infrastructure and system operation. Further, EquiLend employs real-time monitoring of the ATS with end of day checks by supervisory personnel in various departments with remit over data management, trading integrity and regulatory compliance oversight.

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

- 2.1.2 EquiLend, through the NGT Platform, provides subscribers with an inventory and price discovery communications utility for potential SFTs in equity and fixed income securities. As an ATS conforming with U.S. regulatory requirements, EquiLend offers a legally safe forum for communicating potential SFTs in equity and fixed income securities, in addition to certain potential off-platform collateral trading exchange transactions between lenders and total return swap communication functionality between hedgers and other qualified institutional subscribers in a purely brokerage capacity. As an ATS, EquiLend comes under the direct jurisdiction of the SEC, as discussed above.
- 2.1.3 EquiLend has a statutory requirement to ensure that business on its markets is conducted in an orderly manner, providing proper protection to investors. EquiLend rules have been designed to ensure compliance with all applicable laws, regulations and rules to ensure a fair and orderly market. EquiLend has an internal compliance department and contracts with a third-party compliance consultant which, amongst other things, monitors EquiLend’s compliance with all applicable legislation. EquiLend’s chief compliance officer (“CCO”) is responsible for updating policies and procedures to comply with changes in applicable laws, regulations and rules.

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

(i) **appropriate representation of independent directors, and**

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

2.1.4 EquiLend's directors are appointed pursuant to the terms of the EquiLend limited liability agreement (the "**LLC Agreement**") and its by-laws, and are subject to the duties and obligations imposed under Delaware law. EquiLend's directors are appointed based on skills and experience appropriate to the firm's business as a SFT ATS and broker-dealer. EquiLend does not have independent directors; however, at its parent level, EquiLend Holdings has one (1) independent third-party director.

(d) **The ATS has policies and procedures to appropriately identify and manage conflicts of interest, and**

2.1.5 EquiLend takes potential conflicts of interest and the associated consequences seriously and has implemented appropriate procedures to mitigate the risk of such occurrences. EquiLend does not engage in principal or agency trading, whether for its own account or otherwise with discretion for the account of any third-party, so it has no interests subject to trading risk conflicts. These procedures supplement the legal duties applicable to each director to avoid any situation in which they have, or could have, a direct or indirect interest that conflicts, or could conflict, with the interests of EquiLend or its subscribers.

2.1.6 EquiLend's directors and executive officers are not members of any board of directors, nor otherwise employed in any capacity, including as a consultant, with any unaffiliated direct competitor of the firm.

2.1.7 All EquiLend employees are subject to contractual restrictions that are designed to mitigate, manage and limit conflicts of interest. EquiLend also runs background checks on all of its employees and conducts audits, no less than annually, of all employee outside securities accounts and business activities, which are required to be affirmatively disclosed to each of the firm's human resources and compliance departments, and are reviewed, subject to CCO approval, recorded, and maintained consistent with books and records requirements applicable to the firm's SEC and FINRA registrations, as well as doing business corporate record-keeping requirements.

2.1.8 EquiLend has implemented conflicts of interest, confidentiality and information barrier policies and procedures that are communicated to all employees and supervised consultants. These policies and procedures provide an overview of EquiLend's key obligations and the controls implemented in order to identify, manage and disclose actual and potential conflicts of interest.

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

2.1.9 As a Delaware limited liability company, the LLC Agreement is EquiLend's principal governance document. EquiLend's governance structure as memorialized in the LLC Agreement is compliant with the provisions of the Delaware *Limited Liability Company Act*, as amended and as interpreted by the Delaware Court of Chancery.

2.1.10 Directors receive no remuneration, but every director is entitled to be indemnified by EquiLend against all costs, charges, losses, expenses and liabilities incurred by them in the execution and discharge of his or her duties to EquiLend or in relation thereto to the maximum extent allowable by law. The directors also have the benefit of the directors' and officers' liability insurance.

2.1.11 EquiLend has policies and procedures in place to recruit, hire and onboard new employees. Its policies ensure that all staff are qualified for their roles and receive appropriate workplace, security awareness, compliance and job-specific training. EquiLend's human resources, information technology – infrastructure and compliance departments, respectively, conducts annual and periodic mandatory subject-matter continuing education and other professional training. All internal and external training undertaken by staff is documented consistent with the firm's books and records obligations. In the event that an employee termination occurs, robust off-boarding procedures are followed to secure the firm's access to accounts and physical hardware, and to protect confidential subscriber and proprietary firm information.

2.1.12 EquiLend has established, maintains and reviews compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides. EquiLend conducts its business with the highest standards of commercial honor and just and equitable principles of trade. EquiLend's supervisory policies and procedures provide guidance to designated supervisors in their oversight of EquiLend's business. EquiLend recognizes that compliance is not a static event and has implemented policies, procedures and best practices designed to promote and sustain a culture of compliance. The supervisory policies and procedures are updated as necessary.

- 2.1.13 Consistent with FINRA Rule 3110 and FINRA Rule 3310 – *Anti-Money Laundering and Compliance Program*, EquiLend has implemented written policies and procedures designed to achieve compliance with all applicable securities laws, regulations and rules. As a broker-dealer, EquiLend has an obligation to identify and respond to actual and potential conflicts of interest applicable to its business, and to resolve such actual or potential conflicts of interest by putting the customer's interest before its own. Further, EquiLend must design its organizational structures, lines of reporting and physical locations to control for and minimize such conflicts of interest. EquiLend must ensure that before or at the time it provides a service that gives rise to any such conflict, that it discloses the conflict to the entitled party.
- 2.1.14 EquiLend relies on its employees to adhere to written standards of conduct, which are memorialized in the firm's employee handbook, written supervisory policies and procedures and employee disclosure and communications documentation. These communications and documents, in the collective, demonstrate EquiLend's core competencies, reinforce its commitment to protecting confidential subscriber and proprietary firm information and emphasize the firm's obligation to address and control for actual and potential conflicts of interest. A conflict of interest is a situation where an opportunity for personal gain conflicts with EquiLend's best interests. While it is EquiLend's preference to avoid conflicts of interest, if a conflict of interest cannot be avoided, or an employee cannot determine whether a given situation presents a conflict, it is EquiLend's policy for the conflict or the potential conflict to be immediately escalated to and discussed with a manager to determine the appropriate course of action. To avoid potential conflicts of interest, it is EquiLend's policy that work performed or positions held by EquiLend employees outside of working at the firm must not interfere with the employee's duty to EquiLend and its subscribers, and outside business activities are required to be disclosed to and approved by EquiLend. EquiLend has adopted policies that require employees to proactively address potential conflicts of interest related to an employee's family members or other persons with whom the employee has a close personal relationship. Conflicts regarding a financial interest in a customer, competitor or supplier as well as conflicts relating to business gift, meal and entertainment are also addressed in EquiLend's policies.
- 2.1.15 EquiLend has appropriate conflict of interest provisions for all directors, officers and employees. EquiLend has implemented reasonable safeguards and procedures to protect subscriber communications and other confidential and/or protected information, including by limiting access to NGT Platform communications, order and trade-related information to approved employees and/or internal departmental functions within EquiLend, and by implementing standards for the disclosure and monitoring of employee outside securities accounts and outside business activities. EquiLend has implemented effective oversight procedures to ensure that the safeguards and procedures established by it are followed.
- 2.2 Fitness – The ATS has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.**
- 2.2.1 Each director of EquiLend has the appropriate skills, qualifications and industry experience to be a member of the board of directors, and is subject to detailed disclosure requirements under Form BD, which includes information as to criminal or civil sanctions and regulatory actions, and such disclosures are publicly accessible on EquiLend's Form BD filing.
- 3. Regulation of Products**
- 3.1 Review and Approval of Products – Business lines must be approved by the Foreign Regulator**
- 3.1.1 EquiLend's business lines, including the operation of the ATS, are approved by the SEC and FINRA, listed on Form ATS and Form BD, as filed with the SEC, and are disclosed in the broker-dealer's membership agreement with FINRA. Any addition of a new line of business must be approved by FINRA prior to implementation.
- 3.1.2 Pursuant to Regulation ATS, when filing its initial operation report on Form ATS, an ATS is required to provide the SEC with a list of the types of transactions the ATS facilitates or expects to facilitate, as well as the types of securities the ATS trades or expects to trade. As noted above, an ATS is required to update its Form ATS, as necessary, to correct any previously provided information that becomes inaccurate for any reason. The types of products offered on the NGT Platform that would trade or expect to trade for Canadian Subscribers is set out in detail above at paragraphs 1.9 to 1.15 at "Part I Background, 1. Description of EquiLend and its Business".
- 3.1.3 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written policies and procedures to supervise the activities of its registered representatives and other associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules. EquiLend must ensure that the operation of the NGT Platform, as well as its written policies and procedures, comply with applicable securities laws, regulations and FINRA rules. In addition, the Market Access Rule, which EquiLend is subject to, imposes additional financial and regulatory risk management controls and supervisory policy and procedure requirements on an ATS and broker-dealer. This includes the requirement for EquiLend to establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with market access or providing clients with market access.

4. Access**4.1 The requirements of the ATS relating to access to the facilities of the ATS change are fair, transparent and reasonable**

In particular, the ATS:

- A. has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;
- B. has financial standards for those persons who enter orders for execution on the system, including, the need for pre-existing contractual relationships with each counterparty;
- C. does not unreasonably prohibit or limit access by a person or company to services offered by it;
- D. keeps records of each grant and denial or limitation of access, including reasons for granting, denying or limiting access; and
- E. restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

Details of access criteria

- 4.1.1 EquiLend has established written standards for granting access to each of its services to ensure prospective subscribers are appropriately eligible to access and use the NGT Platform, as described above. EquiLend keeps records of each grant of access, including the reasons for granting access, to each subscriber, and each denial or limitation of access, including the reasons for denying or limiting access, to a prospective subscriber.
- 4.1.2 Regulation ATS sets forth certain fair access requirements applicable to ATSs, where, if during at least four (4) of the preceding six (6) calendar months, the ATS had:
 - A. With respect to any NMS stock, five (5) percent or more of the average daily volume in that security reported by an effective transaction reporting plan;
 - B. With respect to an equity security that is not an NMS stock and for which transactions are reported to a SRO, five (5) percent or more of the average daily trading volume in that security as calculated by the SRO to which such transactions are reported;
 - C. With respect to municipal securities, five (5) percent or more of the average daily volume traded in the U.S.; or
 - D. With respect to corporate debt securities, five (5) percent or more of the average daily volume traded in the U.S.
- 4.1.3 If any of the fair access requirements are met, subject to certain exceptions, an ATS must:
 - A. Establish written standards for granting access to trading on its system;
 - B. Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the written standards required above in an unfair or discriminatory manner;
 - C. Make and keep records of:
 - 1. All grants of access including, for all subscribers, the reasons for granting such access; and
 - 2. All denials or limitations of access and reasons, for each applicant, for denying or limiting access; and
 - D. Report the information required on SEC Form ATS-R regarding grants, denials, and limitations of access.
- 4.1.4 These access requirements are similar to the required access requirements for ATSs in Canada.
- 4.1.5 As EquiLend's NGT Platform does not permit or otherwise accommodate cash-based trading, the direct execution of any securities transactions or otherwise the facilitation, direction, intermediation or referral of potential securities transactions, including SFTs, for subsequent execution, clearing or settlement to any third-party, the fair access requirements do not apply to the firm's business or its operation of the NGT Platform.

Due diligence and ongoing supervision

- 4.1.6 EquiLend conducts due diligence on each subscriber prior to permitting access to and authorizing use of the NGT Platform, so as to ensure that each subscriber meets the eligibility criteria requirements under applicable laws, regulations and SEC / FINRA rules, and to protect the integrity of EquiLend and the orderliness of NGT Platform engagement between subscribers.
- 4.1.7 Access to the NGT Platform will be limited to Canadian Subscribers who meet EquiLend's eligibility criteria. Subscribers generally fall into the following categories: "qualified institutional buyers", as such term is defined in Rule 144A, "eligible contract participants", as such term is defined in Section 1a(18) of the CEA, large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million, which can include pension funds and hedge funds. Before being provided direct access to the NGT Platform, each Canadian Subscriber will be required to confirm that it is a "permitted client" as that term is defined in NI 31-103. Retail customers will not be provided access to the NGT Platform.
- 4.1.8 After a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must:
- A. execute an EquiLend Global User Agreement;
 - B. be and remain at all times either (i) an "institutional account" as defined in FINRA Rule 4512 – *Customer Account Information*⁵, or (ii) a broker-dealer registered pursuant to Section 15 of the Exchange Act; and
 - C. appoint an "Administrator", who will be the individual appointed by the Canadian Subscriber with the authority to designate a list of users that are authorized and permitted to access the NGT Platform and enter into transactions on the Canadian Subscriber's behalf.
- 4.1.9 A Canadian Subscriber will be required to provide prompt notification to EquiLend if it no longer qualifies as a permitted client.
- 4.1.10 EquiLend will maintain the following updated information and submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis (within thirty (30) days of the end of each six (6) month period), and at any time promptly upon the request of the ATS Relief Decision Makers:
- A. a current list of all Canadian Subscribers on a per province basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to EquiLend that it could be provided with direct access;
 - B. a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;
 - C. for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
 - D. for each product:
 - 1. the total trading volume and value originating from Canadian Subscribers and as attributed to each applicable Canadian province, and
 - 2. the proportion of aggregate global trading volume and value communicated on the NGT Platform as conducted by Canadian Subscribers and as attributed to each applicable Canadian province, and
 - E. a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the NGT Platform which were reported to the regulator in the home jurisdiction, if any.
- 4.1.11 As required under the U.S. *Bank Secrecy Act* and its implementing regulations, as amended (collectively, the "**BSA**"), EquiLend is required to have written AML policies and procedures (collectively, an "**AML Policy**") which prohibit and actively prevent money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities. Contained in its AML Policy is EquiLend's CIP that complies with the requirements of the BSA. Additionally, as a U.S. entity, EquiLend complies with sanctions requirements established by the Office of Foreign Assets Control.

⁵ An "institutional account" means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the U.S. *Investment Advisers Act of 1940* or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million.

5. Regulation of Participants on the Alternative Trading System

- 5.1 Regulation – The alternative trading system has the authority, resources, capabilities, systems and processes to set requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them by exclusion from participation in the marketplace.**

Members and other participants are required to demonstrate their compliance with these requirements

- 5.1.1 The SEC and FINRA maintain appropriate systems and resources for conducting market and member regulation and for disciplining market participants, including ATSS and broker-dealers. EquiLend maintains appropriate systems and resources for evaluating and achieving compliance with SEC and FINRA requirements.
- 5.1.2 Subscribers to an ATS are subject to the SEC rules and regulations applicable to securities transactions generally, and the SEC has investigation, examination, and enforcement power with respect to subscribers who violate these rules and regulations. In addition, subscribers that are FINRA-member broker-dealers are subject to FINRA rules, with FINRA having investigation, examination, and enforcement power with respect subscribers who violate applicable FINRA rules.

EquiLend Operating Procedures

- 5.1.3 Broker-dealers, including those that operate an ATS, are subject to market surveillance by the SEC and FINRA, which is largely accomplished through mandated periodic and event-driven reporting forms and/or data captured through trade reporting and audit systems. Regulation ATS also requires ATSS to report certain information regarding marketplace activity on a quarterly basis on Form ATS-R.
- 5.1.4 A characteristic of an ATS that distinguishes it from that of an exchange in the U.S. is that an ATS is not permitted to “(i) set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on the system; or (ii) discipline subscribers other than by exclusion from trading. To the extent that a subscriber breaches the NGT Platform’s terms and conditions, EquiLend is limited to either suspending or terminating their access to the NGT Platform and ATS products and services. If the subscriber’s acts are thought to be violation of law, EquiLend will refer the subscriber to the SEC, FINRA and/or law enforcement authorities, as authorized and appropriate.

6. Clearing and Settlement

- 6.1 Clearing arrangements – The ATS has appropriate arrangements for the clearing and settlement of transactions through a clearing broker.**

- 6.1.1 The NGT Platform will not be involved in clearing or settlement activities, which are the responsibility of market participants and are conducted entirely outside EquiLend and the NGT Platform.

7. Systems and Technology

- 7.1 Systems and technology – The ATS’s critical systems have appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the ATS to properly carry on its business. Critical systems are those that support the following functions:**

- (a) order entry,
- (b) execution,
- (c) trade reporting,
- (d) trade comparison,
- (e) data feeds,
- (f) market surveillance,
- (g) trade clearing, and
- (h) financial reporting.

- 7.1.1 EquiLend’s critical systems provide for the continuing function of the overall application presented to subscribers. The NGT Platform enables the communication and negotiation of potential SFTs between qualified financial institutions. Execution, clearing and settlement functionality is not part of any NGT Platform or other services offered by or through EquiLend.

Infrastructure – Data Center Redundancy

- 7.1.2 The NGT platform is comprised of infrastructure hosted at a primary site, also referred to as the “Production” or “**PROD**” site, located in a private locked cage in New Jersey and a secondary site, also referred to as the “Disaster Recover” or “**DR**” site, located in Texas.
- 7.1.3 Each site contains self-contained infrastructure that can handle all traffic if necessary. Each data center site contains various redundancy features at both the hardware and software level.
- 7.1.4 Servers are configured in a cluster mode and feature disks in a RAID1 or RAID10 configuration, dual power supplies connected to separate PDUs (each connected to a separate circuit) and have ethernet connections to two (2) separate switches. There are dual firewalls (each with separate connections to each switch), acting as highly available pairs, as well as redundant load balancers in isolated networks servicing externally facing virtual IPs.
- 7.1.5 Data for the application is stored in a database, which is live-replicated to a DR database at the DR site. Daily incremental and weekly full backups are taken for all databases and these backups are live-replicated between the PROD and DR data centers. Application servers respond to requests forwarded by the load balancers, with multiple instances of each application server available to handle the requests both for load balancing as well as redundancy. In addition to live replication off-site for customer data, it is also backed up daily.

Infrastructure – External Connectivity

- 7.1.6 EquiLend offers its services over the public internet, and optionally enables customers to connect over leased lines via the BT Radianz provider.
- 7.1.7 EquiLend uses multiple public internet service providers to provide reliable access. There are a pair of routers interconnected with each other as well as our providers, with BGP sessions to provide neighbor information for the EquiLend ATS.

Infrastructure – Security/Protection

- 7.1.8 Subscribers using the web UI connect over https using a strong cipher and key exchange. To access the system, the subscriber’s IP range must be whitelisted in both the firewall and the application, and they must enter a valid user-specific username and password.
- 7.1.9 Subscribers using the automated MQ Messaging connect to an SSL endpoint using a strong cipher and key exchange, on an organization-specific port, and must use a pre-arranged Company ID and password to establish a channel session. Each such port has an organization-specific IP whitelist.
- 7.1.10 Leased line connections are handled in the same manner as ones over the public internet, with the same security precautions. The only difference is that the traffic is routed over a private BT leased line rather than over the internet.
- 7.1.11 Internally, all communication is restricted between zones. All inbound TCP connections are inspected and terminated in the DMZ. Once inspection is passed, the session is then handed off to the authentication/authorization zone, which then passes it off to the web zone. The web zone communicates with the application zone and the application zone in turn accesses the database zone. The firewalls prevent any other direct communication between the zones.

8. Financial Viability And Reporting

8.1 Financial viability – The ATS has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

- 8.1.1 Pursuant to Exchange Act Rule 15c3-1, EquiLend must have financial resources sufficient for the proper performance of its functions as an ATS. EquiLend maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed to meet SEC and FINRA requirements.

9. Recordkeeping

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

- 9.1.1 EquiLend keeps books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form. This includes a record of all subscribers who have been granted access to the NGT Platform, subscription agreements, correspondence, daily trading summaries, and detailed order records, as applicable. Records are kept in electronic form and are readily accessible.

- 9.1.2 EquiLend's written supervisory policies and procedures refer to the firm's record retention policy and detail how all relevant records are required to be retained and the applicable duration of retention. This is maintained by the EquiLend CCO and ensures that EquiLend remains in compliance with all relevant regulatory requirements, which include SEC and FINRA rules. EquiLend has implemented a policy, which outlines its regulatory requirements under all applicable laws, regulations and rules, including, as applicable, under Exchange Act Rules 15c3-1, 17a-3 17a- 4, 17a-5, 17a-8, 17a-11, 17f-2, Regulation ATS, FINRA Rules 1250, 2210, 2111, 2232, 3010, 3110, 3170, 3270, 3280, 3310 4511, 4512, 4513, 4515, 4517, 4530, MSRB Rules G-5, G-7, G-9, G-10, G-20, G-27 G-37 and CFR 1023.100 to 1023.670.
- 9.1.3 Regulation ATS, SEC Rules 17a-3 and 17a-4, and FINRA Rule 4511 – *General Requirements* set forth record keeping requirements that detail the types of information that must be retained by broker-dealers, as well as the duration for which these records must be maintained. The types of information include business records and other records, including, but not limited to, those subscribers who have been granted access to EquiLend, daily trading summaries, and records of each order. The SEC and FINRA have mechanisms in place to ensure that the information necessary to conduct adequate surveillance of ATSS for supervisory and enforcement purposes is available to the U.S. Regulators on a timely basis.
- 9.1.4 The SEC and FINRA conduct periodic compliance reviews and examinations and require that records comply with SEC and FINRA rules and are readily accessible, on an ongoing basis.
- 9.1.5 The record preservation requirements for ATSS are set forth in Rule 303 of Regulation ATS and SEC Rule 17a-4. These rules and regulations establish the time period, which varies depending on the record being retained, for which certain books and records are to be retained and preserved.
- 10. Outsourcing**
- 10.1 Outsourcing – Where the ATS has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations, and that are in accordance with industry best practices.**
- 10.1.1 Consistent with local jurisdiction regulatory and licensing requirements, as applicable, EquiLend will outsource certain services (listed below) related to operation of the NGT Platform to other entities.
- 10.1.2 There are administrative services agreements between EquiLend Holdings and the Subsidiaries that describe services rendered and the cost associated with these services. Administrative and technology services provided by EquiLend Holdings include, but are not limited to, infrastructure system administration and maintenance, data management, payroll and human resources services and legal and regulatory compliance services.
- 10.1.3 The NGT Platform is hosted on infrastructure managed by EquiLend staff with server and storage functionality hosted within a facility managed by a third-party vendor. The third-party vendor does not have logical access to EquiLend devices or data, which is directly managed and controlled by EquiLend. The third-party vendor provides EquiLend with space, power, interconnectivity and cooling within a SOC2 Type 2 certified secure facility. EquiLend has chosen to co-locate in facilities with direct access to market participants in order to support private network connectivity.
- 10.1.4 Market data vendors provide securities reference data and securities pricing services pursuant to formal market data agreements.
- 10.1.5 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written policies and procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations and rules, including with applicable FINRA rules.
- 10.1.6 If a broker-dealer, as part of its business structure, outsources certain covered activities (e.g., data center services), the broker-dealer's supervisory system and written supervisory policies and procedures must include procedures regarding its outsourcing practices to ensure compliance with applicable securities laws, regulations and rules, including applicable FINRA rules. The broker-dealer's policies and procedures should include, without limitation, a due diligence analysis of all of its current or prospective third-party service providers to determine whether they are capable of performing the outsourced activities. In addition, when a broker-dealer outsources covered activities to a third-party, the broker-dealer has a continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities. This requires the broker-dealer to have in place specific policies and procedures that will monitor the service providers' compliance with the terms of any agreements and assess the service provider's continued fitness and ability to perform the covered activities being outsourced.
- 10.1.7 EquiLend satisfies the foregoing regulatory requirements as outlined in several of EquiLend's written supervisory policies and procedures, including both technical, non-technical and regulatory policies and procedures, created to ensure

compliance with applicable regulations. As required under FINRA Rule 3110, EquiLend has implemented policies⁶ and procedures in connection with its use of third-party services providers. When entering into an outsourcing agreement, EquiLend's policies require that EquiLend has a written contract with the service provider that includes the expectations of EquiLend and the other party to the services agreement. EquiLend is required to follow prudent business practices and conduct a due diligence analysis of prospective service providers, including an assessment of its reputation, financial stability, capability to deliver the services and have adequate confidentiality safeguards. On an ongoing basis, but at least annually, EquiLend reviews certain third-party service providers to determine the quality of services provided, whether such third-party service providers are providing the services in a satisfactory manner consistent with the requirements outlined in such third-party service provider's contract.

11. Fees

11.1 Fees – The ATS's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the ATS on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that the ATS has sufficient revenues to satisfy its responsibilities.

11.1.1 All fees imposed by the ATS are reasonable and equitably allocated and do not have the effect of creating barriers to access and are balanced with the criterion that the ATS has sufficient revenues to satisfy its responsibilities.

12. Information Sharing And Oversight Arrangements

12.1 Information sharing and regulatory cooperation – The ATS has mechanisms in place to enable it to share information and otherwise co-operate with the securities regulatory authorities in the Jurisdictions, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

12.1.1 The CCO of EquiLend undertakes to notify staff of the securities regulators in each of the Jurisdictions promptly if any of the representations made in connection with or related to this Application cease to be true or correct in any material respect, or become incomplete or misleading.

12.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the securities regulatory authorities in the Jurisdictions and the Foreign Regulator.

12.2.1 The SEC and the securities regulatory authorities in the Jurisdictions are parties to a MoU related to securities market oversight and enforcement, which is available at:

https://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf

In addition, the AMF and the OSC are parties to a MoU with FINRA related to securities market oversight and enforcement, which is available at:

https://www.finra.org/sites/default/files/MoU_FINRA_QAMF_061015.pdf (AMF), and

<https://www.finra.org/sites/default/files/Industry/p125113.pdf> (OSC).

PART III SUBMISSIONS BY EQUILEND

1. Submissions Concerning the ATS Relief

1.1 EquiLend is regulated and operates in the U.S. as an ATS and, therefore, may be considered an "alternative trading system" as defined in section 1.1 of NI 21-101. EquiLend is prohibited from carrying on business in the Jurisdictions unless it (a) is registered as a dealer, (b) is a member of a self-regulatory entity and (c) complies with the provisions of the Marketplace Rules. EquiLend seeks to provide Canadian Subscribers that enter into SFTs (securities borrowing and lending transactions in respect of equities and fixed income products) with access to communicate potential SFTs on the NGT Platform and, therefore, may be considered to be engaging in the business of "trading" in the Jurisdictions. EquiLend is not registered as an investment dealer with the ATS Relief Decision Makers in the Jurisdictions, is not a member of any Canadian self-regulatory entity (e.g., IIROC) and is not approved to carry on business as an ATS in the Jurisdictions. EquiLend currently relies on the "international dealer exemption" under section 8.18 of NI 31-103 in Ontario and Québec.

1.2 EquiLend is registered with the SEC as a broker-dealer and an ATS and is a member of FINRA, a SRO in the U.S. with a mandate similar to that of IIROC in Canada. EquiLend satisfies all of the criteria for registration with the SEC as a broker-dealer, continues to satisfy the requirements under Regulation ATS and is a member in good standing of FINRA.

⁶ For additional information with respect to broker-dealer obligations with respect to third-party service providers, please see *Notice to Members 05-48 - Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers*, available at <https://www.finra.org/rules-guidance/notices/05-48>.

As described in “Part II - Application of Approval Criteria to the Alternative Trading System”, above, EquiLend is subject to a substantially similar regulatory regime in the U.S. to that in Canada.

- 1.3 In CSA Notice 21-328, CSA Staff provide an exemption model where foreign ATSs may be permitted to offer direct access to Canadian participants without having to establish a Canada-based affiliate, provided they meet certain terms and conditions, including a requirement that they comply with the applicable regulations in their home jurisdiction. In CSA Notice 21-328, CSA Staff state that to offer direct access to Canadian participants, a foreign ATS would need to apply for an exemption from the Marketplace Rules and provide details of the application process, exemption criteria, and sample terms and conditions that may be included in a foreign ATS's exemption order. A foreign ATS may be exempt from the Marketplace Rules provided that certain conditions of the CSA's proposed exemption and regulatory framework are met, including maintaining regulatory compliance in its home jurisdiction, providing the CSA with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model. Although the proposed exemption would grant foreign ATSs relief from the Marketplace Rules, depending on their model of operations, foreign ATSs or their participants may, as discussed below, still be subject to the dealer registration requirements under applicable securities legislation for engaging in the business of trading.
- 1.4 EquiLend submits that it satisfies the criteria in the exemption model for foreign ATSs to offer direct access to Canadian participants without having to establish a Canada-based affiliate, as set out in CSA Notice 21-328. EquiLend has submitted this Application for an exemption from the Marketplace Rules and has provided details demonstrating how it meets the CSA's criteria set out in CSA Notice 21-328, including maintaining regulatory compliance in its home jurisdiction, providing the ATS Relief Decision Makers with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model.
- 1.5 Under section 6.2 of NI 21-101, registration exemptions are denied for marketplaces. However, CSA Notice 21-328 does not purport to alter the registration regime for marketplaces as demonstrated in the following statement:
- “We note that although the proposed exemption would grant foreign ATSs relief from the Marketplace Rules, depending on their model of operations, foreign ATSs or their participants may still be subject to registration under applicable securities legislation. Foreign ATSs may trigger registration requirements under applicable Canadian securities laws because they may engage in the business of trading. A common exemption available in these cases would be the International Dealer Exemption (IDE). The IDE may be available where the foreign ATS offers trading in foreign securities. Foreign ATSs should consider the registration requirement and available exemptions when determining which securities to offer for trading.*
- In the case of participants on foreign ATSs, they may also need to be registered where they are dealing with Canadian participants. For example, in the case of a request-for-quote system that results in agreements to trade where a foreign participant is interacting directly with Canadian participants, the foreign participant may need to be registered as a dealer or rely on a registration exemption.” (emphasis added)*
- 1.6 By its terms, CSA Notice 21-328 was designed for foreign ATS platforms trading non-Canadian fixed income products. The *ICE Bonds Securities Corporation*⁷ and *Trumid Financial, LLC*⁸ exemption orders have each involved platforms trading non-Canadian fixed income instruments.
- 1.7 However, the GLMX order⁹ has further expanded the exemption framework by permitting trading in SFTs involving “Canadian Government Securities”, defined as all debt instruments denominated in Canadian dollars and issued domestically by the Government of Canada or provincial governments or municipalities, as an incidental part of its business which will constitute less than 10% measured by total GLMX volume for the last twelve (12) months. Similar to the case of GLMX, EquiLend will not be trading outright in “foreign securities”, but enables NGT Platform communication functionality involving potential SFTs referencing securities that go beyond the foreign security category. EquiLend's model of operations for SFTs will accommodate communications in both “foreign securities” and Canadian Securities, where any communicated Canadian Securities will comprise less than 10% of attributed global NGT Platform volume, notional value and revenue, as calculated on an annualized twelve (12) month basis.
- 1.8 EquiLend currently offers, and intends in the future to offer to Canadian Subscribers located in the Jurisdictions, potential SFT communication capabilities on the NGT Platform referencing Canadian Securities, as an incidental part of its business, which will constitute less than 10% of attributed global NGT Platform volume, notional value and revenue, as calculated on an annualized twelve (12) month basis. This will allow EquiLend to conduct potential SFT communication

⁷ Re *ICE Bonds Securities Corporation*, 2020 ABASC 95, which is available at <https://www.asc.ca/-/media/ASC-Documents-part-1/Exemption-Orders/2020/06/ICE-Bonds-Securities-Corporation-Creditex-Decision.ashx>.

⁸ In the Matter of *Trumid Financial, LLC* (2021), 44 OSCB 1724, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/trumid-financial-llc-0>.

⁹ *Supra*, footnote 1.

capabilities on the NGT Platform in a manner that is similar to EquiLend Canada, subject to the 10% cap on SFTs referencing Canadian Securities.

- 1.9 EquiLend has determined that where it may be subject to dealer registration under applicable Canadian securities legislation with respect to “foreign securities” as defined in subsection 8.18(1) of NI 31-103, EquiLend will rely on the “international dealer exemption” under section 8.18 of NI 31-103 in the Jurisdictions and, observe the volume/value/revenue ceiling for (a) the “specified debt exemption” under subsection 8.21(2)(a) of NI 31-103 for federal or provincial government debt securities, and (b) the “trades through or to a registered dealer exemption” under section 8.5 of NI 31-103 for corporate debt securities.
- 1.10 The robust U.S. regulatory regime governing ATSs provides adequate investor protection and oversight and supervision of EquiLend. It is appropriate for EquiLend to rely on the regulatory regime in the U.S. as a substitute for the regulatory regime in Canada, as the oversight, supervision and regulatory requirements are sufficiently similar to that of the Canadian regulatory regime applicable to ATSs.
- 1.11 By complying with the regulatory regime applicable to ATSs in the U.S., EquiLend considers that it will be complying with the substantially similar requirements of the Canadian regulatory regime applicable to ATSs. Access to the NGT Platform will be limited to Canadian Subscribers who must meet EquiLend’s eligibility criteria. Before being provided direct access to the NGT Platform, EquiLend will confirm that each Canadian Subscriber is a “permitted client” as that term is defined in NI 31-103. A Canadian Subscriber will be required to confirm that it continues to satisfy the eligibility criteria for access to the NGT Platform on an ongoing basis.
- 1.12 Canadian Subscribers that engage in SFTs would benefit from the ability to trade on the NGT Platform, as they would have access to a range of non-Canadian fixed income and equity securities, including as collateral, which is not currently widely available in the Jurisdictions. EquiLend would offer subscribers resident in the Jurisdictions a transparent, efficient market to engage in negotiation of potential SFTs. EquiLend uses sophisticated information systems and has adopted rules and compliance functions that will ensure that Canadian Subscribers are adequately protected. EquiLend therefore submits that it would not be prejudicial to the public interest to grant the Requested Relief.
- 1.13 In Canada, an ATS can only execute trades in “exchange-traded securities”, “corporate debt securities”, “government debt securities”, or “foreign exchange-traded securities”, as defined in section 1.1 of NI 21-101. EquiLend wishes to accommodate negotiation of securities and potential SFT transactions in categories of securities broader than this and CSA Notice 21-328 seems well-adapted to permitting this objective for foreign ATSs, and this result is therefore not at odds with the basic objectives of NI 21-101 insofar as SFT platforms are concerned.
- 1.14 In the U.S., EquiLend is not subject to pre-trade or post-trade transparency requirements. In Canada, pre-trade transparency requirements are not applicable to EquiLend pursuant to sections 7.1 and 8.1 of NI 21-101 because orders capable of acceptance in foreign exchange-traded securities and exchange-traded securities and debt securities will not be displayed on the NGT Platform as there is no cash trading, execution, clearance or settlement in these instruments on the NGT Platform.
- 1.15 The Canadian rules as to post-trade transparency are somewhat different than in the U.S. where no such rules apply to SFTs. Section 7.4 of NI 21-101 imposes post-trade transparency requirements for exchange-traded securities and foreign exchange-traded securities and subsection 8.2(3) of NI 21-101 imposes post-trade transparency requirements for government debt securities and corporate debt securities. We respectfully submit that these provisions were not drafted with SFTs in mind.
- 1.16 SFTs do not need, and cannot accommodate, the same level of transparency as a marketplace in which outright cash trading, execution, clearing and settlement in fixed income and equity instruments occur. SFTs are uniquely driven by credit risk determinations with respect to the borrower. For this reason, if CSA Notice 21-328 were not relied upon, exemptive relief from transparency requirements would likely have been granted in Canada following the *EquiLend Canada* decision¹⁰. This would make the resulting Canadian regulatory approach consistent with the one in the U.S. and should not therefore be a basis for denying the exemption sought.

PART IV FEES

1. Fees

- 1.1 Filing fees have been paid or are in the process of being paid to the ATS Relief Decision Makers in the Jurisdictions.

¹⁰ In the Matter of EquiLend Canada (2020), 43 OSCB 408, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/equilend-canada-corp>.

PART IV OTHER MATTERS

1. Other Matters

1.1 In connection with this Application we enclose:

- (a) Appendix A – Draft Decision, and
- (b) Appendix B – *Authorization and Verification Statement* of the EquiLend, authorizing us to file this Application and confirming the truth of the facts contained herein.

1.2 Should you have any questions regarding this Application, please contact me at the number or email above with any questions regarding this Application.

Yours very truly,

(signed) “Terence Doherty”

Terence Doherty
Osler, Hoskin & Harcourt LLP

cc:

Paul Nigrelli, Chief Financial Officer & Chief Compliance Officer, *EquiLend LLC*
Ralph Hipsher, Associate Director, *EquiLend LLC*
Gawain Chan, *Osler, Hoskin & Harcourt LLP*
Sheri Wang, *Osler, Hoskin & Harcourt LLP*

Enclosures

APPENDIX B

DRAFT DECISION

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO,
QUEBEC
AND
NOVA SCOTIA
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
EQUILEND, LLC
(the Filer)

DECISION

(Section 15.1 of NI 21-101 and section 12.1 of NI 23-101 and section 10 of NI 23-103)

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be:

- (a) exempt pursuant to subsection 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;
- (b) exempt pursuant to subsection 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole;
- (c) exempt pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) from NI 23-103 in whole

(the relief mentioned in paragraphs (a) to (c) being collectively referred to herein as the **Exemptive Relief Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a private limited liability company incorporated under the laws of the State of Delaware in the United States of America (**U.S.**), whose head office is located at 225 Liberty Street, 10th Floor, Suite 1020, New York, New York, 10281, U.S.
2. The Filer is a direct wholly-owned subsidiary of EquiLend Holdings LLC (**EquiLend Holdings**). EquiLend Holdings is a holding company for various EquiLend entities, including the Filer and EquiLend Canada Corp. (**EquiLend Canada**).

3. The Filer was formed in October 2001. It is registered as an alternative trading system (**ATS**) and a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) pursuant to section 15 of the U.S. *Securities Exchange Act of 1934*, as amended, (the **Exchange Act**). The Filer is also a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation. The Filer operates one (1) ATS that is registered with the SEC.
4. The Filer is subject to a comprehensive regulatory regime in the U.S. The Filer is registered with and regulated by the SEC and FINRA as a broker-dealer and an ATS. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.
5. The Filer operates an electronic negotiation platform (the **NGT Platform**) that facilitates the negotiation of potential securities borrow and loan transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (**SFTs**) by providing secure access and connectivity between potential borrowers and lenders through a private network or the internet. All SFTs communicated through the NGT Platform are “potential SFTs” as the counterparties to a potential SFT must migrate off of the NGT Platform to complete or reject the prospective transaction under their respective bilateral or global securities lending agreements.
6. There is no obligation on the part of any counterparty to a potential SFT to ultimately settle the prospective transaction under the terms by which the potential SFT was communicated and matched on the NGT Platform. Rather, the counterparties may ultimately settle the prospective transaction in the over-the-counter market under those terms or the counterparties may cancel the prospective transaction after migrating off of the NGT Platform.
7. The Filer is informed of the ultimate status of the prospective transaction (i.e., whether the counterparties settle the prospective transaction under the terms through which it was communicated and matched on the NGT Platform or cancel the prospective transaction) through a feedback function in which the counterparties report back to the Filer on the status of the potential SFT after they have migrated off of the NGT Platform.
8. The NGT Platform is operated through EquiLend Holdings and its subsidiaries (the **Subsidiaries**), including the Filer, each which are separately regulated, registered or are otherwise exempt from registration in their respective jurisdictions, including the U.S., Canada, the United Kingdom, the Republic of Ireland and the European Union, Australia, Hong Kong and certain other jurisdictions in Asia.
9. EquiLend Canada operates the NGT Platform in Canada. EquiLend Canada is registered as an investment dealer in Ontario and Québec and is also a member of the Canadian Investment Regulatory Organization (**CIRO**) for the purposes of operating as an ATS in Ontario and Québec.
10. The NGT Platform facilitates the negotiation of potential SFTs in equities and fixed income securities.
11. The securities exchanged in the potential SFTs communicated and matched on the NGT Platform are as follows:
 - (a) “foreign exchange traded securities” within the meaning of NI 21-101;
 - (b) non-Canadian debt securities, including:
 - (i) high-grade and high-yield U.S. corporate bonds;
 - (ii) U.S. Government-sponsored agency bonds;
 - (iii) U.S. Government debt securities (e.g., Treasury Bonds, Treasury Notes, etc.);
 - (iv) emerging market bonds, which are defined as U.S. dollar or Euro-denominated bonds issued by sovereign entities or corporations domiciled in a developing country, including both high grade and non-investment grade debt;
 - (v) European high-grade and high-yield corporate bonds, which are defined as corporate bonds issued by entities domiciled in Europe; and
 - (vi) non-U.S. sovereign government bonds (e.g., UK gilts or German bundesbonds).
12. In addition, the Filer currently enables NGT Platform communication functionality involving potential SFTs referencing “exchange-traded securities”, “corporate debt securities” and “government debt securities” (collectively, **Canadian Securities**) with counterparties outside of Canada, and intends in the future to enable NGT Platform communication functionality involving potential SFTs referencing such securities with Canadian subscribers located in the Jurisdictions, each within the meaning of NI 21-101, as an incidental part of its business, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

13. The Filer does not have any offices or maintain other physical installations in Nova Scotia, Ontario, Québec or any other Canadian province or territory except for an office in Toronto, Ontario whose activities are limited to sales and marketing.
14. Prior to getting access to the NGT Platform, a subscriber (customer) must sign an EquiLend Global User Agreement (**User Agreement**) with the Filer that covers, among other things, obligations of the subscriber, and termination events.
15. The subscriber identifies to the Filer by name an authorized Administrator, who then permissions each employee or contractor of the subscriber to use the NGT Platform (**Named Users**). The Named Users are the only individuals within the subscriber licensed to access and use the NGT Platform.
16. Once a potential SFT is mutually agreed and completed outside the NGT Platform by the counterparties, and the Filer is informed of the completion by the counterparties through the Filer's feedback function, the NGT Platform will send trade details to the parties of the transaction via a pre-approved method (e.g., email). Subscribers, independently and in advance, notify the Filer that they are properly documented with and able to trade with specific counterparties prior to engaging in transactions with that counterparty. The Filer is not a party to the potential SFT and is not otherwise directly or indirectly involved in the execution, clearing or settlement of any potential SFT communicated on the NGT Platform.
17. The Filer proposes to offer direct access to the NGT Platform to prospective subscribers in the Jurisdictions (**Canadian Subscribers**) to facilitate transactions in potential SFTs. Access to the NGT Platform will be limited to Canadian Subscribers who meet the Filer's eligibility criteria. Subscribers generally fall into the following categories: "qualified institutional buyers", as such term is defined in Rule 144A under the U.S. *Securities Act of 1933*, as amended, "eligible contract participants", as such term is defined in Section 1a(18) of the U.S. *Commodity Exchange Act of 1936*, as amended; large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million which can include pension funds and hedge funds.
18. Before being provided direct access to the NGT Platform, the Filer will confirm that each Canadian Subscriber is a non-individual "permitted client" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. Retail customers and natural persons will not be provided with access to the NGT Platform.
19. After a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute the User Agreement in which the prospective Canadian Subscriber represents to the Filer that the Canadian Subscriber's conduct of potential SFTs is subject to a level of regulation and oversight under applicable securities, banking or other appropriate laws that impose upon the Canadian Subscriber a combination of requirements such as audits, public disclosure of financial information, capital rules, collateral requirements, record keeping requirements or other similar safeguards, and agrees to use the NGT Platform and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a non-individual "permitted client" as defined in NI 31-103.
20. Under the User Agreement, a Canadian Subscriber and its affiliates constitute a "Subscriber Group". The Subscriber Group will authorize Named Users, who are the only persons authorized to use the NGT Platform. The Subscriber Group's right to use the NGT Platform is conditioned upon the Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the NGT Platform, and using the NGT Platform only in compliance with applicable law.
21. The Filer has determined that it may be subject to dealer registration under applicable Canadian securities legislation and so it proposes to rely on the "international dealer exemption" under section 8.18 of NI 31-103 in the Jurisdictions and, subject to observing the volume ceiling in paragraph 10 above, on the "specified debt" exemption under section 8.21 of NI 31-103 and the "trades through or to a registered dealer" exemption under section 8.5 of NI 31-103.
22. The Filer will ensure that all applicants who become Canadian Subscribers satisfy the Filer's eligibility criteria, including, among other things, that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103.
23. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

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

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

- (a) in the case of the registration requirements that may otherwise apply to the Filer in connection with the trading of Canadian Securities, the Filer
 - (i) does not execute trades in Canadian Securities with or for its clients, except as permitted under applicable securities laws, and
 - (ii) complies with the conditions of the international dealer exemption in section 8.18 of NI 31-103 as if such securities were “foreign securities” as defined in section 8.18 of NI 31-103; and
- (b) the Filer complies with the terms and conditions attached hereto as Schedule A.

“●”

Director, Market Regulation
Ontario Securities Commission

SCHEDULE A

Terms and Conditions

Regulation and Oversight of the Marketplace

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;
2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;
3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a non-individual "permitted client" as that term is defined in NI 31-103;
5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as non-individual "permitted clients";
6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the NGT Platform;

Trading by Canadian Subscribers

7. The Filer will only offer potential SFTs (securities borrow and loan transactions) to Canadian Subscribers and in that context use only the collateral listed in accordance with representation numbers 11 to 12 of this Decision;
8. Potential SFTs communicated on the NGT Platform by Canadian Subscribers will be executed, cleared and settled outside the NGT Platform, by subscribers and without any direct facilitation or involvement on the part of the Filer;
9. The Filer will only permit Canadian Subscribers to communicate potential SFTs in securities that are permitted to be traded in the United States under applicable securities laws and regulations;

Reporting

10. The Filer will promptly notify staff of the Decision Makers of any of the following:
 - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
 - (i) changes to its regulatory oversight;
 - (ii) the access model, including eligibility criteria, for Canadian Subscribers;
 - (iii) systems and technology; and
 - (iv) its clearing and settlement arrangements;
 - (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction relevant to the products traded;
 - (c) any known investigations of, or regulatory action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;
 - (d) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
 - (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the NGT Platform, the Filer or any Canadian Subscriber;
11. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within thirty (30) days of the end of each six (6) month period), and at any time promptly upon the request of staff of the Decision Makers:

- (a) a current list of all Canadian Subscribers, presented on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access to the NGT Platform;
- (b) a list of all Canadian applicants for status as a Canadian Subscriber, presented on a per provincial basis, who were denied such status or access or who had such status or access revoked during the period;
 - (i) for those Canadian applicants for status as a Canadian Subscriber that were denied access, an explanation as to why access was denied;
 - (ii) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
- (c) for each product:
 - (i) the total volume and value of SFTs communicated and matched on the NGT Platform as originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis;
 - (ii) the proportion of worldwide volume and value of SFTs communicated and matched on the NGT Platform as conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers;
 - (iii) the volume and value of SFTs in Canadian Securities (as defined in representation 12 of this Decision) communicated and matched on the NGT Platform, and proportion of volume in such Canadian Securities relative to the total volume communicated and matched on the NGT Platform for the six (6) month period, calculated in a manner acceptable to the Decision Makers; and
- (d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the NGT Platform which were reported to the regulator in the home jurisdiction;

Disclosure

12. The Filer will provide to its Canadian Subscribers disclosure that states that:
- (a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
 - (b) the rules applicable to trading on the NGT Platform may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
 - (c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;
14. The Filer will file with the Decision Makers a valid and binding appointment of Osler, Hoskin & Harcourt LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the NGT Platform or the Filer's activities in Canada; and

Information Sharing

15. The Filer must, and must cause its affiliated entities, if any, to promptly provide to the Decision Makers, on request, any and all data, information, and analyses in the custody or control of the Filer or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:
- (a) data, information, and analyses relating to all of its or their businesses; and
 - (b) data, information, and analyses of third parties in its or their custody or control; and

16. The Filer must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, investor protection funds and other appropriate legal and regulatory bodies.

Index

42KM Investment Partners Ltd.		Falcon Gold Corp.	
New Registration.....	9537	Cease Trading Order.....	9430
Agrios Global Holdings Ltd.		Feng, Jiubin	
Cease Trading Order	9429	Notice from the Governance & Tribunal	
Alkaline Fuel Cell Power Corp.		Secretariat	9391
Cease Trading Order	9429	Capital Markets Tribunal Order – ss. 127(1), 127.1....	9395
Asif, Usman		Capital Markets Tribunal Reasons and	
Notice from the Governance & Tribunal		Decision – ss. 127(1), 127.1.....	9399
Secretariat.....	9393	FenixOro Gold Corp.	
Axia Real Assets LP		Cease Trading Order.....	9429
Consent to Suspension.....	9537	Finch, Thomas John	
BevCanna Enterprises Inc.		Notice from the Governance & Tribunal	
Revocation Order.....	9411	Secretariat	9392
Bistricher, Marc Judah		Capital Markets Tribunal Order	A.3.4
Notice from the Governance & Tribunal		Galaxy Placements Inc.	
Secretariat.....	9391	Consent to Suspension	9537
Capital Markets Tribunal Order	9396	Gong, Xiao Hua (Edward)	
Brandes Investment Partners & Co.		Notice from the Governance & Tribunal	
Decision	9425	Secretariat	9392
Canada Silver Cobalt Works Inc.		Capital Markets Tribunal Order	9397
Cease Trading Order	9429	Guardian Ethical Management Inc.	
CareSpan Health, Inc.		Voluntary Surrender	9537
Cease Trading Order	9429	Halo Collective Inc.	
CIM International Group Inc.		Cease Trading Order.....	9429
Notice from the Governance & Tribunal		HAVN Life Sciences Inc.	
Secretariat.....	9391	Cease Trading Order.....	9430
Capital Markets Tribunal Order – ss. 127(1), 127.1	9395	iMining Technologies Inc.	
Capital Markets Tribunal Reasons and		Cease Trading Order.....	9429
Decision – ss. 127(1), 127.1	9399	Kennedy, William Jeffrey	
CohBar Inc.		Notice from the Governance & Tribunal	
Cease Trading Order	9429	Secretariat	9391
Cormark Securities Inc.		Capital Markets Tribunal Order	9396
Notice from the Governance & Tribunal		Lendle Corporation	
Secretariat.....	9391	Notice from the Governance & Tribunal	
Capital Markets Tribunal Order	9396	Secretariat	9393
Element Nutritional Sciences Inc.		Liquid Meta Capital Holdings Ltd.	
Cease Trading Order	9429	Cease Trading Order.....	9429
EquiLend, LLC		LXRandCo, Inc.	
Marketplaces – Application for an Exemption from		Cease Trading Order.....	9429
the Marketplace Rules – Notice and Request for		MAV Beauty Brands Inc.	
Comment	9539	Cease Trading Order.....	9429

McEwen Mining Inc.	
Decision	9417
mCloud Technologies Corp.	
Cease Trading Order	9429
Mughal Asset Management Corporation	
Notice from the Governance & Tribunal Secretariat.....	9393
Nuveen Global Green Bond Fund	
Decision	9425
Osisko Green Acquisition Limited	
Order.....	9412
Performance Sports Group Ltd.	
Cease Trading Order	9429
Saline Investments Ltd.	
Notice from the Governance & Tribunal Secretariat.....	9391
Capital Markets Tribunal Order	9396
Sproutly Canada, Inc.	
Cease Trading Order	9429
Sun Life Canada Securities Inc./ Valeurs mobilières	
Sun Life Canada inc.	
New Registration.....	9537
TD Asset Management Inc.	
Decision	9419
Terra Firma Capital Corporation	
Order.....	9415
Vertex One Asset Management Inc.	
Voluntary Surrender	9537
Webull Securities (Canada) Limited	
New Registration.....	9537