

The Ontario Securities Commission

OSC Bulletin

July 18, 2024

Volume 47, Issue 29

(2024), 47 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

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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



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ISSN 0226-9325

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A. Capital Markets Tribunal

A.2 Other Notices

A.2.1 Traders Global Group Inc. and Muhammad Murtuza Kazmi

FOR IMMEDIATE RELEASE
July 10, 2024

TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI,
File No. 2023-21

TORONTO – The hearing of the Motion dated July 5, 2024 brought by the Ontario Securities Commission to consider extension of the Temporary Order dated August 29, 2023 in the above-named matter is scheduled to be heard on July 24, 2024 at 10:00 a.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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Ontario Securities Commission

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A.2.2 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
July 11, 2024

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

TORONTO – The previously scheduled day of July 12, 2024 will not be used for the merits hearing in the above-named matter. The merits hearing will continue on July 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 2024 at 10:00 a.m. on each day.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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B. Ontario Securities Commission

B.1 Notices

B.1.1 Notice of Cross-border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group

NOTICE OF CROSS-BORDER COOPERATION AGREEMENT AMONG MEMBERS OF THE OPTIONS CLEARING CORPORATION CRISIS MANAGEMENT GROUP

July 18, 2024

The Ontario Securities Commission has entered into a Cross-border Cooperation Agreement among Members of the Options Clearing Corporation (**OCC**) Crisis Management Group (**CMG**) including the United States Securities and Exchange Commission, the Federal Deposit Insurance Corporation and other relevant authorities. The purpose of the CMG is to enhance preparedness and planning for, and to facilitate the crisis management, recovery and resolution of OCC. The Agreement sets out the manner in which the CMG will work together.

Questions may be referred to:

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Cross-border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group**1. Objectives, nature and scope of this agreement**

- 1.1 We, as the Home Authorities and Host Authorities, as defined in Annex A, for the Options Clearing Corporation (“OCC”), have set out in this cross-border cooperation agreement (“Agreement”) the manner in which we will work together with a view to facilitating institution-specific crisis management planning and cooperation between and among relevant authorities, with an emphasis on cooperation in the event of the resolution of OCC, insofar as the authorities are responsible for crisis management, recovery or resolution.
- 1.2 The Co-lead Authorities are the Securities and Exchange Commission and the Federal Deposit Insurance Corporation (“FDIC”) (each a “Co-lead Authority” and together, the “Co-lead Authorities”).
- 1.3 The parties to this Agreement are the Home and Host Authorities listed in Annex A, as updated and circulated from time to time by the Co-lead Authorities (each a “Party” and together, the “Parties” or “Authorities”). Each of the Parties is a member of the Crisis Management Group (“CMG”) for OCC. The CMG is a cooperative structure formed by the Parties consistent with Key Attribute 9 of the Financial Stability Board’s (“FSB’s”) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“Key Attributes”), calling for the establishment of CMGs for financial market infrastructures (“FMIs”) that are systemically important in more than one jurisdiction. The CMG’s purpose is to enhance preparedness and planning for, and to facilitate the crisis management, recovery and resolution of OCC. The CMG does not have legal personality.
- 1.4 This Agreement sets forth the Parties’ intentions with regard to cooperation, coordination and the exchange of information, to the extent permitted, for each of the respective Parties, by the respective laws, regulations, and requirements applicable to that Party (“Applicable Law”). The provisions of this Agreement and the understandings reached at the CMG do not create legally binding or legally enforceable obligations, confer any rights or give rise to any legal claim on behalf of any Party or third parties. This Agreement should be interpreted in a manner that is permitted by, and consistent with, Applicable Law. This Agreement does not contemplate roles, responsibilities or powers beyond those granted to the Parties under Applicable Law. This Agreement does not supersede or modify Applicable Law and nothing in this Agreement affects the competence or the supervisory, resolution or regulatory authority of the Parties under Applicable Law.
- 1.5 The Parties may disclose the existence of this Agreement to the public. A Party may publicly disclose all or portions of this Agreement, to the extent such public disclosure is in the proper exercise of its functions, powers or obligations, but will provide prior notice to the Co-lead Authorities, which will inform the other Parties.

2. General framework for cooperation

- 2.1 The roles of the Parties during “business as usual” (that is, during planning for recovery and resolution) and “in crisis” with respect to OCC are set forth herein.
- 2.2 The Parties’ approach to the crisis management, recovery and resolution measures that they adopt with respect to OCC should be informed by: (i) the Key Attributes and the related FSB Guidance on Central Counterparty Resolution and Resolution Planning, (ii) the Bank for International Settlements’ (“BIS’s”) Committee on Payment and Settlement Systems’ and the Technical Committee of the International Organization of Securities Commissions’ (“IOSCO’s”) Principles for Financial Market Infrastructures (“PFMI”), and (iii) the BIS’s Committee on Payments and Market Infrastructures’ and IOSCO’s Recovery of Financial Market Infrastructures (“Recovery Guidance”).

3. Undertakings to cooperate

- 3.1 The Parties will cooperate in the recovery and resolution planning process and, subject to paragraphs 6.2 through 6.6 of this Agreement, will share relevant information to the extent permitted by Applicable Law, including information relating to the recovery and resolution planning process such as the resolution plan developed by the FDIC for OCC (the “OCC Resolution Plan”). To prepare for coordinated resolution of the activities of OCC, the Parties also will endeavor to share, where appropriate and to the extent permitted by Applicable Law, relevant information relating to the recovery and resolution planning process for OCC or its affiliates and providers of critical systems or services to OCC or its affiliates in their respective jurisdictions. As the OCC Resolution Plan is refined, the Parties may identify steps necessary to implement the resolution strategy, potential barriers to resolution, areas in which cross-border cooperation would be needed, and actions the Parties might consider taking to facilitate identified strategies.
- 3.2 To the extent consistent with Applicable Law, the Parties will endeavor to work to develop, and if necessary, implement OCC resolution options that are aimed at pursuing financial stability and the continuity of OCC’s critical functions without exposing taxpayers to losses. In doing so, the Parties will duly consider the potential impact of their resolution actions on the financial stability of other jurisdictions.

- 3.3 The Parties, at a sufficiently senior level, through representation in the CMG, may participate in reviewing the overall resolution strategy for OCC and may provide input on the development and maintenance of the OCC Resolution Plan.
- 3.4 The Parties may engage in periodic table top simulation or scenario exercises within the CMG in order to assess the viability of the OCC Resolution Plan to help prepare for a coordinated resolution of OCC.
- 3.5 The Parties may use the results of the Resolvability Assessment referred to in subparagraph 4.1(ii) below to inform the resolution planning process.
- 3.6 The Parties acknowledge that:
- (i) A review of the substantive resolution strategy set forth in the OCC Resolution Plan by appropriate senior officials of the Home Authorities and Host Authorities should occur at least annually; and
 - (ii) Appropriate senior officials of the Home Authorities and Host Authorities should review the operational aspects of the OCC Resolution Plan at least annually.
- 3.7 Subject to Applicable Law, the Parties will endeavor to inform each other of material and relevant changes to their respective crisis management or resolution frameworks.

4. Home Authorities' undertakings

- 4.1 The appropriate Home Authorities¹ will:
- (i) Facilitate and chair meetings of the CMG;
 - (ii) With the benefit of the input of the other Parties: (a) perform an assessment of the resolvability of OCC (the "Resolvability Assessment") considering the guidance set forth in the Key Attributes *Resolvability Assessments* Annex, and (b) identify actions that the Home Authorities, the Host Authorities, or OCC may need to take to improve the resolvability of OCC;
 - (iii) Lead the discussions of relevant information related to the recovery plan developed by OCC (the "OCC Recovery Plan") within the CMG;
 - (iv) Create and ultimately maintain the OCC Resolution Plan, considering the impact of OCC and its resolution on the financial stability of other jurisdictions;
 - (v) Lead the discussions of the OCC Resolution Plan and the review of relevant recovery plan information within the CMG, with the benefit of the input of the other Parties;
 - (vi) To the extent permitted by Applicable Law, endeavor to alert other Parties without undue delay, so as to allow practical cooperation, if OCC encounters material difficulties, takes recovery actions, or if it becomes apparent that OCC is likely to enter the applicable resolution regime;
 - (vii) Take into account the overall effect of their actions with respect to OCC on financial stability in other relevant jurisdictions and, where possible and feasible and consistent with Applicable Law, endeavor to avoid taking actions that reasonably could be expected to trigger instability in OCC or in the financial system of one or more relevant jurisdictions; and
 - (viii) Where possible and feasible and to the extent permitted by Applicable Law, work with the other Parties towards a coordinated resolution of OCC with the aim of maintaining financial stability and the continuity of the critical functions of OCC without exposing taxpayers to losses.

5. Host Authorities' undertakings

- 5.1 Each Host Authority will:
- (i) Participate, at a sufficiently senior level, at meetings of the CMG;
 - (ii) Provide input into the development and maintenance of the OCC Resolution Plan;
 - (iii) To the extent consistent with Applicable Law, coordinate with the other Parties the implementation of the actions set out in the OCC Resolution Plan;

¹ With respect to the actions identified in subparagraphs 4.1(i) through (vi), the appropriate Home Authorities will be one or both of the Co-lead Authorities.

- (iv) To the extent permitted by Applicable Law, alert the Home Authorities without undue delay on becoming aware that an OCC affiliate or provider of critical systems or services to OCC or its affiliates encounters material difficulties or if it becomes apparent that such entity is likely to enter the Host Authority's resolution regime; and
- (v) Where possible and feasible, work with the other Parties towards the coordinated resolution of OCC with the aim of maintaining financial stability and the continuity of the critical functions of OCC without exposing taxpayers to losses.

5.2 Each Host Authority will endeavor not to pre-empt resolution actions by the Home Authorities while reserving the right to act on its own initiative if necessary to achieve domestic stability in the absence of effective action by the Home Authorities.

6. Cooperation mechanisms and information sharing framework

6.1 The Parties will meet at least annually and may hold additional meetings if necessary to address emergency situations or if requested by the Parties. Requests for additional meetings should be addressed to the Co-lead Authorities and should specify the purpose of the meeting.

6.2 To the extent permitted by Applicable Law, the Parties intend to exchange information on their resolution regimes, the operations of OCC in the jurisdictions of the Parties, and such other information relevant to the recovery and resolution planning and implementation process as provided in this Agreement. During an emergency situation, information exchanges may increase in frequency and level of detail based on the specific circumstances and consistent with the provisions of this Agreement.

6.3 The Co-lead Authorities will coordinate information sharing in connection with regular and ad hoc CMG meetings. The Parties will maintain up-to-date contact lists, which will include contact details for key senior and working-level staff, and the Co-lead Authorities will maintain and facilitate access to those lists by all Parties. This contact list should be used for all notices under this Agreement. The Parties intend to agree on multiple means of telecommunications (e.g., electronic correspondence, conference calls) to facilitate rapid and effective communication sharing and communication among the Parties.

6.4 To the extent permitted by Applicable Law, the Parties may, from time to time, share confidential (i.e., non-public), proprietary or supervisory information (including, but not limited to, the Resolvability Assessments, the OCC Recovery Plan, the OCC Resolution Plan, other recovery or resolution strategies or plans, and information regarding the members of OCC) ("Confidential Information"). To the extent that any Party's authority permits the sharing of Confidential Information only upon request, any requests for Confidential Information to such Party will be made in writing, to the extent practicable in the situation. Such request should state why the information is being requested and confirm that it will be used, and its confidentiality maintained, pursuant to paragraphs 6.5 and 6.6.

6.5 Each Party receiving any Confidential Information pursuant to this Agreement (a "Receiving Party") from another Party will use the Confidential Information only for lawful purposes related to the Receiving Party's financial stability, safety and soundness, supervisory or regulatory functions, including recovery and resolution planning and crisis management. In addition, each Receiving Party will hold confidential all such Confidential Information to the extent permitted by Applicable Law and will not disclose any of it other than as necessary to carry out its lawful responsibilities and as consistent with the following limitations:

- (i) Except as provided below in subparagraphs (ii) and (iii), before a Receiving Party discloses any Confidential Information received pursuant to this Agreement to any other person, including any other Party or a governmental entity that is not a signatory to this Agreement, the Receiving Party seeking to disclose such Confidential Information will request and obtain prior written consent from the Party that produced or provided the Confidential Information (the "Producing Party").
- (ii) Where Confidential Information is produced or provided by a Producing Party to a subset of or all other Parties, those Receiving Parties may share such Confidential Information amongst themselves without the consent of the Producing Party, but such Confidential Information may not be shared with any other Party without the prior written consent of the Producing Party.
- (iii) In the event that a Receiving Party is required by Applicable Law or legal process, including a legally enforceable demand, to disclose Confidential Information, it will, to the extent permitted by Applicable Law, inform the Producing Party about such possible compelled disclosure in advance of sharing such Confidential Information. If the Producing Party does not consent to such disclosure, the Receiving Party will take reasonable steps, to the extent permitted by Applicable Law, to resist disclosure, including by asserting all appropriate legal exemptions or privileges that may be available to challenge the requirement or demand to disclose Confidential Information.

- (iv) Subject to the foregoing, access to Confidential Information by each Receiving Party should be restricted to those staff members who have a bona fide need for access to such information in connection with the Receiving Party's lawful activities. The Receiving Parties will also establish and maintain safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Confidential Information received under this Agreement.
- (v) A Receiving Party will promptly notify the Producing Party in the event the Receiving Party becomes aware of an unauthorized disclosure of Confidential Information obtained from the Producing Party, including, where possible, identifying the recipient(s) of information.
- (vi) The Parties acknowledge that, without prejudice to any other applicable rights of the Producing Party, a Receiving Party's failure to comply with the foregoing limitations may result in that Party having limited or no access to Confidential Information in the future.
- (vii) The provision of, or request for, information under this Agreement may be denied on grounds of public interest or national security, or when disclosure would interfere with an ongoing investigation.

For the avoidance of doubt, the restrictions in this Agreement do not apply to a Party's use or treatment of information that the Party obtains from OCC, or receives from any other source independent of this Agreement, under Applicable Law regardless of whether that same information is also shared under this Agreement.

- 6.6 No privileges or confidentiality associated with information provided by any Party are waived as a result of sharing information as contemplated by this Agreement.

7. Cross-border implementation of resolution measures

- 7.1 The Parties will work together to develop a process for evaluating the application of potential resolution options and processes for OCC.
- 7.2 The Parties will endeavor to ensure that any resolution plans that are maintained for any OCC affiliate or provider of critical systems or services to OCC or its affiliates consider the interaction with the OCC Resolution Plan. To the extent practicable and consistent with its mandate, each Party should take into account the overall effect of the plan for which they have responsibility, including the OCC Resolution Plan, on OCC and its affiliates and on financial stability in the jurisdictions concerned.
- 7.3 While it is recognized that each Party must operate within the framework of Applicable Law, each Party will work together with the other Parties to identify and, to the extent possible and feasible, to address the legal and operational impediments to effective cross-border implementation of resolution actions with regard to OCC under the applicable legal and operational frameworks related to crisis management, recovery and resolution in such Party's jurisdiction.
- 7.4 In the event of the resolution of OCC, the Parties will maintain open communication channels and coordinate with each other, to the extent permitted by Applicable Law, to promote, as appropriate, consistency of external communications both leading up to, at the time of, and for whatever period is necessary following resolution.

8. Additional provisions

- 8.1 Any Party may terminate its participation in this Agreement upon written notice to the other Parties, provided, however, that upon such termination, the Agreement will continue to apply between the remaining Parties. The confidentiality provisions set forth in paragraphs 6.5 and 6.6 of this Agreement will continue to apply to all Confidential Information in the possession of any Party even if such Party ceases to be a Party to this Agreement, by way of termination or otherwise.
- 8.2 Except as otherwise provided in Section 8, any modification to this Agreement (other than a change in the Parties to the Agreement) will be agreed to in writing by all Parties.
- 8.3 The Co-lead Authorities may enter into discussions with other authorities with a view to their joining the CMG and becoming party to this Agreement. The Co-lead Authorities will consult with current CMG members and, upon receiving the written consent of current CMG members, may add an authority as a new CMG member upon such authority's execution of an accession. Promptly following such execution, the accession and revised Annex A will be circulated to all CMG members.
- 8.4 The Parties may have existing bilateral or multilateral arrangements or may execute bilateral or multilateral arrangements in the future. This Agreement is not intended to amend or supersede existing arrangements or limit the terms of any future arrangements.

[SIGNATURE PAGES FOLLOW.]

B.1: Notices

This Cross-border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group is signed by the representatives of each Party, and will become effective with respect to such Party, as of the date written below such Party's signature block.

Securities and Exchange Commission

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Federal Deposit Insurance Corporation

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Board of Governors of the Federal Reserve System

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

U.S. Commodity Futures Trading Commission

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Autorité des marchés financiers (Québec)

Name:

Title:

Date:

Intervention

The Minister responsible for Canadian Relations and the Canadian Francophonie, represented by the Associate General Secretary of the Secrétariat du Québec aux relations canadiennes, takes part herein pursuant to the first paragraph of section 3.8 of *An Act respecting the Ministère du Conseil exécutif* (R.S.Q., c. M-30), acknowledges the undertakings set out in this MOU and declares to be satisfied therewith.

Per: _____

Name: "Gilbert Charland"

Title: Associate General Secretary for
Canadian Relations, Government of Québec

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Bank of Canada

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Ontario Securities Commission

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Autorité de Contrôle Prudentiel et de Résolution

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Autorité des Marchés Financiers

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Banque de France

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Bank of England

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

B.1: Notices

Prudential Regulation Authority

Name:

Title:

Date:

Cross-Border Cooperation Agreement for Options Clearing Corporation (Signature Page)

ANNEX A

The Parties to this Agreement are the Home Authorities and Host Authorities listed below:

Home authorities (each a “Home Authority”, and together, the “Home Authorities”) and the “Home Jurisdiction”:

Home Jurisdiction	Home Authorities
United States of America	Securities and Exchange Commission Federal Deposit Insurance Corporation Board of Governors of the Federal Reserve System U.S. Commodity Futures Trading Commission

Host authorities (each a “Host Authority”, and together, the “Host Authorities”) and the “Host Jurisdiction”:

Host Jurisdiction	Host Authority or Host Authorities
Canada	Autorité des marchés financiers (Québec) Bank of Canada Ontario Securities Commission
France	Autorité de Contrôle Prudentiel et de Résolution Autorité des Marchés Financiers Banque de France
United Kingdom	Bank of England Prudential Regulation Authority

Cross-Border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group
(Annex A)

B.2 Orders

B.2.1 Forbidden Spirit Distilling Corp.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Section 144 of the Securities Act (Ontario) – application for a partial revocation of a cease trade order – issuer cease traded due to failure to file audited annual financial statements – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a private placement under prospectus exemptions – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Applicable Legislative Provisions

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

Citation: 2024 BCSECCOM 300

PARTIAL REVOCATION ORDER

FORBIDDEN SPIRIT DISTILLING CORP.

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

Background

- ¶ 1 Forbidden Spirits Distilling Corp. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator or securities regulatory authority in each of British Columbia (the Principal Regulator and Ontario (each a Decision Maker)) respectively on May 8, 2023.
- ¶ 2 The Issuer has applied to each of the Decision Makers for a partial revocation order of 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.

Representations

- ¶ 5 This decision is based on the following facts represented by the Issuer:
1. The Issuer was formed by amalgamation on December 16, 2021 in accordance with the provisions of the *Business Corporations Act* (British Columbia) and obtained a public listing of securities on the TSX Venture Exchange on December 16, 2021 following closing of a qualifying transaction involving Spartan Acquisition Corp. and Forbidden Distillery Inc. On December 20, 2021, the Issuer commenced trading under the symbol VDKA.
 2. The Issuer's head office is located in Kelowna, British Columbia.
 3. The Issuer is reporting in British Columbia, Alberta and Ontario.

4. The Issuer's authorized capital consists of an unlimited number of common shares (the Common Shares) without par value, of which a total of 61,004,024 Common Shares are issued and outstanding. In addition, the Issuer has 2,000,000 share purchase warrants outstanding which are exercisable into 2,000,000 Common Shares of the Issuer and 5,518,257 stock options exercisable into 5,518,257 Common Shares.
5. The FFCTO was issued by the Decision Makers on May 8, 2023 due to the failure of the Issuer to file its annual financial statements, annual management's discussion and analysis and certification of annual filings for the year ended December 31, 2022 (collectively, the Unfiled Documents).
6. Subsequent to the failure to file the Unfiled Documents, the Issuer also failed to file the following documents (together with the Unfiled Documents, the Unfiled Continuous Disclosure Documents):
 - (a) the Issuer's interim financial statements and management's discussion and analysis for the three months ended March 31, 2023 and certification of interim filings for the three months ended March 31, 2023,
 - (b) the Issuer's interim financial statements and management's discussion and analysis for the six months ended June 30, 2023 and certification of interim filings for the six months ended June 30, 2023,
 - (c) the Issuer's interim financial statements and management's discussion and analysis for the nine months ended September 30, 2023 and certification of interim filings for the nine months ended September, 2023,
 - (d) the Issuer's annual financial statements, management's discussion and analysis and certification of annual filings for the year ended December 31, 2023, and
 - (e) the Issuer's interim financial statements and management's discussion and analysis for the three months ended March 31, 2024 and certification of interim filings for the three months ended March 31, 2024.
7. The Issuer's failure to file the Unfiled Continuous Disclosure Documents in a timely manner arose as a consequence of financial difficulties.
8. Other than the failure to file the Unfiled Continuous Disclosure Documents, the Issuer is not in default of the Legislation. The issuer confirms that its SEDAR+ profile and SEDI profiles (as they pertain to the current insiders of the Issuer) are up to date.
9. The Issuer proposes to complete:
 - (a) a private placement of convertible notes (the Convertible Notes) for aggregate gross proceeds of up to a maximum of \$500,000 (the Private Placement). The Convertible Notes shall be issued in aggregate principal amounts of \$1,000 and be convertible at the option of the holder into Common Shares at a price of \$0.01 per Common Share. The Private Placement will be completed in accordance with all applicable laws. In particular, the Private Placement will be conducted on a prospectus exemption basis with subscribers in British Columbia, Ontario and other Canadian provinces who satisfy the requirements of Section 2.3 (Accredited Investor) of National Instrument 45-106 Prospectus Exemptions (NI 45-106) and, potentially, with subscribers in international jurisdictions in reliance on the prospectus exemption set forth in Section 3 of BC Instrument 72-503,
 - (b) the Company anticipates paying a finder's fee equal to 8% of the Private Placement amount in cash and 8% in Common Share Purchase Warrants (the Finder Warrants) to Alphanorth Asset Management (the Finder). The Finder Warrants will entitle the holder to acquire one Common Share (subsequent to the full revocation of the FFCTO) at an exercise price of \$0.01/share for a period of 24 months from the date of issuance, and
 - (c) upon completion of the Private Placement, the Issuer will use the funds raised to facilitate payment to the Issuer's service providers, including its legal counsel and auditors in order to have the Issuer's audited financial statements for the fiscal years ended December 31, 2023 and 2022, corresponding MD&A and certification of annual filings completed. The Issuer will also file outstanding interim financial statements and MD&A and otherwise bring forward its continuous disclosure record in order to be in a position to apply for a full revocation of the FFCTO. The Issuer also anticipates using a portion of the funds raised to settle debt obligations arising in connection with this application, ordinary course business expenses and otherwise.

10. The Issuer confirms that the Convertible Notes may only be converted and the Filer Warrants may only be exercised after the full revocation of the FFCTO.
11. The proceeds of the Private Placement (the Proceeds) are intended to be used by the Issuer as follows:

Description	Estimated Amount
Payment of legal, accounting, transfer agent and Exchange fees incurred to date and in connection with the Private Placement, including outstanding auditors fees	\$179,500.00
Payment of finder's fee equal to 8% of the Proceeds	\$40,000.00
Preparation and filing of the outstanding continuous disclosure documents, applications for a full revocation order and payment of related fees	\$35,980.00
Employee (excluding directors and officers) salaries and benefits through end of June 2024	\$111,250.00
Fees and expenses related to the calling and holding of the Issuers annual general meeting	\$20,000.00
General working capital	\$113,270.00
Total:	\$500,000.00

12. The Issuer intends to prepare and file the outstanding continuous disclosure documents and pay all outstanding fees within a reasonable period of time following the completion of the Private Placement. The Issuer also intends to make an application to the Decision Makers for a full revocation of the FFCTO. Based on the management's current reasonable estimation, the Issuer believes the proceeds from the Private Placement will be sufficient to enable the Issuer to file the outstanding continuous disclosure documents, pay all related outstanding fees and provide the Issuer with sufficient working capital to continue its business until the FFCTO has been fully revoked.
13. The Private Placement and the issuance of the Finder Warrants would involve a trade of securities of the Issuer and, as such, neither can be completed without a partial revocation of the FFCTO.
14. The Issuer confirms that there are no convertible or debt securities currently outstanding.
15. There have been no material changes in the business, operations or affairs of the Issuer since the issuance of the FFCTO that have not been previously disclosed by news release and/or material change report and filed on the Issuer's SEDAR+ profile.
16. The Issuer will obtain, and provide upon request to the principal regulator, signed and dated acknowledgements from all participants in the proposed trades, which clearly state that the securities of the issuer acquired by the participant will remain subject to the failure-to-file cease trade order until a full revocation order is granted, the issuance of which is not certain.
17. The Issuer also confirms it will provide a copy of the failure-to-file cease trade order and the partial revocation order to all participants in the proposed trades.
18. To the Issuer's knowledge, no participant in the Private Placement is an insider or a related party (as such term is defined in Multilateral Instrument 61-101-*Protection of Minority Security Holders in Special Transactions*) of the Issuer.
19. Upon issuance of a partial revocation order, the Issuer will issue a press release announcing the partial revocation order and the intention to complete the Private Placement. Upon completion of the Private Placement, the Issuer will issue a press release and file a material change report. As other material events transpire, the Issuer will issue appropriate press releases and material change reports as applicable.

Order

¶ 6 Each of the Decision Makers is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.

¶ 7 The decision of the Decision Makers under the Legislation is that the FFCTO is partially revoked as it applies to the Issuer solely to permit the Private Placement and the issuance of the Finder Warrants, provided that:

1. Prior to completion of the Private Placement, the Issuer will:
 - (a) Provide each participant in the Private Placement and the Finder with a copy of the FFCTO and a copy of this partial revocation order.
 - (b) Obtain a signed and dated acknowledgement from each such participant in the Private Placement and the Finder which clearly states that all of the Issuer's securities will remain subject to the FFCTO until the FFCTO is revoked and that the issuance of this partial revocation order does not guarantee the issuance of a full revocation in the future.
2. The Issuer undertakes to make available a copy of the written acknowledgement to staff of the Decision Makers on request.

¶ 8 July 9, 2024

"Larissa M. Streu"
Manager, Corporate Disclosure Corporate Finance

OSC File #: 2024/0287

B.2.2 Royal Fox Gold Inc.

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).

July 15, 2024

**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
ROYAL FOX GOLD INC.
(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 British Columbia and Alberta.

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.

“David Surat”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0383

B.3

Reasons and Decisions

B.3.1 BMO Asset Management Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to facilitate the offering of exchange-traded mutual fund securities and conventional mutual fund securities under the same form of prospectus – Relief granted from the requirement in NI 41-101 to file a long form prospectus for exchange-traded fund securities provided that a simplified prospectus is prepared and filed in accordance with NI 81-101 and the filer includes disclosure required pursuant to Form 41-101F2 that is not contemplated by Form 81-101F1 in respect of the exchange-traded fund securities – Filer will file ETF Facts in the form prescribed by Form 41-101F4 in respect of exchange-traded fund securities of a fund and will file a Fund Facts document in the form prescribed by Form 81-101F3 in respect of conventional mutual fund securities of a fund – Technical relief granted from Parts 9, 10 and 14 of NI 81-102 to permit each fund to treat its exchange-traded fund securities and conventional mutual fund securities as separate mutual funds for the purpose of compliance with Parts 9, 10 and 14 of NI 81-102.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 3.1(2) and 19.1.
National Instrument 81-102 Investment Funds, Parts 9, 10 and 14 and s. 19.1.

July 9, 2024

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

AND

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

AND

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

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each of the Existing Funds (as defined below) and such other mutual funds as are managed or may be managed by the Filer or an affiliate now or in the future that offer ETF Securities (as defined below) either alone or along with Mutual Fund Securities (as defined below) (collectively, the **Future Funds** and together with the Existing Funds, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting exemptive relief that:

- (a) exempts the Filer, any affiliate of the Filer, and each Fund from the requirement in subsection 3.1(2) of National Instrument 41-101 General Prospectus Requirements (NI 41-101) to prepare and file a long form prospectus for the ETF Securities in the form prescribed by Form 41-101F2 Information Required in an Investment Fund Prospectus (the Form 41-101F2) provided that the Filer files (i) a prospectus for the ETF Securities in accordance with the provisions of National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101), other than the requirements pertaining to the filing of a fund facts document; and (ii) an ETF facts document in accordance with Part 3B of NI 41-101 (the ETF Prospectus Form Relief); and

- (b) permits the Filer, any affiliate of the Filer, and each Fund that offers both ETF Securities and Mutual Fund Securities to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10 and 14 of National Instrument 81-102 *Investment Funds (NI 81-102)* (the **Sales and Redemptions Relief**),

(collectively, the ETF Prospectus Form Relief and the Sales and Redemptions Relief, 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; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

Interpretation

Capitalized terms used herein have the meaning ascribed thereto below (or in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102, as applicable) unless otherwise defined in this Decision.

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

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

Basket of Securities means, in relation to the ETF Securities of a Fund, a group of some or all of the constituent securities of the Fund, a group of securities or assets representing the constituents of the Fund, or a group of securities selected by the portfolio manager or sub-advisor, as applicable, from time to time.

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

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

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

Exchange means the Toronto Stock Exchange or Cboe Canada Inc., as applicable.

Existing ETFs means the ETFs managed by the Filer that are distributed pursuant to a long form prospectus dated January 17, 2024.

Existing ETF Series Mutual Funds means the mutual funds managed by an affiliate of the Filer that are distributed pursuant to a simplified prospectus dated May 24, 2024.

Existing Funds means the Existing ETFs together with the Existing ETF Series Mutual Funds.

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

Fund Facts means a prescribed summary disclosure document required pursuant to NI 81-101 in respect of one or more classes or series of Mutual Fund Securities being distributed under a prospectus.

Legislation means the securities legislation of each of the Jurisdictions, as applicable.

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

Mutual Fund Securities means securities of a Fund that are not listed or traded on an exchange and that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

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

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

Securityholders means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Ontario, having its head office in the City of Toronto.
2. The Filer is registered as a portfolio manager and exempt market dealer in each of the Jurisdictions, as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Quebec.
3. The Filer, or an affiliate of the Filer, is, or will be, the investment fund manager of each of the Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

5. Each Fund is, or will be, an open-ended mutual fund established as either a trust or a class of shares of a mutual fund corporation under the laws of a Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Fund that relies on the Exemption Sought will offer ETF Securities either alone or along with Mutual Fund Securities.
6. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.
7. The Existing ETFs are distributed pursuant to a long form prospectus dated January 17, 2024 in the form prescribed by Form 41-101F2 (the Long Form Prospectus). Each of the Existing ETFs currently offers ETF Securities listed on an Exchange.
8. The Existing ETF Series Mutual Funds are distributed pursuant to a simplified prospectus dated May 24, 2024. Each Existing ETF Series Mutual Fund currently offers ETF Securities listed on an Exchange, as well as Mutual Fund Securities.
9. If the ETF Prospectus Form Relief is granted, it is expected that:
 - a. on or about July 2024, the Filer will file a preliminary simplified prospectus in the form prescribed by Form 81-101F1 in respect of a Future Fund, pursuant to which it will offer ETF Securities. ETF Facts in the form prescribed by Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**) for each class or series of ETF Securities of such Future Fund will also be filed.
 - b. when the Long Form Prospectus is renewed in 2025, the Filer may file a preliminary and pro forma simplified prospectus in the form prescribed by Form 81-101F1, in respect of the Existing ETFs, pursuant to which it will continue to offer ETF Securities of the Existing ETFs. ETF Facts in the form prescribed by Form 41-101F4 for each class or series of ETF Securities of the Existing ETFs will also be filed. In addition, Fund Facts in the form prescribed by Form 81-101F3 *Contents of Fund Facts Document* (the **Form 81-101F3**) for each class or series of Mutual Fund Securities of any Future Fund would also be filed.
10. The Filer or an affiliate has applied, or will apply, to list any ETF Securities of each of the Funds that relies on the Exemption Sought on an Exchange or another Marketplace. In the case of a Future Fund, the Filer or an affiliate will not file a final or amended simplified prospectus for any of the Funds in respect of the ETF Securities until an Exchange or other applicable Marketplace has conditionally approved the listing of the ETF Securities.
11. The Existing Funds are not in default of securities legislation in any of the Jurisdictions.
12. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through appropriately registered dealers.
13. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized

Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on an Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on an Exchange or another Marketplace.

14. In addition to subscribing for and reselling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market.
15. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, ETF Securities generally will not be able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of an Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
16. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on an Exchange or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash, securities other than Baskets of Securities and/or cash, or cash only, at the discretion of the Filer or an affiliate. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the net asset value of the ETF Securities on the date of redemption.

ETF Prospectus Form Relief

17. The Filer believes it is more efficient and expedient to include all classes or series of Mutual Fund Securities and ETF Securities (as applicable), in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the securities of the Funds by permitting disclosure relating to all classes or series of securities to be included in one prospectus.
18. The Filer or an affiliate will file ETF Facts in the form prescribed by Form 41-101F4 in respect of each class or series of ETF Securities and will file Fund Facts in the form prescribed by Form 81-101F3 in respect of each class or series of Mutual Fund Securities.
19. The Filer or an affiliate will ensure that any additional disclosure included in the simplified prospectus of the Funds relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes.
20. The Funds will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto.
21. The Funds will comply with Part 3B of NI 41-101 when preparing and filing ETF Facts for the ETF Securities of the Funds.

Sales and Redemption Relief

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

Decision

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

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

1. in respect of the ETF Prospectus Form Relief, the Filer or an affiliate complies with the following conditions:

B.3: Reasons and Decisions

- (a) the Filer or an affiliate files a simplified prospectus in respect of the ETF Securities in accordance with the requirements of NI 81-101 and Form 81-101F1, other than the requirements pertaining to the filing of a fund facts document;
 - (b) the Filer or an affiliate includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1) in respect of the ETF Securities in each Fund's simplified prospectus; and
 - (c) the Filer or an affiliate includes disclosure regarding this decision under the heading "Additional Information" in each Fund's simplified prospectus; and
- 2. in respect of the Sales and Redemptions Relief, the Filer or an affiliate and each Fund comply with the following conditions:
 - (a) with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and
 - (b) with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"Darren McKall"
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2024/0384
SEDAR Project #: 6151326

B.3.2 Fidelity Investments Canada ULC and Fidelity Global Equity+ 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 48 days to facilitate the consolidation of the fund's prospectus with the prospectus of other funds under common management – No conditions.

Applicable Legislative Provisions

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

July 11, 2024

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

AND

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

AND

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

AND

IN THE MATTER OF
FIDELITY GLOBAL EQUITY+ FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits for the renewal of the Current Simplified Prospectus (defined below) of the Funds be extended to those time limits that would apply if the lapse date was November 9, 2024 (the **Exemption Sought**).

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under the laws of Alberta and has its head office in Toronto, Ontario.

2. The Filer is registered as follows: (i) as a portfolio manager, mutual fund dealer and exempt market dealer in each of the Canadian Jurisdictions; (ii) as an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador; and (iii) as a commodity trading manager in Ontario under the *Commodity Futures Act* (Ontario).
3. The Filer is the trustee and investment fund manager of the Funds.
4. The Fund is an open-end mutual fund trust established under the laws of the Province of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Canadian Jurisdictions.
5. Neither the Filer or the Fund is in default of securities legislation in any of the Canadian Jurisdictions.
6. The Fund currently distributes securities in the Canadian Jurisdictions under a simplified prospectus dated September 22, 2023, as amended and restated on April 15, 2024, and as further amended (the **Current Simplified Prospectus**).
7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the Current Simplified Prospectus is September 22, 2024 (the **Current Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of the Funds would have to cease on its Current Lapse Date unless: (i) the Funds file 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 is the investment fund manager of certain other mutual funds as listed in Schedule "A" (the **Fidelity Funds**), that currently distribute their securities under a simplified prospectus with a lapse date of November 9, 2024 (the **Fidelity Funds Prospectus**).
9. The Fund shares many common operational and administrative features with the Fidelity Funds. To allow investors to compare the features of the Fund and the Fidelity Funds more easily, and also to reduce prospectus renewal, printing and related costs, the Filer proposes to distribute the securities of the Fund and the Fidelity Funds under a common simplified prospectus. To facilitate the combination of the Fund and Fidelity Funds in a single offering document, the Filer requests that the Current Lapse Date of the Current Simplified Prospectus be extended by 48 days until November 9, 2024, to coincide with the lapse date of the Fidelity Funds Prospectus. If the Exemption Sought is granted, the Filer will file a combined *pro forma* simplified prospectus for the Fund and Fidelity Funds in accordance with the time limits that would apply if the lapse date of both the Current Simplified Prospectus and Fidelity Funds Prospectus were November 9, 2024.
10. It would be impractical to alter and modify all the dedicated systems, procedures and resources required to prepare the renewal simplified prospectus and fund facts for the Fidelity Funds (the **Fidelity Funds Renewal Prospectus Documents**), and unreasonable to incur the costs and expenses associated therewith, so that the Fidelity Funds Renewal Prospectus Documents can be filed earlier with the renewal simplified prospectus and fund facts document(s) of the Funds (the **Renewal Prospectus Documents**).
11. If the Exemption Sought is not granted, it will be necessary to renew the Current Simplified Prospectus twice within a short period of time in order to consolidate the Current Simplified Prospectus with the Fidelity Funds Prospectus.
12. The Filer may make minor changes to the features of the Fidelity Funds as part of the Fidelity Funds Renewal Prospectus Documents. The ability to file the Renewal Prospectus Documents with the Fidelity Funds Renewal Prospectus Documents will ensure that the Filer can make the operational and administrative features of the Funds and the Fidelity Funds consistent with each other.
13. There have been no material changes in the affairs of the Fund since the Current Simplified Prospectus. Accordingly, the Current Simplified Prospectus and current fund facts document(s) of the Funds represent current information regarding the Fund.
14. Given the disclosure obligations of the Fund, should a material change in the affairs of the Funds occur, the Current Simplified Prospectus and current fund facts document(s) of the Fund will be amended as required under the Legislation.
15. New investors of the Fund will receive delivery of the most recently filed fund facts document(s) of the Fund. The Current Simplified Prospectus will still be available upon request.
16. The Exemption Sought will not affect the accuracy of the information contained in the Current Simplified Prospectus or the current 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 Management
Ontario Securities Commission

Application File #: 2024/0374
SEDAR+ File #: 6149139

SCHEDULE A

The Fidelity Funds

Fidelity Canadian Disciplined Equity® Fund

Fidelity Canadian Growth Company Fund

Fidelity Canadian Large Cap Fund

Fidelity Canadian Opportunities Fund

Fidelity Dividend Fund

Fidelity Greater Canada Fund

Fidelity Dividend Plus Fund

Fidelity Special Situations Fund

Fidelity True North® Fund

Fidelity Canadian Core Equity Fund

Fidelity American Disciplined Equity® Fund

Fidelity American Equity Fund

Fidelity American Equity Systematic Currency Hedged Fund

Fidelity U.S. Focused Stock Fund

Fidelity U.S. Focused Stock Systematic Currency Hedged Fund

Fidelity Small Cap America Fund

Fidelity Small Cap America Systematic Currency Hedged Fund

Fidelity U.S. Dividend Fund

Fidelity U.S. Dividend Currency Neutral Fund

Fidelity U.S. Dividend Systematic Currency Hedged Fund

Fidelity U.S. Dividend Registered Fund

Fidelity U.S. All Cap Fund

Fidelity Women's Leadership Fund

Fidelity Women's Leadership Systematic Currency Hedged Fund

Fidelity Insights Systematic Currency Hedged Fund™

Fidelity U.S. Core Equity Fund

Fidelity SmartHedge™ U.S. Equity Fund

Fidelity AsiaStar® Fund

Fidelity China Fund

Fidelity Emerging Markets Fund

Fidelity Europe Fund

Fidelity Far East Fund

B.3: Reasons and Decisions

Fidelity Global Fund

Fidelity Global Disciplined Equity® Fund

Fidelity Global Dividend Fund

Fidelity Global Large Cap Fund

Fidelity Global Concentrated Equity Fund

Fidelity Global Concentrated Equity Currency Neutral Fund

Fidelity Global Small Cap Fund

Fidelity International Disciplined Equity® Fund

Fidelity International Concentrated Equity Fund

Fidelity International Concentrated Equity Currency Neutral Fund

Fidelity Japan Fund

Fidelity NorthStar® Fund

Fidelity International Growth Fund

Fidelity Long-Term Leaders Fund

Fidelity Long-Term Leaders Currency Neutral Fund

Fidelity Climate Leadership Fund™

Fidelity Global Intrinsic Value Fund

Fidelity Global Small Cap Opportunities Fund

Fidelity Global Consumer Industries Fund

Fidelity Global Financial Services Fund

Fidelity Global Health Care Fund

Fidelity Global Natural Resources Fund

Fidelity Global Real Estate Fund

Fidelity Technology Innovators Fund

Fidelity Canadian Asset Allocation Fund

Fidelity Canadian Balanced Fund

Fidelity Monthly Income Fund

Fidelity Income Allocation Fund

Fidelity Global Asset Allocation Fund

Fidelity Global Monthly Income Fund

Fidelity Global Monthly Income Currency Neutral Fund

Fidelity Tactical Strategies Fund

Fidelity U.S. Monthly Income Fund

Fidelity U.S. Monthly Income Currency Neutral Fund

B.3: Reasons and Decisions

Fidelity Tactical High Income Fund

Fidelity Tactical High Income Currency Neutral Fund

Fidelity NorthStar® Balanced Fund

Fidelity NorthStar® Balanced Currency Neutral Fund

Fidelity American Balanced Fund

Fidelity American Balanced Currency Neutral Fund

Fidelity Conservative Income Fund

Fidelity Multi-Asset Innovation Fund

Fidelity Climate Leadership Balanced Fund™

Fidelity Inflation-Focused Fund

Fidelity Income Portfolio

Fidelity Global Income Portfolio

Fidelity Balanced Portfolio

Fidelity Global Balanced Portfolio

Fidelity Growth Portfolio

Fidelity Global Growth Portfolio

Fidelity Balanced Managed Risk Portfolio

Fidelity Conservative Managed Risk Portfolio

Fidelity Global Equity Portfolio

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® 2060 Portfolio

Fidelity ClearPath® 2065 Portfolio

Fidelity ClearPath® Income Portfolio

Fidelity Canadian Bond Fund

B.3: Reasons and Decisions

Fidelity Corporate Bond Fund

Fidelity Canadian Money Market Fund

Fidelity Canadian Short Term Bond Fund

Fidelity Tactical Fixed Income Fund

Fidelity American High Yield Fund

Fidelity American High Yield Currency Neutral Fund

Fidelity U.S. Money Market Fund

Fidelity Floating Rate High Income Fund

Fidelity Floating Rate High Income Currency Neutral Fund

Fidelity Multi-Sector Bond Fund

Fidelity Multi-Sector Bond Currency Neutral Fund

Fidelity Strategic Income Fund

Fidelity Strategic Income Currency Neutral Fund

Fidelity Investment Grade Total Bond Fund

Fidelity Investment Grade Total Bond Currency Neutral Fund

Fidelity Tactical Credit Fund

Fidelity Global Bond Fund

Fidelity Global Bond Currency Neutral Fund

Fidelity Climate Leadership Bond Fund™

Fidelity Canadian High Dividend ETF Fund

Fidelity Canadian High Quality ETF Fund

Fidelity Canadian Low Volatility ETF Fund

Fidelity U.S. Dividend for Rising Rates ETF Fund

Fidelity U.S. Dividend for Rising Rates Currency Neutral ETF Fund

Fidelity U.S. High Dividend ETF Fund

Fidelity U.S. High Dividend Currency Neutral ETF Fund

Fidelity U.S. High Quality ETF Fund

Fidelity U.S. High Quality Currency Neutral ETF Fund

Fidelity U.S. Low Volatility ETF Fund

Fidelity U.S. Low Volatility Currency Neutral ETF Fund

Fidelity All-in-One Equity ETF Fund

Fidelity International High Dividend ETF Fund

Fidelity International High Quality ETF Fund

Fidelity International Low Volatility ETF Fund

Fidelity Sustainable World ETF Fund

Fidelity Tactical Global Dividend ETF Fund

Fidelity Total Metaverse ETF Fund

Fidelity Canadian Monthly High Income ETF Fund

Fidelity Global Monthly High Income ETF Fund

Fidelity All-in-One Balanced ETF Fund

Fidelity All-in-One Conservative ETF Fund

Fidelity All-in-One Growth ETF Fund

Fidelity Canadian Short Term Corporate Bond ETF Fund

Fidelity Systematic Canadian Bond Index ETF Fund

Fidelity Global Core Plus Bond ETF Fund

Fidelity Global Investment Grade Bond ETF Fund

Fidelity Advantage Bitcoin ETF Fund®

Fidelity Advantage Ether Fund™

Fidelity Global Value Long/Short Fund

Fidelity Long/Short Alternative Fund

Fidelity Market Neutral Alternative Fund

Fidelity U.S. Dividend Private Pool

Fidelity U.S. Growth and Income Private Pool

Fidelity Conservative Income Private Pool

Fidelity Global Asset Allocation Private Pool

Fidelity Global Asset Allocation Currency Neutral Private Pool

Fidelity Asset Allocation Private Pool Trust

Fidelity Balanced Private Pool Trust

Fidelity Balanced Income Private Pool Trust

Fidelity Premium Fixed Income Private Pool

Fidelity Premium Money Market Private Pool

Fidelity Premium Tactical Fixed Income Private Pool

Fidelity Canadian Equity Multi-Asset Base Fund

Fidelity Canadian Focused Equity Multi-Asset Base Fund

Fidelity Canadian Money Market Investment Trust

Fidelity Canadian Real Return Bond Index Multi-Asset Base Fund

Fidelity Canadian Short Term Fixed Income Multi-Asset Base Fund

Fidelity Concentrated Canadian Equity Multi-Asset Base Fund

Fidelity Concentrated Value Investment Trust

Fidelity Convertible Securities Multi-Asset Base Fund

Fidelity Dividend Multi-Asset Base Fund

Fidelity Emerging Markets Debt Multi-Asset Base Fund

Fidelity Emerging Markets Equity Multi-Asset Base Fund

Fidelity Emerging Markets Local Currency Debt Multi-Asset Base Fund

Fidelity Floating Rate High Income Multi-Asset Base Fund

Fidelity Founders Investment Trust™

Fidelity Global Bond Currency Neutral Multi-Asset Base Fund

Fidelity Global Bond Multi-Asset Base Fund

Fidelity Global Credit Ex-U.S. Investment Trust

Fidelity Global Dividend Investment Trust

Fidelity Global Equity Investment Trust

Fidelity Global Growth and Value Investment Trust

Fidelity Global High Yield Multi-Asset Base Fund

Fidelity Global Innovators® Investment Trust

Fidelity Global Intrinsic Value Investment Trust

Fidelity Global Real Estate Multi-Asset Base Fund

Fidelity High Income Commercial Real Estate Multi-Asset Base Fund

Fidelity Insights Investment Trust™

Fidelity International Equity Investment Trust

Fidelity International Growth Multi-Asset Base Fund

Fidelity North American Equity Investment Trust

Fidelity U.S. Bond Multi-Asset Base Fund

Fidelity U.S. Dividend Investment Trust

Fidelity U.S. Equity Investment Trust

Fidelity U.S. Money Market Investment Trust

Fidelity U.S. Small/Mid-Cap Equity Multi-Asset Base Fund

Fidelity International Equity Multi-Asset Base Fund

Fidelity Canadian Fundamental Equity Multi-Asset Base Fund

Fidelity Floating Rate High Income Currency Neutral Multi-Asset Base Fund

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

Fidelity High Income Commercial Real Estate Currency Neutral Multi-Asset Base Fund

Fidelity Insights Currency Neutral Multi-Asset Base Fund™

B.3: Reasons and Decisions

Fidelity International Equity Currency Neutral Investment Trust

Fidelity International Growth Currency Neutral Multi-Asset Base Fund

Fidelity U.S. Bond Currency Neutral Multi-Asset Base Fund

Fidelity U.S. Growth Opportunities Investment Trust

Fidelity Canadian Government Long Bond Index Multi-Asset Base Fund

Fidelity Multi-Sector Bond Hedged Multi-Asset Base Fund

Fidelity Global Developed Markets Sovereign Bond Index Hedged Multi-Asset Base Fund

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

Fidelity Canadian Large Cap Multi-Asset Base Fund

Fidelity Dividend Plus Multi-Asset Base Fund

Fidelity SmartHedge™ U.S. Equity Multi-Asset Base Fund

B.3.3 TD Asset Management Inc. and the Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict of interest investment restrictions and management company reporting requirements in ss. 111(2)(b) and (c), 111(4) and 117(1) of the Securities Act (Ontario), the self-dealing restrictions for dealer managed investment funds in s.4.1(2) of NI 81-102 and for registered advisers in s.13.5(2)(a) of NI 31-103 to permit public and private investment funds to invest in related underlying investment vehicles that are not investment funds and not reporting issuers – Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c.S.5, as am., ss. 111(2)(b), 111(2)(c)(i) & (ii), 111(4), 113, 117(1)1 and 117(2).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a) and 15.1.
National Instrument 81-102 Investment Funds, ss. 4.1(2) and 19.1.

July 15, 2024

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.
(the Filer)

AND

THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer, the Filer's affiliates and the Top Funds (as defined below) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for

1. the revocation and replacement of the Current Relief (as defined below) (the **Revocation**), and
2. an exemption from:
 - (a) in respect of the Top Funds, the restrictions in the Legislation which prohibit:
 - (i) an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder,
 - (ii) an investment fund from knowingly making an investment in an issuer in which,
 - (A) any officer or director of the investment fund, its management company or distribution company or an associate of any of them, or
 - (B) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company,
 - (iii) has a significant interest, and

- (b) an investment fund, its management company or its distribution company from knowingly holding an investment described in paragraph (i) or (ii) above;
- (c) in respect of the Public Top Funds (as defined below), the prohibition in paragraph 4.1(2) of National Instrument 81-102 Investment Funds (NI 81-102) against a “dealer managed investment fund” (as defined in NI 81-102) knowingly making an investment in an issuer in which any partner, director, officer or employee of the investment fund’s management company or an affiliate or associate of the investment fund’s management company is a partner, director or officer; in respect of the Filer and each affiliate of the Filer that is a registered adviser, the prohibition in paragraph 13.5(2)(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registration Obligations (NI 31-103) against knowingly causing a Top Fund to invest in securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (this restriction, together with the restrictions described in paragraphs (a) and (b) above are referred to herein as the Investment Fund Conflict of Interest Investment Restrictions), and
- (d) in respect of the Filer and each affiliate that acts as manager of a Public Top Fund, the requirement to prepare a report in accordance with the requirements of the Legislation of every transaction by a Public Top Fund involving a purchase of securities from, or sale of securities to, any related person or company (the Investment Fund Conflict of Interest Reporting Requirement);

to permit each Top Fund to invest a portion of its assets in one or more Existing Underlying Investments (as defined herein) and any future investment vehicle that will be managed by the Filer or an affiliate of the Filer after the date of this decision and that will not be a reporting issuer or an investment fund (the **Future Underlying Investments** and, together with the Existing Underlying Investments, the **Underlying Investments**) (the **Exemption Sought**).

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 81-102, NI 31-103, 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.

Current Relief means decisions in respect of the Filer and Top Funds dated July 16, 2020 and November 11, 2022.

Existing Private Top Funds means each investment fund managed by the Filer or an affiliate as at the date of this decision that is not a reporting issuer.

Existing Public Top Funds means each investment fund managed by the Filer or an affiliate as at the date of this decision that is a reporting issuer subject to NI 81-102.

Future Private Top Funds means each investment fund, other than the Existing Private Top Funds, that will be managed by the Filer or an affiliate after the date of this decision and that will not be a reporting issuer.

Future Public Top Funds means each investment fund, other than the Existing Public Top Funds, that will be managed by the Filer or an affiliate after the date of this decision and that will be a reporting issuer subject to NI 81-102.

Private Top Funds means the Existing Private Top Funds and the Future Private Top Funds.

Public Top Funds means the Existing Public Top Funds and the Future Public Top Funds.

Top Funds means the Public Top Funds and the Private Top Funds.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Ontario with its head office located in Toronto, Ontario.
2. 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.
3. The Filer or an affiliate of the Filer is, or will be, the IFM of the Top Funds. To the extent that the Filer or an affiliate of the Filer is the IFM of any Future Public Top Fund or Future Private Top Fund, the representations set out in this decision will apply to the same extent to such Future Public Top Fund or Future Private Top Fund, as applicable.
4. The Filer or an affiliate of the Filer is, or will be, the manager of the Underlying Investments. To the extent that the Filer or an affiliate of the Filer is the manager of any Future Underlying Investment, the representations set out in this decision will apply to the same extent to such Underlying Investment.
5. The Filer or an affiliate of the Filer is, or will be, a “responsible person” (as that term is defined in NI 31-103) of each Top Fund and each Underlying Investment.
6. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Top Funds

7. The securities of each Top Fund are, or will be, (a) distributed to investors pursuant to a prospectus prepared in accordance with National Instrument 41-101 General Prospectus Requirements or National Instrument 81-101 Mutual Fund Prospectus Disclosure, as applicable or (b) sold to investors in one or more Jurisdictions pursuant to an exemption from the prospectus requirement under National Instrument 45-106 Prospectus Exemptions (NI 45-106) and/or the Legislation.
8. The securities of each Public Top Fund are, or will be, qualified for distribution in one or more Jurisdictions.
9. Each Public Top Fund is, or will be, a reporting issuer under the securities legislation of one or more Jurisdictions.
10. Each Private Top Fund has, or will have, an offering memorandum or statement of investment policies and guidelines, which is provided to investors. None of the Private Top Funds are, or will be, reporting issuers under the securities legislation of any Jurisdiction.
11. Each Top Fund may wish to invest in securities of the Underlying Investments, provided the investment is consistent with the Top Fund’s investment objectives and strategies.
12. Each Private Top Fund will invest in securities of one or more Underlying Investments pursuant to applicable exemptions from the prospectus requirement under NI 45-106 and/or the Legislation.
13. The Existing Private Top Funds and Existing Public Top Funds are not in default of securities legislation of any of the Jurisdictions.
14. Each Public Top Fund is, or will be, subject to NI 81-107 and the manager of each Public Top Fund has established, or will establish, an independent review committee (IRC) in order to review conflict of interest matters pertaining to its management of the Public Top Funds as required by NI 81-107.

The Underlying Investments

15. The “Existing Underlying Investments” are as follows:
 - (a) TD *Emerald* Private Debt Pooled Fund Trust (**PDPF Trust**), TD *Emerald* Long Private Debt Pooled Fund Trust (**Long PDPF Trust**) and TD Greystone Mortgage Fund (**Mortgage Fund**) and together with the PDPF Trust and the Long PDPF Trust, the **Existing Underlying Trusts**), each an investment trust existing under the laws of Ontario that is not an investment fund and not a reporting issuer; and
 - (b) TD Greystone Infrastructure Fund (Canada) L.P. II (**Infrastructure Fund**), TD Greystone Real Estate LP Fund (**Real Estate Fund**) and TD Greystone Global Real Estate Fund (Canada Feeder) L.P. (**Global Real Estate Fund**), each a limited partnership formed under the laws of Ontario that is not an investment fund and not a reporting issuer.

B.3: Reasons and Decisions

16. The Existing Underlying Investments are administered by the Filer, as manager, and their assets are managed by a PM. A third-party fund administrator calculates a net asset value (NAV) that is used for the purposes of determining the purchase and redemption price of the units of each Existing Underlying Investment.
17. Securities of the Underlying Investments are, or will be, distributed solely to investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 and/or the Legislation.
18. Each Underlying Investment has or will have an offering memorandum or statement of investment policies and guidelines, as applicable, which is provided to investors.
19. Each Underlying Investment produces, or will produce, audited financial statements on an annual basis, in accordance with generally accepted accounting principles with a qualified auditing firm as the auditor of those financial statements.

The Existing Underlying Trusts

20. Each Existing Underlying Trust is an investment product established as a trust under the laws of Ontario.
21. The investment objectives of PDPF Trust are to seek to provide income and preserve capital over the long term by investing primarily in private debt securities. PDPF Trust may also invest in other fixed and floating rate debt instruments.
22. The investment objectives of Long PDPF Trust are to seek to provide income and preserve capital over the long term by investing primarily in private long-term debt securities. The Long PDPF Trust may also invest in other fixed and floating rate debt instruments. The portfolio holdings of the Long PDPF Trust will generally have terms to maturity over ten years.
23. The investment objectives of the Mortgage Fund are to provide a vehicle to invest in Canadian commercial real estate mortgages and to achieve superior long-term total returns while maintaining long-term stability of capital.
24. None of the Existing Underlying Trusts is an “investment fund” as such term is defined under the Legislation.
25. The value of the portfolio assets of each Existing Underlying Trust is independently determined, or will be prior to relying on any relief granted under this decision, by a party that is arm’s length to the Filer on a monthly basis.
26. None of the Existing Underlying Trusts is a reporting issuer in any jurisdiction of Canada. Units of the Existing Underlying Trusts are sold pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 or the Legislation, as applicable.
27. None of the Existing Underlying Trusts is in default of securities legislation of any of the Jurisdictions.
28. No Top Fund will actively participate in the business or operations of an Existing Underlying Trust.

The Infrastructure Fund

29. The Infrastructure Fund is an investment product established as a limited partnership under the laws of Ontario. The general partner of the Infrastructure Fund is Greystone Infrastructure Fund (Canada) Inc., which is an affiliate of the Filer.
30. TD Greystone Infrastructure Fund (Global Master) SCSp (the Master Infrastructure Fund) is a limited partnership formed under the laws of Luxembourg. The general partner of the Master Infrastructure Fund is TD Greystone Infrastructure GP SÀRL, which is an affiliate of the Filer.
31. The investment objective of the Infrastructure Fund is to provide substantial long term returns from infrastructure assets by investing in units of the Master Infrastructure Fund.
32. The investment objective of the Master Infrastructure Fund is to provide sustainable long-term returns by investing in a diversified global infrastructure portfolio that complies with established risk and portfolio limits.
33. Neither the Infrastructure Fund nor the Master Infrastructure Fund are subject to NI 81-102 and are not considered to be an “investment fund” as such term is defined under the Legislation.
34. The Infrastructure Fund is not a reporting issuer in any jurisdiction of Canada. Units of the Infrastructure Fund are sold solely to investment funds managed by the Filer pursuant to an exemption from the prospectus requirements in accordance with NI 45-106 or the Legislation, as applicable. Other investors who wish to obtain exposure to the assets of the Master Infrastructure Fund purchase units of another Canadian infrastructure limited partnership managed by the Filer that has an investment mandate similar to the investment mandate of the Master Infrastructure Fund pursuant to exemptions from the prospectus requirements in accordance with NI 45-106.

- 35. The value of the portfolio assets of the Master Infrastructure Fund is independently determined by a party that is arm's length to the Filer on a quarterly basis.
- 36. The Infrastructure Fund is not in default of securities legislation of any of the Jurisdictions.
- 37. No Top Fund will actively participate in the business or operations of the Infrastructure Fund.

Real Estate Fund

- 38. The Real Estate Fund is an investment product established as a limited partnership under the laws of Ontario. The general partner of the Real Estate Fund is GMI Real Estate Inc., which is an affiliate of the Filer.
- 39. The investment objective of the Real Estate Fund is to seek superior long-term total returns by investing in a diversified Canadian real estate portfolio. Under its investment strategy, the Real Estate Fund may also invest in equity interests in, and mortgages of, Canadian real estate, securities or bonds where the underlying asset is a mortgage or real estate, cash and short-term investments.
- 40. The Real Estate Fund is not subject to NI 81-102 and is not considered to be an "investment fund" as such term is defined under the Legislation.
- 41. The Real Estate Fund is not a reporting issuer in any jurisdiction of Canada. Units of the Real Estate Fund are sold pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 or the Legislation, as applicable. Each such investor is responsible for making its own investment decisions regarding its purchases and/or redemptions of units of the Real Estate Fund.
- 42. The value of the portfolio assets of the Real Estate Fund is independently determined by a party that is arm's length to the Filer on a quarterly basis.
- 43. The Real Estate Fund is not in default of securities legislation of any of the Jurisdictions.
- 44. No Top Fund will actively participate in the business or operations of the Real Estate Fund.

Global Real Estate Fund

- 45. The Global Real Estate Fund is an investment product established as a limited partnership under the laws of Ontario. The general partner of the Global Real Estate Fund is TD Greystone Global Real Estate Fund (Canada Feeder) GP Inc., which is not an affiliate of the Filer.
- 46. The investment objective of the Global Real Estate Fund is to seek consistent long-term total returns by investing in a diversified global real estate portfolio. It seeks to achieve its investment objective by investing in units of the TD Greystone Global Real Estate Fund L.P. (the Master Global Real Estate Fund), a limited partnership formed and existing under the laws of the province of Ontario, or such other jurisdiction as the Filer may in the future determine.
- 47. The investment objective of the Master Global Real Estate Fund is to seek consistent long-term total returns by investing in a diversified global real estate portfolio that follows the risk controls set forth in its offering circular.
- 48. The Global Real Estate Fund and the Master Global Real Estate Fund have the same investment objectives; however, the Global Real Estate Fund will seek to achieve its investment objective by investing 100% of its capital (less amounts reserved for expenses) in the Master Global Real Estate Fund, whereas the Master Global Real Estate Fund will seek to achieve its investment objective by investing directly or indirectly in real estate assets, including by investing substantially more than 10% of its assets in other real estate investment products.
- 49. Neither the Global Real Estate Fund nor the Master Global Real Estate Fund are subject to NI 81-102 and are not considered to be an "investment fund" as such term is defined under the Legislation. Units of the Global Real Estate Fund are sold pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 or the Legislation, as applicable. Each such investor is responsible for making its own investment decisions regarding its purchases and/or redemptions of units of the Global Real Estate Fund.
- 50. The value of the portfolio assets of the Master Global Real Estate Fund is independently determined by a party that is arm's length to the Filer on at least a quarterly basis.
- 51. The Global Real Estate Fund and the Master Global Real Estate Fund are administered by the Filer, as manager, and their assets are managed by a PM. The custodian of the Global Real Estate Fund and the Master Global Real Estate Fund calculates a NAV that is used for purposes of determining the purchase and redemption price of the units of the Global Real Estate Fund and the Master Global Real Estate Fund.

- 52. The Global Real Estate Fund is not in default of securities legislation of any of the Jurisdictions.
- 53. No Top Fund will actively participate in the business or operations of the Global Real Estate Fund.

The Future Underlying Investments

- 54. The Future Underlying Investments may be structured as limited partnerships, trusts or corporations governed by the laws of a jurisdiction of Canada.
- 55. Each Future Underlying Investment will not be an “investment fund” as such term is defined under the Legislation.
- 56. The Future Underlying Investments will not be reporting issuers in any of the Jurisdictions.
- 57. Each Future Underlying Investment will be operated in a manner similar to how the Filer operates its investment funds, including being administered by the Filer or an affiliate, having its assets managed by a PM, and calculating a NAV that is used to determine the purchase and redemption price of the units of the Future Underlying Investment.

Investments by Top Funds in the Underlying Investments

- 58. An investment by a Top Fund in an Underlying Investment will only be made if the investment is compatible with the investment objectives of the Top Fund.
- 59. The Filer believes that an investment by a Top Fund in an Underlying Investment will provide the Top Fund with an efficient and cost-effective manner of pursuing portfolio diversification and asset diversification instead of purchasing securities, or the underlying assets (including private equity, private credit, private infrastructure, and private real estate) of each Underlying Investment, directly. The Top Fund will also gain access to the investment expertise of the PM to the underlying assets of each Underlying Investment, as well as to their investment strategies and asset classes.
- 60. The Filer believes that an allocation to private equity, private credit, private infrastructure, private real estate and other alternative investments provides Top Fund investors with unique diversification opportunities and represents an appropriate investment tool for the Top Fund.
- 61. The Filer believes that it is in the best interests of the Top Funds to obtain exposure to the strategy of each Underlying Investment in order to provide the Top Funds with an investment in a variety of alternative and private assets.
- 62. Investments by a Top Fund in an Underlying Investment will be effected at an objective price. The Filer’s policies and procedures provide that an objective price, for this purpose, will be the NAV per security of the applicable class or series of the Underlying Investment.
- 63. Each Public Top Fund is, or will be, valued and redeemable daily and each Private Top Fund is, or will be, valued and redeemable daily, monthly or quarterly, as applicable. The Underlying Investments may be potentially subject to redemption limitations, including lock-up periods, early redemption penalties and other restrictions on redemptions in a given period of time (collectively, Redemption Limitations).
- 64. An investment by a Top Fund in an Underlying Investment will only be made if such investment represents the business judgment of a responsible person uninfluenced by considerations other than the best interests of that Top Fund.

Generally

- 65. The Filer does not anticipate that any fees or sales charges would be incurred, directly or indirectly, by a Top Fund with respect to an investment in an Underlying Investment that, to a reasonable person, would duplicate a fee payable by the Top Fund to the Filer or by its investors.
- 66. In respect of an investment by a Top Fund in an Underlying Investment, no management fees or incentive fees will be payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Investment for the same service.
- 67. A Top Fund’s investment in an Underlying Investment will be disclosed to investors in that Top Fund’s quarterly portfolio holding reports, financial statements, and fund facts or ETF facts documents, as applicable.
- 68. Where an investment is made by a Public Top Fund in an Underlying Investment, the annual and interim management reports of fund performance for the Public Top Fund will disclose the name of the related person in which an investment is made, being an Underlying Investment.

69. Where an investment is made by a Top Fund in an Underlying Investment, the records of portfolio transactions maintained by the Top Fund will include, separately for every portfolio transaction effected for the Top Fund by the Filer or through any affiliate of the Filer, the name of the related person in which an investment is made, being an Underlying Investment.
70. A unit of an Underlying Investment will be considered an “illiquid asset” within the meaning of NI 81-102. Consequently, if the Exemption Sought is granted, a Public Top Fund will acquire securities of an Underlying Investment, whether directly or indirectly, subject to the illiquid asset restriction in section 2.4 of NI 81-102. As a result, a Public Top Fund will not purchase units of an Underlying Investment if immediately after purchase, more than 10% of the NAV of the Public Top Fund would be made up of “illiquid assets”.
71. The prospectus of each Public Top Fund will disclose in the next renewal or amendment thereto following the date of this decision, the fact that the Public Top Fund may invest, directly or indirectly, in one or more Underlying Investments, which are investment vehicles managed by the Filer or an affiliate of the Filer.
72. The offering memorandum or statement of investment policies and guidelines, where available, or other disclosure document of a Private Top Fund will disclose in the next update thereto following the date of this decision, the fact that the Private Top Fund may invest, directly or indirectly, in one or more Underlying Investments, which are investment vehicles managed by the Filer or an affiliate of the Filer as well as include the Additional Disclosure (as defined below).
73. Each Underlying Investment produces, or will produce, audited financial statements on an annual basis, in accordance with generally accepted accounting principles with a qualified auditing firm as the auditor of those financial statements.
74. The amount invested from time to time in an Underlying Investment by a Top Fund, together with one or more Top Funds, may exceed 20% of the outstanding voting securities of the Underlying Investment. This may result by reason of a group of Top Funds providing initial investments into the Underlying Investment on the start-up of the Underlying Investment. As a result, each Top Fund could, together with one or more other Top Funds, become a “substantial security holder” of an Underlying Investment within the meaning of the Legislation, further to which the Top Fund would be prohibited under the Legislation from knowingly purchasing and holding securities of the Underlying Investment. The Top Funds are, or will be, “related investment funds”, as such term is defined in the Legislation by virtue of common management by the Filer or by an affiliate of the Filer.
75. In addition, an officer or director of the Filer or of an affiliate of the Filer may have a “significant interest” in an Underlying Investment and/or a person or company who is a substantial security holder of the Top Fund, the Filer or an affiliate of the Filer may have a “significant interest” in the Underlying Investment within the meaning of the Legislation, which would prohibit the Top Fund from investing in the Underlying Investment.
76. Paragraph 13.5(2)(a) of NI 31-103 prohibits the Filer or an affiliate that acts as PM of a Top Fund from knowingly causing a Top Fund to invest in an Underlying Investment that is structured as a limited partnership, where the general partner of the Underlying Investment is an affiliate of the Filer and the Filer or its affiliate is a responsible person of the Top Funds unless (i) this fact is disclosed to the client and (ii) the written consent of the client to the purchase is obtained before the purchase. It is impractical for the Filer to obtain the prior written consent from each investor in the Top Fund, given the widely held nature of the Top Funds.
77. A partner, director, officer or employee of a PM of a Public Top Fund, or a partner, director, officer or employee of an associate or an affiliate of a PM of a Public Top Fund, may also be a partner, director or officer of an Underlying Investment. Consequently, as a Public Top Fund may be a “dealer managed investment fund”, the restrictions in subsection 4.1(2) of NI 81-102 may apply to an investment by a Public Top Fund in an Underlying Investment.
78. Subsection 6.2(3) of NI 81-107 provides an exemption for investment funds (including investment funds that are not reporting issuers) from the Investment Fund Conflict of Interest Investment Restrictions for purchases of related issuer securities if the purchase is made on an exchange. However, the exemption in subsection 6.2(3) of NI 81-107 does not apply to purchases of non-exchange-traded securities and therefore does not apply to purchases of an Underlying Investment by a Top Fund.
79. Absent the Exemption Sought,
- (a) each Top Fund would be prohibited by the Investment Fund Conflict of Interest Investment Restrictions from (i) becoming a substantial securityholder of an Underlying Investment, alone or together with other Top Funds, and (ii) investing in an Underlying Investment in which an officer or director of the Filer or of an affiliate of the Filer has a significant interest or in which a person or company who is a substantial securityholder of the Top Fund or the Filer has a significant interest;
 - (b) each Public Top Fund that is a “dealer managed investment fund” would be prohibited by the Investment Fund Conflict of Interest Investment Restrictions from knowingly making an investment in an Underlying Investment

in which any partner, director, officer or employee of the Public Top Fund's management company or an affiliate or associate of the Public Top Fund's management company is a partner, director or officer;

- (c) the Filer or an affiliate of the Filer acting as PM of a Top Fund would be prohibited by the Investment Fund Conflict of Interest Investment Restrictions from causing the Top Fund to invest in securities of an Underlying Investment without disclosing this fact and obtaining the written consent of each investor in the Top Fund before the purchase; and
- (d) the Filer, or an affiliate of the Filer acting as the management company (as defined in the Legislation) of the Public Top Funds would be required by the Investment Fund Conflict of Interest Reporting Requirement to file a report of every transaction of purchase or sale of securities between the Public Top Funds and the Underlying Investments within 30 days after the end of the month in which such purchase or sale occurs.

80. It would be costly and time-consuming for the Public Top Funds to comply with the Investment Fund Conflict of Interest Reporting Requirement.
81. The manager of the Public Top Funds will request approval from the IRC of the Public Top Funds to permit the investment of the Public Top Funds in the Underlying Investments, including by way of standing instructions. No such investments will be made by a Public Top Fund until the IRC provides its approvals under section 5.2 of NI 81-107. The manager of the Public Top Funds will comply with section 5.1 of NI 81-107 and the manager of the Public Top Funds and the IRC of the Public Top Funds will comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions. If the IRC becomes aware of an instance where the manager of a Public Top Fund did not comply with the terms of any decision evidencing the Exemption Sought, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Public Top Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the Jurisdiction under which the Public Top Fund is organized.
82. Investments in Underlying Investments are considered illiquid investments under NI 81-102 and, therefore, are not permitted to exceed 10% of the NAV of a Public Top Fund. Such investments are included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102 for a Public Top Fund. Given the readily available liquidity of the remainder of each Public Top Fund's investment portfolio, the Filer believes that the risk of a Public Top Fund needing to liquidate its investment in these illiquid assets when markets are under stress or in other environments where liquidity may be reduced is remote.
83. A Private Top Fund considers its overall liquidity requirements and the limitations on its redemption rights in making any investment in an Underlying Investment.
84. A Top Fund's investment in an Underlying Investment will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Top Fund.

Current Relief

85. Under a decision dated July 16, 2020, the Filer and the Public Top Funds were granted relief from the Investment Fund Conflict of Interest Investment Restrictions and Investment Fund Conflict of Interest Reporting Requirement to invest in certain Existing Underlying Investments. And under a decision dated November 11, 2022, the Filer and the Private Top Funds were granted relief from the applicable Investment Fund Conflict of Interest Investment Restrictions to invest in certain Existing Underlying Investments and certain mutual funds.
86. The Filer wishes to revoke the Current Relief and replace it with this decision in order to (a) extend the scope of the Current Relief to permit the Top Funds to invest in any Future Underlying Investments, (b) consolidate the Current Relief under a single decision document, and (c) update the list of Existing Underlying Investments.

Decision

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

The decision of the principal regulator under the Legislation is that:

- 1. The Revocation is granted, and
- 2. The Exemption Sought is granted provided that:
 - (a) the securities of a Private Top Fund and the Underlying Investments, if distributed in Canada, are distributed in Canada solely to accredited investors pursuant to exemptions from the prospectus requirement under NI 45-106 or the Legislation, as applicable;

- (b) a direct or indirect investment by a Top Fund in an Underlying Investment is compatible with the investment objective and strategy of such Top Fund and included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102 for a Public Top Fund;
- (c) at the time of the purchase by a Top Fund of securities of an Underlying Investment, either (A) the Underlying Investment holds no more than 10% of its NAV in securities of other investment funds, or (B) the Underlying Investment:
 - (i) has adopted a fundamental investment objective to track the performance of another investment fund or similar investment product;
 - (ii) purchases or holds securities of investment funds that are “money market funds” (as such term is defined in NI 81-102); or
 - (iii) purchases or holds securities that are “index participation units” (as such term is defined in NI 81-102) issued by an investment fund;
- (d) no sales or redemption fees will be paid as part of the investment by a Top Fund in the Underlying Investment, unless the Top Fund redeems its securities of the Underlying Investment during a Redemption Limitation, in which case a fee may be payable by the Top Fund;
- (e) no management fees or incentive fees will be payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Investment for the same service;
- (f) the securities of an Underlying Investment held by a Top Fund will not be voted at any meeting of the security holders of the Underlying Investment, except that the Top Fund may arrange for the securities of the Underlying Investment it holds to be voted by the beneficial holders of securities of the Top Fund;
- (g) a Top Fund's investment in an Underlying Investment will be disclosed to investors in such Top Fund's quarterly portfolio holding reports, financial statements, and fund facts or ETF facts document, as applicable;
- (h) the prospectus of a Public Top Fund discloses, or will disclose, in the next renewal or amendment thereto following the date of this decision, the fact that the Public Top Fund may invest in an Underlying Investment, which is an investment vehicle managed by the Filer or an affiliate, the potential conflict of interest that arises from this investment and how it is mitigated or avoided, and the approximate or maximum percentage of the NAV that is intended to be invested in securities of the Underlying Investment;
- (i) the offering memorandum or statement of investment policies and guidelines, where available, or other disclosure document of a Private Top Fund, will be provided to each new investor in a Private Top Fund prior to their purchase of securities of the Private Top Fund, and will disclose the following information (the Additional Disclosure) in the next update thereto following the date of this decision:
 - (i) that the Private Top Fund may purchase securities of one or more Underlying Investments, which are investment vehicles managed by the Filer or an affiliate;
 - (ii) the approximate or maximum percentage of the NAV of the Private Top Fund that it is intended be invested in securities of each Underlying Investment;
 - (iii) that one or more officers, directors or substantial securityholders of the Filer, or of an affiliate of the Filer or of the Private Top Fund may have a significant interest in an Underlying Investment, the approximate amount of the significant interest they hold on an aggregate basis expressed as a percentage of the Underlying Investment's NAV, and the potential conflicts of interest which may arise from such relationships;
 - (iv) the fees and expenses payable by the Underlying Investment that the Top Fund may invest in, including any incentive fee; and
 - (v) that securityholders of the Private Top Fund are entitled to receive from the Filer or an affiliate of the Filer, on request and free of charge, a copy of the offering memorandum or other disclosure document, if any, and the annual and interim financial statements of the Underlying Investments in which the Private Top Fund invests;

- (j) the IRC of the Public Top Fund will review and provide its approval, including by way of standing instructions, prior to the purchase of securities of an Underlying Investment, directly or indirectly, by the Public Top Fund, in accordance with subsection 5.2(2) of NI 81-107;
- (k) the Filer complies with section 5.1 of NI 81-107, and the Filer and the IRC of the Public Top Fund comply with section 5.4 of NI 81-107, for any standing instructions the IRC provides in connection with the transactions;
- (l) if the IRC becomes aware of an instance where the Filer or an affiliate of the Filer, in its capacity as the manager of a Public Top Fund, did not comply with the terms of this decision, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Public Top Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the Jurisdiction under which the Public Top Fund is organized;
- (m) where an investment is made by a Public Top Fund in an Underlying Investment, the annual and interim management reports of fund performance for the Public Top Fund disclose the name of the related person in which an investment is made, being the Underlying Investment;
- (n) where an investment is made by a Top Fund in an Underlying Investment, the records of portfolio transactions maintained by the Top Fund include, separately for every portfolio transaction effected for a Top Fund by the Filer or through any affiliate of the Filer, the name of the related person in which an investment is made, being the Underlying Investment; and
- (o) a Top Fund will not invest in an Underlying Investment unless (i) the NAV of the Underlying Investment is based on a valuation of the portfolio assets of the Underlying Investments that is independently determined by an arm's length third party and (ii) the Underlying Investment produces annual financial statements that are audited by a qualified auditing firm in accordance with generally accepted accounting principles and made available to the Top Fund.

"Darren McKall"
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2024/0351
SEDAR+ File #: 6144473

B.3.4 Chord Energy Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from requirements of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities – filer to remain a U.S. issuer under MJDS and a SEC foreign issuer – filer to continue to prepare oil and gas disclosure in compliance with U.S. rules.

Applicable Legislative Provisions

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, s. 8.1

Citation: *Re Chord Energy Corporation*, 2024 ABASC 125

July 16, 2024

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

AND

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

AND

IN THE MATTER OF
CHORD ENERGY CORPORATION
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) that, subject to the conditions set forth herein, the Filer be exempted from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) (the **Exemption Sought**).

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is a corporation governed by the laws of the State of Delaware, with its head office in Houston, Texas.
2. The Filer is a reporting issuer in each of the provinces and territories of Canada (collectively, the **Reporting Jurisdictions**), and is not in default of securities legislation in any jurisdiction of Canada. The Filer became a reporting issuer in the Reporting Jurisdictions on May 31, 2024, upon completion of a plan of arrangement under Section 193 of the *Business Corporations Act* (Alberta) pursuant to which the Filer acquired all of the issued and outstanding shares of Enerplus Corporation (**Enerplus**).
3. The Filer's authorized capital stock consists of 240,000,000 shares of common stock (**Common Shares**), par value US\$0.01 per share, and 5,000,000 shares of preferred stock (**Preferred Shares**), par value US\$0.01 per share. As of June 12, 2024, there were 66,477,862 Common Shares issued and outstanding and no Preferred Shares were outstanding.
4. The Common Shares are listed on the NASDAQ under the symbol "CHRD".
5. The Filer has senior unsecured notes issued and outstanding in the amount of US\$400 million (**Notes**). Based on information obtained by the Filer from Broadridge Financial Solutions Inc. (**Broadridge**), which conducted geographical surveys of beneficial holders of the Notes as at June 12, 2024 covering the issued and outstanding Notes, Canadian beneficial noteholders held none of the Notes.
6. Based on the Filer's list of registered shareholders provided by its registrar and transfer agent, as of June 12, 2024, registered holders of Common Shares located in Canada held an aggregate of 59,811 Common Shares, which equates to 0.09 percent of the Filer's issued and outstanding Common Shares.
7. Based on information obtained by the Filer from Broadridge, which conducted geographical surveys of beneficial holders of the Common Shares as at June 12, 2024 covering the issued and outstanding Common Shares, Canadian beneficial shareholder accounts held approximately 3,098,668 Common Shares, which equates to 4.66 percent of the total outstanding Common Shares.
8. The Common Shares are registered under the 1934 Act. The Filer is subject to and is in compliance with all requirements applicable to it imposed by the SEC, the 1933 Act, the 1934 Act, the United States *Sarbanes-Oxley Act of 2002* and the rules of the NASDAQ (collectively, the **U.S. Rules**).
9. The Filer prepares disclosure with respect to its oil and natural gas activities (the **Oil and Gas Disclosure**) in accordance with the U.S. Rules.
10. The Filer is a "U.S. issuer" under NI 71-101 and qualifies as an "SEC foreign issuer" under NI 71-102 and, as such, relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.
11. The Common Shares are not listed for trading on any "marketplace" in Canada (as such term is defined in National Instrument 21-101 *Marketplace Operation*), and the Filer has no current intention to list the Common Shares on any marketplace in Canada.

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 Exemption Sought is granted, provided that:

- (a) the Filer remains a U.S. issuer and an SEC foreign issuer;
- (b) the Filer continues to prepare the Oil and Gas Disclosure in compliance with the U.S. Rules;
- (c) the Filer issues in Canada, and files on SEDAR+, a news release stating that it will provide the Oil and Gas Disclosure in accordance with the U.S. Rules rather than in accordance with NI 51-101; and
- (d) the Filer files the Oil and Gas Disclosure with the securities regulatory authority or regulator in the Reporting Jurisdictions as soon as practicable after the Oil and Gas Disclosure is filed pursuant to the U.S. Rules.

B.3: Reasons and Decisions

“Timothy Robson”
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2024/0322

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
Comprehensive Healthcare Systems Inc.	July 9, 2024	
Pasinex Resources Limited	June 11, 2024	July 9, 2024
Antibe Therapeutics Inc.	July 10, 2024	
Poplar Creek Resources Inc.	July 10, 2024	
Decklar Resources Inc.	July 10, 2024	
ePlay Digital Inc.	July 10, 2024	
Biovaxys Technology Corp.	May 15, 2024	July 11, 2024
Maple Leaf Green World Inc.	July 12, 2024	
Magnetic North Acquisition Corp.	July 12, 2024	
The Hampshire Group, Inc.	July 12, 2024	
Albert Labs International Corp.	July 15, 2024	
CubicFarm Systems Corp.	July 15, 2024	
SpotLite360 IOT Solutions, Inc.	July 15, 2024	
VSBLTY Groupe Technologies Corp.	July 15, 2024	
Juva Life Inc.	July 15, 2024	

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

Company Name	Date of Order	Date of Lapse
Magnetic North Acquisition Corp.	May 8, 2024	July 12, 2024

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		

B.4: Cease Trading Orders

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	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Perk Labs Inc.	April 4, 2024	
Organto Foods Inc.	May 8, 2024	
Magnetic North Acquisition Corp.	May 8, 2024	July 12, 2024
FRX Innovations Inc.	May 10, 2024	

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:

BMO Private Canadian Corporate Bond Portfolio
Principal Regulator – Ontario

Type and Date:

Amendment No. 1 to Final Simplified Prospectus dated July 9, 2024

NP 11-202 Final Receipt dated Jul 10, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06113170

Issuer Name:

Dynamic Emerging Markets Equity Fund
Principal Regulator – Ontario

Type and Date:

Amendment No. 3 to Final Simplified Prospectus dated July 8, 2024

NP 11-202 Final Receipt dated Jul 9, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06038389

Issuer Name:

CWB Core Equity Fund
CWB Onyx Balanced Solution
CWB Onyx Canadian Equity Fund
CWB Onyx Conservative Solution
CWB Onyx Diversified Income Fund
CWB Onyx Global Equity Fund
CWB Onyx Growth Solution
Principal Regulator – Alberta

Type and Date:

Final Simplified Prospectus dated Jul 9, 2024

NP 11-202 Final Receipt dated Jul 10, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06135134

Issuer Name:

Ninepoint Web3 Innovators Fund
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Jul 10, 2024

NP 11-202 Final Receipt dated Jul 11, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06145997

Issuer Name:

Invesco Canadian Core Plus Bond ETF
Invesco Global Bond ETF
Invesco NASDAQ 100 Income Advantage ETF
Invesco S&P 500 Equal Weight Income Advantage ETF
Principal Regulator – Ontario

Type and Date:

Preliminary Long Form Prospectus dated Jul 11, 2024

NP 11-202 Preliminary Receipt dated Jul12, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06156077

Issuer Name:

Dynamic Active Emerging Markets ETF
Principal Regulator – Ontario

Type and Date:

Amendment No. 1 to Final Long Form Prospectus dated July 8, 2024

NP 11-202 Final Receipt dated Jul 9, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06065193

Issuer Name:

CI Bitcoin Fund

CI Ethereum Fund

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Jul 5, 2024

NP 11-202 Final Receipt dated Jul 10, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06141560

NON-INVESTMENT FUNDS

Issuer Name

Patriot Battery Metals Inc.

Principal Regulator – British Columbia**Type and Date**

Preliminary Shelf Prospectus dated July 11, 2024

NP 11-202 Preliminary Receipt dated July 12, 2024

Offering Price and Description

\$250,000,000 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units

Filing # 06156028**Issuer Name**

HIVE Digital Technologies Ltd.

Principal Regulator – British Columbia**Type and Date**

Preliminary Shelf Prospectus dated July 12, 2024

NP 11-202 Preliminary Receipt dated July 12, 2024

Offering Price and Description

US\$200,000,000 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts

Filing # 06156099**Issuer Name**

Cardiol Therapeutics Inc.

Principal Regulator – Ontario**Type and Date**

Final Shelf Prospectus dated July 12, 2024

NP 11-202 Final Receipt dated July 12, 2024

Offering Price and Description

US \$150,000,000 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units

Filing # 06154251**Issuer Name**

Oncolytics Biotech Inc.

Principal Regulator – Alberta**Type and Date**

Preliminary Shelf Prospectus dated July 12, 2024

NP 11-202 Preliminary Receipt dated July 12, 2024

Offering Price and Description

C\$150,000,000 - Common Shares, Subscription Receipts, Warrants, Units

Filing # 06156164**Issuer Name**

Rua Gold Inc.

Principal Regulator – British Columbia**Type and Date**

Final Shelf Prospectus dated July 11, 2024

NP 11-202 Final Receipt dated July 12, 2024

Offering Price and Description

\$25,000,000 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts

Filing # 06121184**Issuer Name**

Firm Capital Mortgage Investment Corporation

Principal Regulator – Ontario**Type and Date**

Preliminary Shelf Prospectus dated July 11, 2024

NP 11-202 Preliminary Receipt dated July 12, 2024

Offering Price and Description

\$250,000,000 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units

Filing # 06156004**Issuer Name**

AMV II Capital Corporation

Principal Regulator – British Columbia**Type and Date**

Preliminary CPC Prospectus dated July 10, 2024

NP 11-202 Preliminary Receipt dated July 11, 2024

Offering Price and Description

\$250,000 (2,500,000 Common Shares)

\$0.10 per Common Share

Filing # 06155805**Issuer Name**

Definity Financial Corporation

Principal Regulator – Ontario**Type and Date**

Final Shelf Prospectus dated July 11, 2024

NP 11-202 Final Receipt dated July 11, 2024

Offering Price and Description

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

Filing # 06155771**Issuer Name**

Profound Medical Corp.

Principal Regulator – Ontario**Type and Date**

Final Shelf Prospectus dated July 11, 2024

NP 11-202 Final Receipt dated July 11, 2024

Offering Price and Description

Common Shares, Warrants, Debt Securities, Subscription Receipts, Units

US\$150,000,000

Filing # 06146066**Issuer Name**

MetalMark Resources Corp.

Principal Regulator – British Columbia**Type and Date**

Final Long Form Prospectus dated July 8, 2024

NP 11-202 Final Receipt dated July 10, 2024

Offering Price and Description

6,666,667 Units for \$1,000,000

Price: \$0.15 per Unit

Filing # 06099198

Issuer Name

Breathe BioMedical Inc.

Principal Regulator – New Brunswick

Type and Date

Preliminary Long Form Prospectus dated July 5, 2024

NP 11-202 Final Receipt dated July 8, 2024

Offering Price and Description

1,600,000 COMMON SHARES

Price: US\$* per Common Share

Filing # 06154417

B.10 Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	BOWMONT CAPITAL AND ADVISORY LTD.	Exempt Market Dealer	June 24, 2024
Consent to Suspension (Pending Surrender)	Fundscraper Capital Inc.	Exempt Market Dealer	July 12, 2024
Consent to Suspension (Pending Surrender)	EURO PACIFIC ASSET MANAGEMENT, LLC	Portfolio Manager and Exempt Market Dealer	July 12, 2024
Consent to Suspension (Pending Surrender)	NEO-CRITERION CAPITAL SINGAPORE PTE. LTD.	Portfolio Manager	July 15, 2024
New Registration	Canterbury Asset Management, LLC	Portfolio Manager	July 15, 2024

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B.11

CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.1 CIRO

B.11.1.1 Canadian Investment Regulatory Organization (CIRO) – Proposed Amendments to UMIR Respecting Net Asset Value Orders and Intentional Crosses – Request for Comment

REQUEST FOR COMMENT

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

PROPOSED AMENDMENTS TO UMIR RESPECTING NET ASSET VALUE ORDERS AND INTENTIONAL CROSSES

CIRO is publishing for comment proposed amendments to the Universal Market Integrity Rules respecting net asset value orders and intentional crosses (**Proposed Amendments**).

The Proposed Amendments would:

- increase transparency around the execution of certain orders in Exempt Exchange-traded Funds (**ETFs**) where the execution price of the order references the net asset value of the ETF as published by the issuer of the ETF in accordance with applicable securities legislation, and
- remove an outdated prohibition in the definition of “intentional cross” that prohibits an intentional cross where one side of the trade is jitney and to clarify its application.

A copy of the CIRO Rules Bulletin, including the text of the Proposed Amendments, is also available on our website at www.osc.ca. The comment period ends on October 18, 2024.

B.11.3 Clearing Agencies

B.11.3.1 Japan Securities Clearing Corporation – Application for Exemption from Recognition as a Clearing Agency – OSC Notice and Request for Comment

OSC NOTICE AND REQUEST FOR COMMENT

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

JAPAN SECURITIES CLEARING CORPORATION

A. Background

The Japan Securities Clearing Corporation (**JSCC**) has applied (the **Application**) to the Commission for an order pursuant to section 147 of the *Securities Act* (Ontario) (**OSA**) to exempt it from the requirement to be recognized as a clearing agency pursuant to subsection 21.2(0.1) of the OSA.

JSCC is a joint-stock company formed under the *Companies Act* of Japan and is a majority-owned subsidiary of the Japan Exchange Group, Inc., a publicly traded company listed on the Tokyo Stock Exchange.

JSCC is licensed as a central counterparty (**CCP**) to perform clearing services under the *Financial Instruments and Exchange Act* (Japan). JSCC is recognized by the European Securities and Markets Authority as a Third Country CCP under the *European Market Infrastructure Regulation* and is subject to an order issued by the U.S. Commodity Futures Trading Commission that exempts JSCC from the requirement to register as a Derivatives Clearing Organization under the U.S. *Commodity Exchange Act*. JSCC is also an authorized CCP in Switzerland and Hong Kong and is designated as a “prescribed facility” in Australia. JSCC has obtained temporary recognition from the Bank of England as a Third Country CCP under applicable EU Exit regulations.

JSCC proposes to offer access to its clearing and settlement facilities for Interest Rate Swaps (**IRS**) to prospective participants in Ontario, either directly or through an intermediary.

To carry on business in Ontario, JSCC must be recognized as a clearing agency under the OSA or apply for an exemption from the recognition requirement. Among other factors set out in the Application, JSCC is seeking an exemption from the recognition requirement on the basis that it is subject to an appropriate regulatory and oversight regime in its home jurisdiction of Japan by the Japanese Financial Service Agency (**JFSA**) and the Bank of Japan.

JSCC is currently subject to an interim clearing exemption order (**Interim Order**) allowing it to provide IRS clearing services to Ontario customers through a foreign clearing participant that is a direct clearing intermediary pursuant to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**). The Interim Order was granted on September 29, 2023, and will expire on September 28, 2024.

JSCC is also subject to certain requirements in NI 94-102. On October 2, 2023, the OSC issued an [order](#) exempting JSCC from certain provisions of NI 94-102 (the **NI 94-102 Exemption Order**) on the basis of substituted compliance. As a result of the NI 94-102 Exemption Order, certain foreign entities clearing OTC derivatives for “local customers” as defined in NI 94-102 will be eligible for substituted compliance under Part 9 of the rule.

B. Application and Draft Exemption Order

In the Application, JSCC describes its requirements under applicable Japanese laws and regulations that are generally comparable or that achieve similar outcomes to the requirements of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**). Subject to comments received, Staff propose to recommend to the Commission that it grant JSCC an exemption order in the form of the proposed draft order attached at Appendix A (**Draft Order**). Staff are prepared to recommend to the Commission that it exempt JSCC because it does not currently pose significant risk to Ontario's capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator.

In determining whether a clearing agency poses significant risk to Ontario, Staff consider the level of activity of the clearing agency in Ontario (using indicators such as notional value and volume of transactions cleared for Ontario-based market participants) and other qualitative and quantitative factors, such as interconnectedness, size of obligations and the role and central importance of a clearing agency to a particular market.

The Draft Order requires JSCC to comply with various terms and conditions set forth in Schedule “A” to the Draft Order, including with respect to:

1. Regulation of JSCC
2. Governance

3. Permitted scope of clearing activities in Ontario
4. Filing requirements
5. Information sharing

The Draft Order also acknowledges that the scope of the terms and conditions imposed by the Commission, or the determination as to whether it is appropriate that JSCC continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets, JSCC's activities or regulatory status, or as a result of any changes to the laws in Japan or Ontario affecting trading in or clearing and settlement of derivatives or securities.

C. Comment Process

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

Please provide your comments in writing, via e-mail, on or before **August 17, 2024**, to the attention of:

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.ca

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

Questions may be referred to:

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July 1, 2024

VIA EMAIL

Ontario Securities Commission
23 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Dear Sirs/Mesdames:

RE: Japan Securities Clearing Corporation

Re: Application for an Exemption from Recognition as a Clearing Agency

We are acting as counsel to Japan Securities Clearing Corporation ("**JSCC**") in connection with its application, pursuant to section 147 of the *Securities Act* (Ontario) (the "**Act**") and National Instrument 24-102 *Clearing Agency Requirements* ("**NI 24-102**"), for an order (the "**Exemption Order**") exempting JSCC from the requirement to obtain recognition as a clearing agency under section 21.2 of the Act in order to provide its central counterparty ("**CCP**") service for interest rate swaps ("**IRS**") to Ontario market participants.

Statements set out herein regarding JSCC's history, operations, regulatory status and objectives and regarding applicable Japanese laws and JSCC requirements are based on statements made and certified to Blake, Cassels & Graydon LLP for the purpose of preparing this application letter.

1. Background

- 1.1 JSCC was established as a joint-stock company under the *Companies Act* of Japan (the "**Companies Act**") on July 1, 2002. Its registered and head office is located at 2-1 Nihombashi Kabutocho, Chuo-ku, Tokyo 103-0026 Japan. JSCC was licensed as a central counterparty on January 7, 2003, making it the first licensed clearing organization in Japan. JSCC's website is at: <https://www.jpx.co.jp/jsc/en/>.
- 1.2 JSCC provides clearing services for transactions in four business lines distinguished by financial product types (each, a "**Clearing Business**"): (i) "**Listed Products**," comprised of equity, debt and other securities sold in the cash market that are listed on Tokyo Stock Exchange, Inc. ("**TSE**") and other exchanges and proprietary trading systems ("**PTS**") in Japan ("**Cash Products**"), financial derivatives listed and traded on Osaka Exchange, Inc. ("**OSE**"), and commodity derivatives listed and traded on commodity markets at OSE, Tokyo Commodity Exchange, Inc. ("**TOCOM**") and Osaka Dojima Exchange, Inc. ("**ODEX**"); (ii) credit default swaps ("**CDS**"); (iii) IRS; (iv) and OTC Japanese Government Bond ("**JGB**") transactions.
- 1.3 Each of JSCC's Clearing Businesses has its own separate share structure, Business Rules, financial resources for default management, and JSCC's own capital contributions for default resources and to manage on-going business operations. Under this structure, JSCC ensures that each Clearing Business is segregated from and has no impact on any other Clearing Business, even in the event of a default of a Clearing Participant clearing transactions in multiple Clearing Businesses.
- 1.4 As of December 31, 2023, JSCC serves 26 Clearing Participants for IRS. JSCC cleared JPY 2,012 trillion of IRS in 2023.
- 1.5 JSCC is licensed to perform clearing services ("Financial Instruments Obligation Assumption Services") under Japan's *Financial Instruments and Exchange Act* ("**FIEA**") and to perform clearing services ("Business of Assuming Commodity Transaction Debts") under Japan's *Commodity Derivatives Act* ("**CDA**"). JSCC is directly regulated by the Japanese Financial Services Agency ("**JFSA**"), the Japanese government agency responsible for ensuring the stability of Japan's financial system, investor protection and market surveillance of securities transactions. JSCC is also directly regulated by the Ministry of Agriculture, Forestry and Fisheries ("**MAFF**") and the Ministry of Economy, Trade and Industry ("**METI**") in respect of its clearing services for commodity derivatives transactions.

July 18, 2024

(2024), 47 OSCB 6030

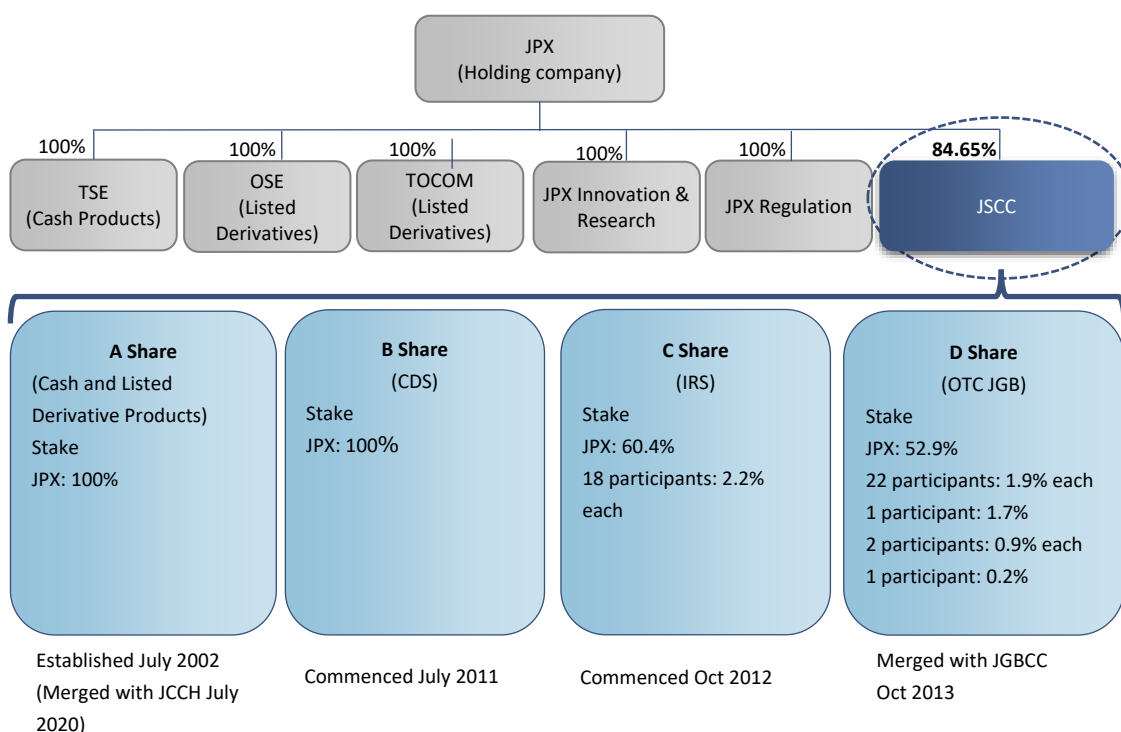
- 1.6 JSCC is subject to the Comprehensive Guidelines for Supervision of Financial Market Infrastructures (the “**CCP Supervisory Guidelines**”) published by the JFSA, which is a binding supervisory guideline promulgated by the JFSA under the FIEA. The CCP Supervisory Guidelines incorporate into Japanese regulations the Principles for Financial Market Infrastructures (“**PFMI**”) published by the then Committee on Payment and Settlement Systems (now Committee on Payments and Market Infrastructures) of the Board of the International Organization of Securities Commissions (“**CPMI-IOSCO**”). JSCC is also subject to the Basic Guidelines on Supervision of Commodity Clearing Organizations published by the MAFF and the METI. JSCC is subject to oversight¹ by the Bank of Japan (“**BOJ**”) of financial market infrastructures, as provided in Article 1 of the *Bank of Japan Act*. JSCC is fully compliant with the PFMIs and the CCP Supervisory Guidelines.
- 1.7 As a vital financial market infrastructure (“**FMI**”) in Japan, JSCC employs a governance structure designed to ensure fairness and robust risk management. JSCC’s corporate philosophy (the “**Corporate Philosophy**”) is as follows: “JSCC, with a solid risk-management framework, aims to contribute to sustainable development of the markets by improving the efficiency, serviceability and safety of the markets as post-trade processing infrastructure”. The Corporate Philosophy is published at <https://www.jpx.co.jp/jsc/en/company/philosophy.html>.
- 1.8 The rules governing Clearing Participants and the clearing of IRS transactions at JSCC are the Interest Rate Swap Clearing Business Rules (the “**IRS Business Rules**”), which are available at https://www.jpx.co.jp/jsc/en/rule/rule_irs.html. Certain capitalized terms that appear in this application and that are not defined in this application are defined in the IRS Business Rules.
- 1.9 On September 29, 2023, the Ontario Securities Commission (“**OSC**”) issued an interim order (the “**Interim Exemption Order**”) exempting JSCC from the requirement to obtain recognition as a clearing agency under section 21.2 of the Act in order to provide its CCP service for IRS to Canadian banks listed on Schedule I to the *Bank Act* (Canada) (each, a “**Schedule I Bank**”). The Interim Exemption Order terminates on the earlier of (i) September 28th, 2024 and (ii) the effective date of the Exemption Order that is the subject of this application letter.
- 1.10 On October 2, 2023, the OSC issued an order (the “**94-102 Exemption Order**”) exempting JSCC from certain provisions of National Instrument 94-102 *Customer Clearing and Protection of Customer Collateral and Positions* (“**NI 94-102**”), in order to permit JSCC to rely on comparable Japanese rules applicable to clearing agencies in lieu of complying with the provisions of NI 94-102 applicable to regulated clearing agencies. Accordingly, JSCC is a “regulated clearing agency” as defined in NI 94-102 and therefore certain non-Canadian Clearing Participants that clear OTC derivatives for entities that have a head office or principal place of business in Ontario and that are “local customers” as defined in NI 94-102 (each an “**Ontario Customer**”) will be eligible for substituted compliance under Part 9 of NI 94-102.
- 1.11 Pursuant to the Interim Exemption Order, Ontario-resident Schedule I Banks are eligible to access the facilities of JSCC through a Clearing Participant that is a resident outside of Ontario. However, JSCC anticipates that banks, pension plans, asset managers, insurance companies and other entities that have a head office or principal place of business in Ontario may be interested in using JSCC’s customer clearing services in respect of certain OTC IRS derivatives as Ontario Customers. Additionally, JSCC may in the future admit eligible Ontario-resident entities as Clearing Participants. This application is submitted to replace the Interim Exemption Order and in order to permit Ontario Customers to access JSCC’s customer clearing services and to permit JSCC to admit eligible Ontario-resident entities as Clearing Participants; provided that, prior to first admitting a Clearing Participant that is an Ontario-resident entity, JSCC shall obtain a legal opinion that confirms the closeout netting and collateral enforcement provisions of the IRS Business Rules are effective in respect of such proposed Ontario-resident Clearing Participant under applicable laws of Ontario and the federal laws of Canada applicable therein.

2. Ownership, Corporate Structure and Governance Structure

Ownership

- 2.1 JSCC is a majority-owned subsidiary of Japan Exchange Group, Inc. (“**JPX**”). JPX’s other subsidiaries include TSE, OSE, TOCOM, JPX Market Innovation & Research and Japan Exchange Regulation. There are four classes of equity securities in the capital of JSCC: Class A shares, Class B shares, Class C shares and Class D shares. Each share class relates to a different Clearing Business. The Class C shares relate to the IRS Clearing Business. A meeting of the holders of the Class C shares has the right to exercise the powers listed in section 2.4 below. JSCC’s organizational structure is shown in the following chart:

¹ In March 2013, the BOJ formulated the “The Bank of Japan Policy on Oversight of Financial Market Infrastructures,” clarifying the adoption of the PFMIs as criteria to be used for evaluating the safety and efficiency of systemically important financial market infrastructures.



2.2 Further information concerning JPX and its activities is available at <https://www.jpx.co.jp/english/>.

General Meeting of Shareholders

2.3 Under the Companies Act, resolutions of a general shareholder meeting include the following:

- matters related to the organization of the company, such as the appointment and dismissal of Directors and Statutory Auditors;
- matters related to the foundation and organization of the company (e.g., amendments to the Articles of Incorporation of JSCC, mergers, and dissolutions);
- matters relating to the important interests of shareholders (e.g., consolidation of shares, dividends of retained earnings, etc.); and
- matters that may be challenging for Directors to resolve (e.g. remuneration of directors).

Class-Shareholders Meeting

2.4 Matters requiring resolution of a general meeting of Class C shareholders include the following:

- distribution of any surplus related to the IRS Clearing Business;
- modification of the Class C share terms;
- reduction of reserves;
- merger, company split, or share exchange in consideration of the delivery of Class C shares;
- issuance of Class C shares;
- issuance of share options to acquire Class C shares;
- acquisition of Class C shares by JSCC;
- consolidation or split of Class C shares;
- change in the number of Directors who may be elected at a general meeting of Class C shareholders; and

- j. amendment to Paragraph 5 of Article 21 of the Articles of Incorporation².

Meetings of the holders of the Class A shares and the holders of Class B shares, respectively, have the right to make resolutions with respect to the distribution of any surplus related to the applicable Clearing Business of such classes of shares.

A meeting of the holders of the Class D shares has the right to make resolutions as to the same matters as a meeting of the holders of the Class C shares, in relation to the JGB OTC Transaction Clearing Business.

In addition, the general meeting of holders of Class A, B, C and D shares together may appoint not more than eleven Directors. Additionally, class meetings of the holders of Class B, C and D shares may each appoint one Director.

Board of Directors

- 2.5 JSCC's Board of Directors (the "**Board**") is responsible for, among other things, approving high-level policies, strategies and objectives of JSCC, including JSCC's medium-term business plan, and budgets and investment proposals, and supervising the directors' execution of their duties. JSCC executes its business plans based on resolutions of the Board. JSCC's Board bears ultimate responsibility for risk management in line with the Corporate Philosophy. The Board is required to comply with applicable laws and regulations. The Board is subject to review by the Statutory Auditors (as defined below) and at the annual general meeting of shareholders. If the Statutory Auditors find that Directors have engaged in misconduct, are likely to engage in misconduct, or identify violations of laws and regulations or the Articles of Incorporation, or grossly improper activity, the Statutory Auditors shall report the findings to the Board of Directors without delay. In the event of the receipt of a report from a Director to the effect that he/she found a fact that threatens to cause significant damage to JSCC, and in the event of the receipt of a report from an accounting auditor to the effect that he/she found evidence of misconduct relating to the performance of duties of a director, or a material fact in violation of the laws and regulations or the Articles of Incorporation, the Board of Statutory Auditors shall conduct an investigation as necessary and take appropriate measures, such as giving advice or recommendation to the Directors, depending on the situation. Shareholders have the power to appoint and dismiss Directors. JSCC's Governance Guidelines set out in more detail the roles and responsibilities of the Board of Directors, and are available at: <https://www.jpx.co.jp/jsc/en/risk/governance.html>.
- 2.6 The Board is composed of two full-time directors and five part-time directors. The members of the Board are elected for a term of two years. The directors are required to be selected on the basis that they have the knowledge and experience to carry out the business and affairs of JSCC appropriately and securely, and are of sufficiently good repute.
- 2.7 At the time of this submission, the following individuals are serving as Board members:

The JSCC Board of Directors

Name	Current Primary Position
Konuma Yasuyuki	President & CEO ¹
Isomoto Naoki	Executive Officer ¹
Asai Kunihiro	Senior Corporate Managing Director, Nikko Asset Management CO., Ltd. ²
Ohashi Kazuhiko	Professor, Graduate School of Business Administration, Hitotsubashi University ³
Kato Izuru	President, Representative Director, Chief Economist of Totan Research CO., Ltd. ²
Sakata Hideki	Senior Managing Director, Global Markets, Nomura Securities CO., Ltd. ²
Sasaki Daishi	Co-Head of Global Markets Company (in charge of Fixed Income, Foreign Exchange and Equities), Mizuho Financial Group, Inc. ²
Futagi Satoshi	Senior Executive Officer, Japan Exchange Group, Inc.

² Paragraphs 4 and 5 of Article 21 (Board of Directors) of JSCC's Articles of Incorporation are as follows:

4. A Resolution of the Board of Directors shall be adopted at its meeting at which a majority of the Directors entitled to participate in the resolution shall be present and by a majority of the Directors so present.

5. Notwithstanding the provision of the immediately preceding Paragraph, when the Board of Directors re-consults with the IRS Management Committee as prescribed in the Interest Rate Swap Clearing Business Rules any resolution made by such Committee and such Committee re-passes its resolution in response to such re-consultation and then the Board of Directors passes its resolution contrary to such re-resolution by such Committee, such resolution of the Board of Directors shall be adopted at the meeting at which a majority of the Directors entitled to participate in the resolution shall be present and by not less than two-thirds (2/3) of the Directors so present.

Notes:

1. Full-time director.
2. Independent of JPX and JSCC.
3. Independent of Clearing Participants, their affiliates, JPX and JSCC.

Advisory Committees

2.8 The Board has established committees to advise on matters considered necessary to fulfill its supervisory responsibilities (“**Advisory Committees**”). The Advisory Committees consist of two Committees that are common to all Clearing Businesses, the Risk Committee and the Disciplinary Measures Assessment Committee, and certain committees that each relate to a specific Clearing Business and function to incorporate the opinions of Clearing Participants into JSCC’s governance. The following Advisory Committees advise in respect of the IRS Clearing Business:

- (1) Risk Committee: Where the Board intends to make a decision on a matter considered necessary to perform its duties related to risks of the Clearing Businesses, it must seek the advice of the Risk Committee. The Risk Committee is selected by the Board and is composed of individuals who are external directors of JSCC, officers of Clearing Participants or their customers, or are otherwise considered qualified.
- (2) Disciplinary Measures Assessment Committee: For matters involving actions against Clearing Participants, JSCC consults with the Disciplinary Measures Assessment Committee, which is composed of individuals who are independent from JSCC and are selected by the Board from among persons who have deep insight concerning the matters for consultation and the ability to exercise fair judgment. The Disciplinary Measures Assessment Committee Rules provide that a committee member with a special interest in a matter being deliberated at the Disciplinary Measures Assessment Committee may not participate in that deliberation.
- (3) IRS Management Committee: This committee discusses matters for consultation set forth in the IRS Business Rules and IRS Management Committee Rules. Members are appointed by the Board from among the officers and employees of IRS Clearing Participants and the Class C shareholders.
- (4) IRS Default Management Committee: This committee advises on matters such as hedging when the default of an IRS Clearing Participant is determined and bidding during default auctions. Members are selected by the Board from the officers and employees of IRS Clearing Participants.

Statutory Auditors

2.9 JSCC maintains a Board of Statutory Auditors, as required by the Companies Act (the “**Statutory Auditors**”). The duties of the Statutory Auditors are defined in the Companies Act, and include preparing audit reports, appointing and removing full-time statutory auditors, deciding audit policy, deciding the method to investigate the status of business and assets of the company, and other matters related to the execution of the auditor’s duties. Audit reports cover matters prescribed by the Companies Act, including the accuracy JSCC’s annual business report and annual financial statements (and other documents prescribed by statute), and are presented to the general meeting of shareholders annually. JSCC’s annual business reports include comprehensive descriptions relating to its business, including in respect of information technology systems. The Statutory Auditors have authority under the Companies Act to investigate company business and assets, to request a meeting of the Board, and to report on the improper conduct of a director. The Statutory Auditors have the obligation and responsibility to report results of audits to shareholders, and to ensure, and to keep the shareholders informed regarding, the lawfulness of directors’ activities. Each Statutory Auditor is nominated for election by the Board of Directors, subject to the absence of objection by the Board of Statutory Auditors, and must be elected by a resolution of the general meeting of shareholders.

2.10 At the time of this submission, the following individuals are serving as Statutory Auditors:

The JSCC Board of Statutory Auditors

Name	Current Primary Position
Suzuki Yoshihiko	Standing Statutory Auditor
Morishita Kunihiro	Attorney-at-law
Yanaga Masao	Professor, Graduate School of Professional Accountancy, Meiji University

3. Regulatory Framework

Domestic Regulatory framework

- 3.1 JSCC holds a license to conduct the “Financial Instruments Obligation Assumption Service” under the FIEA, which permits it to conduct the business of clearing financial instruments as a CCP. JSCC also holds a license for conducting the “Business of Assuming Commodity Transaction Debts” under the CDA, which permits it to conduct the business of clearing transactions in commodities and commodity derivatives. JSCC’s business is governed by the FIEA, CDA and other Japanese laws. JSCC has established Business Rules for each of its Clearing Businesses, which are subject to approval by the Prime Minister of Japan (except in the case of the Business Rules on Business of Assuming Commodity Transaction Debts, which are subject to the approval of the Minister of the MAFF and the Minister of the METI). JSCC is obligated by the FIEA and CDA to conduct its business and operations according to the Business Rules, thus making these rules (including the IRS Business Rules) legally binding and enforceable. As noted above, JSCC is subject to the direct regulation and supervision by the JFSA, the MAFF, and the METI, and oversight by the BOJ in accordance with objectives prescribed in the *Bank of Japan Act*.
- 3.2 The following table shows the domestic legal and regulatory framework for JSCC, with a box highlighting matters relevant to the IRS Clearing Business:

Clearing Business	Product	Market	Law	Supervisory Authority
Listed Products	Cash Products	Japanese Securities Exchanges, PTS	FIEA	JFSA
	Listed Financial Derivatives	OSE		
	Listed Commodity Derivatives	TOCOM	CDA	METI
		ODEX		MAFF
CDS	CDS			
IRS	IRS	OTC	FIEA	JFSA
OTC JGB	OTC JGB			

Overseas Regulatory Framework

- 3.3 JSCC has obtained recognition as a Third Country CCP under the European Market Infrastructure Regulation (“**EMIR**”) from the EU’s European Securities and Markets Authority (“**ESMA**”) to provide all its clearing services to Clearing Participants established in European Union (“**EU**”) countries. Currently, some of JSCC’s Clearing Participants are domiciled in EU countries.
- 3.4 In Australia, JSCC has received a designation as a “prescribed facility” under the *Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015*. Although JSCC does not currently have any Australian domiciled IRS Clearing Participants, this designation would permit JSCC to admit an Australian IRS Clearing Participant.
- 3.5 Some affiliates of Clearing Participants that clear CDS or IRS through JSCC are categorized as U.S. Persons under the guidelines of the U.S. Commodity Futures Trading Commission (“**CFTC**”). To allow these trading entities to access JSCC’s Clearing Businesses for swaps (as defined in the CFTC’s rules), JSCC has obtained from the CFTC an order of exemption from registration as a Derivatives Clearing Organization under the U.S. *Commodity Exchange Act*.
- 3.6 JSCC has obtained from the Hong Kong Securities and Futures Commission (“**SFC**”) authorization to provide Automated Trading Services, as well as designation as a central counterparty, which can be used for the observance of mandatory clearing obligations under the Securities and Futures Ordinance (“**SFO**”). Currently, one IRS Clearing Participant is incorporated in Hong Kong.

- 3.7 JSCC has obtained recognition as a Foreign Central Counterparty under the Financial Market Infrastructure Act from the Swiss Financial Market Supervisory Authority (“**FINMA**”) to offer IRS Clearing Services. Currently, one IRS Clearing Participant is incorporated in Switzerland.
- 3.8 JSCC has obtained temporary recognition from the Bank of England for the provision of all its clearing services in the U.K. as a Third Country CCP under the *Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018*, to provide services to Clearing Participants and trading facilities established in the U.K. Some of JSCC’s Clearing Participants are incorporated in the U.K.
- 3.9 As a result of the various authorizations described in the foregoing paragraphs, applicable trading entities in the referenced jurisdictions may satisfy certain obligations in relation to the central clearing requirements of OTC derivative transactions that are in effect in the EU, Australia, the U.S., Hong Kong, Switzerland, and the U.K., as applicable, by clearing such trades through JSCC.
- 3.10 To provide trading participants established in the U.S. with direct access to the trading systems for Listed Derivatives listed on OSE and TOCOM, each of OSE and TOCOM maintains a registration with the CFTC as a Foreign Board of Trade under the U.S. *Commodity Exchange Act*. Each such registration includes a designation of JSCC as a CCP for the clearing of trades executed at OSE and TOCOM, respectively.
- 3.11 The following table summarizes JSCC’s various authorizations, recognitions, designations, and exemptions from overseas regulatory authorities:

Country / Region	Covered Trades	Relevant Authority	Authorization, Recognition, Designation, Exemption Obtained
EU	All Cleared Trades	ESMA	Recognition as a Third Country CCP under EMIR
Australia	IRS	Australian Securities and Investments Commission and Reserve Bank of Australia	Designation as a “prescribed facility” under Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015
US	CDS IRS	CFTC	Order of exemption from Registration as a Derivatives Clearing Organization under the Commodity Exchange Act
Hong Kong	IRS	SFC	Authorization to Provide Automated Trading Services, and Designation as a Central Counterparty, that can be Used for the Observance of Mandatory Clearing Obligations, under SFO
Switzerland	IRS	FINMA	Recognition as Foreign Central Counterparty under Financial Market Infrastructure Act
UK	All Cleared Trades	Bank of England	Temporary Recognition as a Third Country CCP under The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

4. Clearing Participants of JSCC

- 4.1 JSCC defines qualifications for clearing participants separately for each Clearing Business. This is done to manage the credit risk of participants, with the criteria for each clearing participant category aligned with the nature of the applicable Clearing Business. Criteria for participation are designed to be reasonable, clear, and publicly available, focusing primarily on the entity’s management structure, financial conditions, and business capability. JSCC continually monitors each Clearing Participant’s management structure, financial condition, and business execution capability. If JSCC recognizes a problematic situation, it has the discretion to initiate a process to suspend clearing services in whole or in part for that Clearing Participant, or revoke its clearing qualification, as necessary. The process includes in-advance hearing opportunities for the affected Clearing Participant and is subject to the assessment and advice by Disciplinary Measures Assessment Committee under the Disciplinary Measures Assessment Committee Rules.

- 4.2 As of the end of January 2024, there were a total of 124 clearing participants for Cash Products and Listed Derivatives, 11 CDS clearing participants, 26 IRS Clearing Participants, and 41 OTC JGB clearing participants.³
- 4.3 In respect of the IRS Clearing Business, a Clearing Participant is a person that holds an IRS Clearing Qualification, allowing it to become JSCC's counterparty in a cleared IRS Transaction in accordance with the IRS Business Rules. There are no other participant types or sub-categories of Clearing Participant in respect of the IRS Clearing Business.
- 4.4 To acquire and maintain its Clearing Qualification related to IRS Transactions, each Clearing Participant must meet criteria prescribed by JSCC and set out in the IRS Business Rules. These include that the Clearing Participant must:
- (1) be licensed as a "Financial Instruments Business Operator" under the FIEA or a "Registered Financial Institution" under the FIEA;
 - (2) satisfy certain criteria with respect to financial conditions; and
 - (3) have a sound management structure and appropriate business execution structure as a Clearing Participant.
- 4.5 The Clearing Participant criteria apply uniformly to all applicants, and all Clearing Participants for IRS have access to the same range of accounts and services as described in the IRS Business Rules.
- 4.6 Further information on such criteria is available in the IRS Business Rules and JSCC's "Guideline on Standard for Clearing Qualification Acquisition in Credit Default Swap and Interest Rate Swap Clearing" available at: https://www.jpjx.co.jp/jsccl/en/rule/rule_irs.html.
- 4.7 Each Clearing Participant must enter into a Clearing Participant Agreement with JSCC, pursuant to which it agrees to comply with JSCC's Business Rules. Only Clearing Participants can set up accounts with JSCC and access the system for clearing services. By comparison, clients of Clearing Participants in respect of clearing services for IRS must: (i) enter into a clearing brokerage agreement with a clearing broker that is a Clearing Participant in accordance with the format prescribed by IRS Business Rules, and (ii) submit to JSCC a letter of undertaking requiring them to comply with the IRS Business Rules. Onboarded clients access JSCC's IRS clearing services through their broker Clearing Participant's customer accounts.

5. IRS Clearing Procedures and System Design

- 5.1 JSCC opens an account for each Clearing Participant ("**Clearing Participant Account**") to manage initial margin and variation margin in respect of each cleared IRS Transaction to which a Clearing Participant is a party, and other Funds to be paid or received in respect of such transactions. Each cleared IRS Transaction of a Clearing Participant is recorded in its Clearing Participant Account.
- 5.2 The clearing of OTC IRS transactions is conducted on each business day during the periods from 09:00 to 12:00, 13:00 to 16:00, and 17:30 to 19:00 (JST). Any requests for clearing an OTC IRS transaction received by JSCC outside of these periods are processed at the beginning of the next such period (e.g., a request received at 16:01 is processed at or about 17:30). Cleared IRS transactions include transactions executed through Electronic Trading Platforms provided by institutions registered with the JFSA, SEFs (Swap Execution Facilities) registered with the CFTC, or MTFs (Multilateral Trading Facilities) or OTFs (Organised Trading Facilities) operating in the EU under the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR).
- 5.3 Upon receipt of an application to clear a new eligible IRS Transaction, or multiple such transactions (referred to collectively as a "**Package Trade**"), from a Clearing Participant, JSCC calculates the amount of variation margin and initial margin required to cover the entire portfolio of the Clearing Participant, including both the new transaction(s) and all existing cleared transactions. If the Clearing Participant's deposited collateral is at least equal to the required amount, JSCC would clear the new trade.⁴
- 5.4 JSCC outsources the development and operation of its IT systems to TSE, a JPX subsidiary and JSCC affiliate. JSCC manages outsourcing arrangements according to clearly defined outsourcing guidelines and criteria. The guidelines provide detailed criteria that third parties must meet to be eligible to provide outsourced services to JSCC, and prescribe the internal process JSCC must follow before outsourcing, including completing a prescribed checklist in respect of the eligibility criteria and other matters, which is required to be confirmed as between JSCC and potential system vendors,

³ See the JSCC website at <https://www.jpjx.co.jp/jsccl/en/participant.html> for lists of all JSCC Clearing Participants.

⁴ JSCC can accept clearing applications even if a sufficient amount of margin is not deposited with JSCC at the time of clearing application for the applicable Clearing Participant or customer, if certain prescribed conditions are met (including the shortfall being below a prescribed aggregate cap), in order to reduce the number of rejections of applications in circumstances where the Clearing Participant or customer is temporarily unable to deposit sufficient collateral for operational reasons. This rule became effective on March 4, 2024, and more detailed information is available at: <https://www.jpjx.co.jp/jsccl/en/cimhll00000001ri-att/Public Comment e 20231102.pdf>

and must then be assessed by independent departments within JSCC. The guidelines also provide the format of contract to be entered into with the IT system vendors, which prescribes obligations of the vendors related to the system securities.

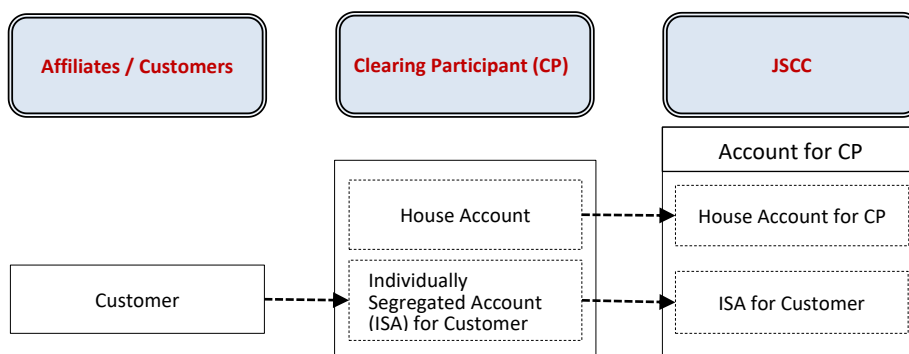
- 5.5 The table below sets out a list of IRS Transactions eligible for clearing through JSCC. Details of the eligible transaction types are also available at <https://www.jpx.co.jp/jsccl/en/cash/irs/product.html>.

IRS Fix-Float	
1	JPY-TONA-OIS-COMPOUND or JPY-TONA-OIS-Compound ("OIS")
2	JPY-TIBOR-ZTIBOR or JPY-Euroyen TIBOR ("Z TIBOR") (1M,3M,6M)
3	JPY-TIBOR-17097 or JPY-TIBOR ("D TIBOR") (1M,3M,6M)
Basis Swap-Tenor Swap (JPY)	
4	Z TIBOR (1M,3M,6M)
5	D TIBOR (1M,3M,6M)
6	OIS
Basis Swap-Curve Swap	
7	OIS vs Z TIBOR
8	OIS vs D TIBOR
9	Z TIBOR vs D TIBOR

6. Customer Protection in JSCC's IRS Clearing Business

Segregated Management of Customer Positions and Margin

- 6.1 For IRS Transactions, JSCC segregates each Clearing Participant's proprietary positions and margin from the positions and margin of each customer of the Clearing Participant. Specifically, the positions and margin of each customer are segregated in individual customer accounts with JSCC at all times, regardless of whether or not the customer is an affiliate of the Clearing Participant. JSCC has established this framework to protect margin related to the positions of each customer from the default or insolvency of a Clearing Participant. The figure below outlines JSCC's customer account structure:



- 6.2 JSCC has adopted optional position transfer arrangements for customer protection. To complete such a transfer, the customer must have in place a prior agreement for this purpose with the Clearing Participant receiving the transfer. The customer must apply to JSCC via the Clearing Participant receiving the transfer, upon which the transferee Clearing Participant accepts the transfer. JSCC would confirm that the required amount of margin pertaining to the transferring positions has been deposited in the customer account at such Clearing Participant. Upon such confirmation, JSCC completes the transfer. By using this option, if a customer's Clearing Participant defaults, the customer may transfer its own positions and margin to a surviving Clearing Participant, and thereby avoid those positions being liquidated under the default management process.

- 6.3 In addition, customers of any Clearing Participant have an option of pre-arranging a back-up Clearing Participant such that if the customer's Clearing Participant defaults, the customer may immediately transfer its own positions and margin to the back-up Clearing Participant subject to the acceptance of the back-up broker.
- 6.4 Entities clearing through Clearing Participants (whether affiliates or customers of Clearing Participants) have the right to claim payment from JSCC as to the "profit equivalent" which they should have received on and after the default determination date, when they choose not to transfer their positions to another Clearing Participant following a Clearing Participant default, and they also have the right to claim the return of Initial Margin directly from JSCC, less the amount of mark-to-market loss pertaining to their own positions.

Protection from Fellow Customer Risk

- 6.5 JSCC has adopted arrangements to protect customers from the risk of default by another customer of the same Clearing Participant.
- 6.6 For the IRS Clearing Businesses, customer margin is individually segregated in accounts for each customer at JSCC. Clearing Participants must deposit the full amount of customer margin with JSCC without delay when they receive margin from a customer. The IRS Business Rules do not allow for the netting of positions recorded in different customer accounts.

Legal Basis for Customer Protection

- 6.7 Japanese law stipulates that in the event of a Clearing Participant default, JSCC's Business Rules would be applied in preference to the general *Bankruptcy Act* (Japan), for the management of outstanding positions between the defaulting Clearing Participant and JSCC.⁵ Therefore, JSCC has the legal authority to liquidate the proprietary positions of a defaulting Clearing Participant and to transfer or liquidate the customer positions of a defaulting Clearing Participant, as stipulated in JSCC's Business Rules.
- 6.8 JSCC uses a trust scheme for the collateral posted by Clearing Participants and their customers. The trust assets are legally protected from the risk of the trustee's default under Japanese law. Also, it allows collateral to be isolated from the default risk of JSCC. In the event of JSCC going bankrupt, the trust bank would return customer collateral directly to each customer, in accordance with payment instructions provided by an independent attorney at law. The attorney is appointed in advance as part of the arrangement and acts as an agent for all of the customers.
- 6.9 Alternatively, a customer and a Clearing Participant can agree to use JSCC's account with the Bank of Japan for the custody of cash collateral instead of using such trust arrangements. By electing to use the model in which cash collateral is held in JSCC's account at the Bank of Japan, clients are insulated from any fellow customer risk and risk associated with a defaulting Clearing Participant.

7. Overview on JSCC Margining, the IRS Clearing Fund and the Default Waterfall

Margin Methodology

- 7.1 JSCC uses different margin frameworks for each of the product types it clears, being Listed Cash Products, Listed Derivatives, CDS, IRS and OTC JGB.
- 7.2 JSCC requires variation margin and initial margin to be deposited by all Clearing Participants, according to the nature of the products in each Clearing Business. For derivatives transactions, including IRS, JSCC also requires the deposit of variation margin and initial margin from customers. Variation margin and initial margin, which cover current exposure and potential future exposure, are to provide coverage for the depositor's own potential losses, and the required amount of each is determined according to positions and market fluctuations.
- 7.3 Additionally, when accepting new IRS transactions from Clearing Participants, JSCC requires the posting of collateral that would be required to cover the entire portfolio, including both the new transaction (or all new transactions in the case of a Package Trade) and all existing cleared transactions, before clearing the new transaction. New trades which fail to fulfill this requirement are rejected.⁶
- 7.4 When customers' deposit of initial margin with a Clearing Participant is operationally difficult, for instance when transactions by customers in a different time zone are expected, and there is prior agreement between the Clearing Participant and the customer for this purpose, JSCC permits customers to deposit initial margin with a Clearing Participant by the business day following that on which the Clearing Participant deposited initial margin for such customer transactions with JSCC.

⁵ See FIEA, Article 156-11-2.

⁶ See footnote 4 above.

Initial Margin for IRS

- 7.5 JSCC calculates the required amount of initial margin for IRS transactions using a historical simulation (expected shortfall) methodology, and adding the amount determined in consideration of the liquidity risk of IRS transactions.

Initial Margin

- (1) The required amount of initial margin is calculated using a historical simulation (expected shortfall) methodology to cover risks from interest rate fluctuations. Specifically, it is set to cover a certain amount of a Net Present Value fluctuation calculated using a daily yield curve fluctuation scenario for a given historical period.
- (2) Parameters used in the calculation include a reference period of 1,250 days, a confidence level of the average of the worst 1%, and a holding period of 5 days (7 days for customer transactions). In addition to the reference period, data from significant historical interest rate fluctuations are also used as stress scenarios. This is to prevent sudden changes in required initial margin when stress events are applied to, or removed from, the interest rate fluctuations during the reference period.
- (3) Additionally, JSCC has methodologies in place (Volatility Scaling methodology based in Exponentially Weighted Moving Average method) to revise the historical interest rate fluctuation scenarios, based on the latest interest rate environment, in order to reflect the current interest rate environment promptly.
- (4) JSCC provides a cross margining service (the “**Cross Margining Service**”), enabling the risk offset between 1) JPY-denominated IRS and 2) certain Japanese Government Bond futures contracts (“**JGB Futures**”) and/or certain Japanese interest rate futures contracts (“**Interest Rate Futures**”), to Clearing Participants, Affiliates, and non-Affiliated customers of the IRS Clearing Business, for whom the Notification of Using Cross Margining has been submitted to JSCC. JSCC calculates the required initial margin for them by using the same historical simulation (expected shortfall) methodology as the IRS Clearing Business.

Liquidity Charge

- (5) Liquidity Charge is calculated to cover market liquidity risk arising from the liquidation of a defaulting Clearing Participant's positions. The Liquidity Charge is calculated by multiplying a position sensitivity (PV01) by a bid/ask spread derived from a market survey of Clearing Participants, and then reflecting a correlation coefficient based on past interest rate fluctuations between tenor buckets.

Variation Margin / Intraday Margin for IRS

- 7.6 JSCC has adopted variation margin frameworks that aim to reduce current exposure. Variation margin is generally paid/received once per day. When calculating variation margin, positions are marked-to-market using the most recent market prices, and the difference between the prior valuation and the latest mark-to-market is paid/received.⁷ To be specific, variation margin is an amount to cover variation of the value of positions calculated using yield curves as of 15:02 (Japan time) from the value of positions calculated using yield curves as of 15:02 on previous business day with respect to positions of each IRS Clearing Participant as of 16:00. Quotes as of 15:02 are obtained from information vendors and inter-dealer brokers with respect to grid points prescribed by JSCC. JSCC calculates the average of such quotes after discarding the highest and the lowest (in principle) and the yield curves are generated based on such averages.
- 7.7 JSCC recalculates the margin requirements at noon based on the most recent positions of each Clearing Participant, and may issue intraday margin calls, if required, to cover any intraday shortfall. Moreover, a framework is also in place to handle large price fluctuations, under which additional margin calculations are made, and JSCC may issue additional intraday margin calls, if required.

Cross Margining Service

- 7.8 JSCC's Cross Margining Service provides Clearing Participants and customers that use both the 1) IRS and 2) JGB Futures and/or Interest Rate Futures clearing services of JSCC with the option to elect to cross margin 1) IRS and 2) JGB Futures and/or Interest Rate Futures positions. Upon making such election, the required amount of initial margin for the Clearing Participant or the customer (each a “**CMS User**”), as applicable, is calculated on a portfolio basis across IRS, JGB Futures and Interest Rate Futures. If the CMS User or its intermediary defaults, then, pursuant to JSCC's Business Rules, the relevant JGB Futures and Interest Rate Futures positions of the CMS User would be automatically transferred to the CMS User's IRS account (which, for the avoidance of doubt, can be used to hold JGB Futures and Interest Rate Futures positions), so that the default losses of the CMS User with respect to IRS, JGB Futures and Interest Rate Futures are netted in a single account. Although intermediaries can use omnibus accounts for customers with

⁷ Clearing Participants, Affiliates, and non-Affiliated customers of the IRS Clearing Business can select payment and receipt of mark-to-market difference, according to the daily fund settlement, in lieu of payment and receipt of variation margin (Variation-Margin-as-Settlement).

respect to JGB Futures and Interest Rate Futures, when a CMS User or its intermediary defaults, the outstanding positions of IRS, JGB Futures and Interest Rate Futures for such entity are aggregated in the entity's Individually Segregated Account for IRS (rather than the omnibus account for JGB Futures and Interest Rate Futures). Accordingly, there is no fellow customer risk with respect to IRS positions held by CMS Users even if they use the Cross Margining Service.

- 7.9 Margin calls for CMS Users are made with respect to the relevant IRS account on a portfolio basis. Once the CMS User fulfills such a call at the relevant IRS account, the margin requirement (calculated on a portfolio basis), the Cross Margining Service for such CMS User becomes effective. The CMS User's participation in the Cross Margining Service will be subject to the CMS User's fulfillment of its margin obligations based on the amount calculated using cross-margining.
- 7.10 If and when a CMS User or its intermediary defaults, the relevant JGB Futures and Interest Rate Futures positions of the CMS User are transferred to the relevant IRS account, so that the profits and losses of both portfolios are netted, and the losses (if any) are covered by the IRS initial margin calculated on a portfolio basis and deposited at the IRS account. For the avoidance of doubt, the only margin held in respect of the applicable IRS, JGB Futures and Interest Rate Futures positions that are cross-margined is held in the IRS account. No margin would be held in a relevant JGB Futures account or Interest Rate Futures account, since the relevant JGB Futures and Interest Rate Futures positions will be transferred to the IRS account if a default occurs.

Backtesting

- 7.11 JSCC conducts daily backtesting to assess the robustness of its margin model. Parameters used to calculate required margin are regularly revised, with additional revisions made for times of market stress. JSCC also updates historical data on price fluctuations for margin calculation of IRS transactions on a daily basis. As such, correlated fluctuations are reflected in margin calculations in a timely manner.
- 7.12 JSCC's backtesting in part involves comparing the margin requirement for each account and the actual losses arising from positions in the account (i.e., the losses based on actual market fluctuations on and after the base date) on a daily basis, to confirm that the target confidence level prescribed in JSCC's Risk Management Policy is achieved. Additionally, JSCC performs backtesting to compare the margin requirement for each account and the hypothetical loss which may arise from positions in the account (calculated assuming that the position on the base date existed before the base date), using statistical analysis. If the target confidence level has not been achieved, JSCC would analyze the cause, and examine appropriate measures, such as revisions to the margin model or parameters, as needed.
- 7.13 JSCC reports backtesting results to JSCC's Risk Oversight Committee on a monthly basis, to the Board of Directors on a quarterly basis, and to Clearing Participants via the advisory committees of each Clearing Business on an annual basis.
- 7.14 JSCC has an internal Risk Management Division that is independent from each Clearing Business division. The Risk Management Division reviews and validates its overall margining models at least annually. Within these reviews, JSCC evaluates the policies and calculation methods of the risk management framework, including margining, and validates their sufficiency and propriety based on backtesting and stress testing results. The results of the overall review and validation of the margin model are presented annually to the Board of Directors and to Clearing Participants via the advisory committees of each Clearing Business.

IRS Clearing Fund

- 7.15 JSCC requires each Clearing Participant to contribute to a clearing fund which covers potential future exposure in the case of the default of multiple Clearing Participants in extreme but plausible market conditions. For the IRS Clearing Business, default expectations are set to the two largest Clearing Participants, including any other Clearing Participant that is an "affiliate" (as defined in the PFMI) of the Clearing Participant. The required amount for the IRS Clearing Fund is revised on a daily basis.
- 7.16 On each business day, the portion of the amount of potential loss that could arise under market conditions considered by JSCC to be extreme but plausible exceeding the amount of Initial Margin (i.e., the excess risk amount) is calculated with respect to the positions of each IRS Clearing Participant as of 19:00 on such day. The amount required to be deposited to the IRS Clearing Fund is the amount equivalent to the expected loss arising at the time of the simultaneous default of two IRS Clearing Participants whose excess risk amounts are the largest and the second largest, prorated according to the Required Initial Margin amount of each IRS Clearing Participant (after any increase). If such amount is less than 100 million yen, then the Clearing Participant must deposit 100 million yen.
- 7.17 Stress scenarios are set by using Principal Component Analysis and historical scenarios. The expected losses that could arise on the part of each Clearing Participant (the risk equivalent under stressed conditions) is calculated with respect to these stress scenarios.

Stress Testing

- 7.18 JSCC conducts stress testing at least daily to determine whether pre-funded loss compensation financial resources, including margin, clearing fund, and JSCC's contribution, are sufficient to cover potential losses, as well as whether the total loss compensation resources, comprised of the aforementioned pre-funded resources plus additional contributions from Clearing Participants, are sufficient to cover the potential losses.
- 7.19 JSCC's stress testing framework considers the largest historical movements in a range of stress events and extreme but plausible hypothetical scenarios.
- 7.20 The results of daily stress testing are reported to the Chief Risk Officer ("**CRO**"), CEO, other full-time directors, and the related division head. Additionally, stress testing results are reported as a part of a status report of compliance with JSCC's Risk Management Policy as it pertains to credit risk to the Risk Oversight Committee on a monthly basis, and to the Board of Directors on a quarterly basis. The results are also reported monthly to Clearing Participants in the "Risk Profile Report" and annually to the advisory committee for each Clearing Business, whose members include Clearing Participants. If a problem with the sufficiency of the loss compensation resources is identified during stress testing, JSCC would maintain the sufficiency of the pre-funded loss compensation resources by recalculating the size of the clearing fund, or by making an additional initial margin call. JSCC would also consider taking other appropriate actions. For example, JSCC would identify the cause of any insufficiency and, if necessary, undertake remedial measures, including revising the existing financial resource framework through rule amendments and capital improvements.
- 7.21 In accordance with the Risk Management Policy, JSCC validates the suitability of the scenarios, models, and parameters used in stress testing of loss compensation resources on at least a monthly basis. JSCC's stress scenarios reflect recent market prices, volatility fluctuations, and positions. For market liquidity fluctuations, rules for securing resources are prepared according to necessity for each clearing service and parameters are revised based on prevailing market conditions. JSCC also conducts daily reverse stress testing to identify excessively extreme scenarios where the loss compensation financial resources would become insufficient.
- 7.22 In accordance with the Risk Management Policy, JSCC's Risk Management Division validates the overall risk management model at least annually, making recommendations regarding revisions to the relevant Clearing Business division, as necessary. The reporting line of the Risk Management Division is independent from each Clearing Business division, reporting directly to the CRO. This helps keep the validation process conducted by the Risk Management Division independent from the Clearing Business divisions. The validation process verifies the effectiveness of the margin and clearing fund model and calculations, and makes recommendations regarding revisions as necessary. The results of the validations are reported to the Board of Directors and the advisory committees of each Clearing Business (i.e., the Listed Products Management Committee, CDS Management Committee, IRS Management Committee, and OTC JGB Management Committee).

Default Management Procedures and Default Waterfall

- 7.23 JSCC's IRS Business Rules set out the details of the default management procedures, including the events constituting a default, the sequencing of the process and obligations of parties involved. JSCC would declare that a Clearing Participant is in default if JSCC's senior management determines that such participant is, or is likely to be, unable to perform its obligations. If a default is declared, JSCC can take actions to contain losses by halting clearing of new transactions from the defaulter and liquidating the defaulter's positions.
- 7.24 JSCC's methods for disposing of positions vary according to the nature of the product for each Clearing Business. Specifically for JSCC's IRS Clearing Business, an auction involving non-defaulting Clearing Participants is used. In addition, hedge transactions may be promptly executed for the defaulter's portfolio to minimize the risk of losses prior to the disposal of the defaulter's positions. For the IRS Clearing Business, hedge transactions are executed based on the advice of the IRS Default Management Committee.
- 7.25 When disposing of Clearing Participant positions, customer positions and collateral can be transferred to non-defaulting Clearing Participants in accordance with the IRS Business Rules. JSCC uses its loss compensation financial resources according to its IRS Business Rules to cover losses arising in the default process.
- 7.26 Even when a Clearing Participant default occurs, JSCC fulfills settlement according to a regular schedule. To fulfill settlement in this manner, JSCC maintains Liquidity Supply Facilities for procuring necessary liquidity.
- 7.27 For the IRS Clearing Business, losses resulting from a Clearing Participant default would be covered in the following order, as set out in Articles 101 to 111 of the IRS Business Rules:

Contribution from the Defaulting Participant

- (1) The defaulting Clearing Participant's "house margin" (initial and variation margin) is consumed.
- (2) The balance of the defaulting Clearing Participant's deposits to the IRS Clearing Fund (including collateral deposited for other Clearing Businesses, if any remains) is consumed.

Contribution from JSCC

- (3) JSCC contributes up to two billion yen of its stockholders' equity as financial resources for loss compensation (the "**First Tier IRS Settlement Guarantee Reserve**").
 - (a) Upon consumption of JSCC's contribution, it would be subject to replenishment. Required actions for replenishment are specified in JSCC's Recovery Plan. Should the replenishment of its capital be difficult, JSCC has an arrangement in place for required financing with JPX, its parent company.

IRS Clearing Fund contributions from non-defaulting Clearing Participants and an additional contribution from JSCC

- (4) The following are consumed on a pro rata basis: (i) IRS Clearing Fund contributions from non-defaulting Clearing Participants, and (ii) an additional contribution up to two billion yen of JSCC's stockholder's equity (together with the First Tier IRS Settlement Guarantee Reserve, "**JSCC Compensation Capital**").
 - (a) IRS Clearing Fund contributions from non-defaulting Clearing Participants are consumed according to the risk amount of each participant.
 - (b) The IRS Clearing Fund contributions from non-defaulting Clearing Participants are capped at a certain level. For further defaults occurring during the Capped Period, such contributions are capped at the required IRS Clearing Fund amount immediately preceding the initial default.
 - (c) The amount of IRS Clearing Fund contribution from non-defaulting Clearing Participants consumed is determined according to the quality of participation in the auction for disposing of the defaulter's positions. The IRS Clearing Fund contributions of Clearing Participants with a lower level of auction participation would be consumed first, and the IRS Clearing Fund contributions of the bid winning Clearing Participant would be consumed after the entire IRS Clearing Fund contribution from all other Clearing Participants are consumed.
 - (d) If a loss consumes all or part of the IRS Clearing Fund contributions from the non-defaulting Clearing Participants, then contributions would be replenished following the end of the Capped Period. To cover credit risk during the Capped Period, JSCC calculates the required IRS Clearing Fund for each non-defaulting Clearing Participant on a daily basis. If the required IRS Clearing Fund exceeds the required IRS Clearing Fund for the day immediately preceding the first default, JSCC would call for the additional amount as Default Contingent Margin. The Default Contingent Margin is a defaulter-pay type collateral to be used as financial resources to cover losses arising from the potential default of the Clearing Participant that deposited the Default Contingent Margin.

Additional contribution from non-defaulting Clearing Participants

- (5) If the loss resulting from a Clearing Participant default exceeds the sum of all the preceding financial resources, an additional contribution called a "Special Clearing Charge" is required from the non-defaulting Clearing Participants. The Special Clearing Charge for defaults occurring during a Capped Period is capped at an amount equal to the required amount of IRS Clearing Fund deposits immediately preceding the first default. This mitigates the procyclical impact on Clearing Participants of the additional contribution.
 - (a) The Special Clearing Charge would be applied according to quality of non-defaulting Clearing Participants' participation in the auction for disposing of the defaulter's positions. The charge would be first applied to Clearing Participants with lower level of auction participation.

Variation Margin Haircutting

- (6) If the loss resulting from a Clearing Participant default exceeds the sum of all the preceding financial resources, all non-defaulting Clearing Participants with positive variation margin from the default date are required to compensate the loss via reductions in such positive Variation Margin ("**Variation Margin Haircutting**"), to a maximum of the relevant variation margin amount.

- 7.28 If, following the Variation Margin Haircutting step, JSCC considers that the loss compensation financial resources are insufficient to cover the loss, Clearing Participants and JSCC would hold a consultation on the countermeasures for the settlement of the loss. If an agreement cannot be reached through consultation, all Cleared Contracts would terminate involuntarily (referred to as a “**Tear-Up**” scenario).

8. Participation in JSCC by Entities in Ontario

- 8.1 JSCC anticipates that banks, pension plans, asset managers, insurance companies and other entities that have a head office or principal place of business in Ontario may be interested in joining JSCC as IRS Clearing Participants or as customers of IRS Clearing Participants.
- 8.2 JSCC does not plan to clear instruments for Ontario Clearing Participants or Ontario Customers that are subject to mandatory clearing under National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, but JSCC will comply with applicable requirements thereunder if in the future it does clear instruments that are subject to mandatory clearing requirements thereunder.
- 8.3 In respect of compliance with trade reporting obligations under OSC Rule 91-507 *Trade Repositories and Derivatives Trade Reporting*, JSCC acknowledges that it shall be subject to the obligation to report to the OSC each derivatives transaction between JSCC and an Ontario local counterparty (including each Clearing Participant incorporated, resident, headquartered or having its principal place of business in Ontario) that arises as a result of its clearing of OTC IRS.
- 8.4 JSCC is subject to **NI 94-102** as a “regulated clearing agency” and is obliged to comply with Part 5 (Treatment of Customer Collateral by a Regulated Clearing Agency), Part 6 (Recordkeeping by a Regulated Clearing Agency), Part 7 (Reporting and Disclosure by a Regulated Clearing Agency) and Part 8 (Transfer of Positions) of NI 94-102 in respect of all clearing of IRS entered into by, for or on behalf of Ontario Clearing Participants or Ontario Customers, except as such requirements are varied by the 94-102 Exemption Order.

9. Criteria for Exemption from Recognition as a Foreign Clearing Agency

- 9.1 Section 2.1 of NI 24-102 requires a foreign clearing agency to provide the following information in its application for exemption from recognition as a clearing agency:
- (1) Its most recently completed PFMI Disclosure Framework Document (as defined in NI 24-102) together with disclosure about any material change to the information in the PFMI Disclosure Framework Document or concerning any information in the PFMI Disclosure Framework Document having become materially inaccurate for any reason.
 - (2) Sufficient information to demonstrate that it is in compliance with the regulatory regime of the jurisdiction in which its head office or principal place of business is located.
 - (3) Any additional relevant information sufficient to demonstrate that it is in the public interest for the securities regulatory authority to exempt the applicant. According to section 2.1 of the Companion Policy to NI 24-102, this additional information is a detailed description of the regulatory regime of the clearing agency’s home jurisdiction and the requirements imposed on the clearing agency, including how such requirements are similar to the requirements in Parts 3 and 4 of NI 24-102.
- 9.2 JSCC’s most recent PFMI Disclosure Framework Document, dated as of March 31, 2024, is available at: <https://www.jpx.co.jp/jsc/en/company/fmi-pdf.html>. JSCC has confirmed that there have been no material changes to the matters addressed in the PFMI Disclosure Framework Document since the date of the document and it continues to be materially accurate.

PFMI Principles

- 9.3 A recognized clearing agency must establish, implement, and maintain rules, procedures, policies, or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13, 15 to 19, 20 other than key considerations 9, 21 to 23 and the following:
- (1) if the clearing agency operates as a CCP, PFMI Principles 4 to 9, 12 and 14;
 - (2) if the clearing agency operates a securities settlement system, PFMI Principles 4, 5, 7 to 9 and 12; and
 - (3) if the clearing agency operates as a central securities depository, PFMI Principle 11.
- 9.4 As set out in JSCC’s most recent PFMI Disclosure Framework Document, JSCC is compliant with all PFMI Principles applicable to it. Accordingly, the requirements in Part 3 of NI 24-102 are satisfied.

9.5 In the “Implementation monitoring of the PFMI: Level 2 assessment report for central counterparties and trade repositories – Japan” publicized by CPMI-IOSCO on February 26, 2015 (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD476.pdf>), Japan is rated as having completely and consistently adopted the PFMI applicable for CCPs licensed under the FIEA and trade repositories.

9.6 JSCC is licensed as the Financial Instruments Clearing Organization stipulated in Article 2, Paragraph 29 of the FIEA, and JSCC is regulated and supervised by the JFSA. A publicly available list of licensed Financial Instruments Clearing Organizations under the FIEA, which includes JSCC, is available at: <https://www.fsa.go.jp/en/regulated/licensed/index.html>.

10. Discussion on Requirements Set out in Part 4 of NI 24-102 and Compliance of JSCC

10.1 The regulatory requirements applicable to clearing agencies that are set out in Part 4 of NI 24-102 are generally also substantially imposed on JSCC directly or indirectly. In many cases, the FIEA and related regulations do not include specific prescriptive requirements stipulating the particular requirements set out in Part 4, but JSCC’s rules and policies (including the IRS Business Rules, which are binding on JSCC and are subject to FIEA review and approval) supplement the FIEA and related regulations in order to impose substantially similar restrictions on JSCC. In particular, we note that:

- (1) pursuant to Article 156-4 of the FIEA, in granting a license, the Prime Minister of Japan shall examine whether the provisions of the Business Rules are in conformity with laws and regulations and are sufficient for the proper and reliable performance of the clearing business;
- (2) the applicable Business Rules approved by the Prime Minister of Japan are the IRS Business Rules, which set out JSCC’s clearing rules for IRS;
- (3) JSCC may not amend the IRS Business Rules without the approval of the Prime Minister of Japan pursuant to Article 156-12 of the FIEA; and
- (4) the FIEA and the JFSA’s CCP Supervisory Guidelines (which is a binding supervisory guideline with respect to the application of laws and regulations and the operation of procedures for licensing and other regulatory actions) and the IRS Business Rules include specific provisions that are comparable to the NI 24-102 Part 4 requirements. The CCP Supervisory Guidelines are available at: <https://www.fsa.go.jp/common/law/202206.pdf>.

10.2 Each requirement in Part 4 of NI 24-102 is set out below in italics, followed by a description of (i) how the requirement is comparable to specific Japanese laws and regulations or JSCC’s IRS Business Rules, which JSCC is legally bound to uphold, and (ii) how JSCC complies with such laws and regulations, as applicable.

Division 1 – Governance

10.3 Board of directors (section 4.1 of NI 24-102)

- (1) *A recognized clearing agency must have a board of directors.*
- (2) *The board of directors must include appropriate representation by individuals who are*
 - (a) *independent of the clearing agency, and*
 - (b) *neither employees nor executive officers of a participant nor their immediate family members.*
- (3) *For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.*
- (4) *For the purposes of subsection (3), a “material relationship” is a relationship that could, in the view of the clearing agency’s board of directors, be reasonably expected to interfere with the exercise of a member’s independent judgment.*

Comparable provisions under Japanese laws and regulations

10.4 The FIEA (Article 156-4, Paragraph 1) requires that the personnel of a Financial Instruments Clearing Organization be composed of individuals each of whom “has sufficient knowledge and experience for conducting Financial Instruments Obligation Assumption Service appropriately and certainly and has sufficient social credibility”. Nominations to the Board of Directors are made in accordance with such requirements.

10.5 The CCP Supervisory Guidelines require a CCP to maintain effective disciplines for management and proper governance in order to ensure appropriate business operations and sound management, and in turn, financial system stability (Section III-1-1(1)).

- 10.6 The CCP Supervisory Guidelines also require, in cases where proposals for the appointment of outside directors are to be determined, that “the outside directors’ personal relationships and equity relationships with the CCP and other interests are verified and their independence, aptitude, etc. are carefully examined, in consideration of the roles they are expected to fulfill” (Section III-1-1(2)).

Compliance by JSCC

- 10.7 JSCC’s Board of Directors is composed of seven directors. Two directors are non-independent full-time directors (the President & CEO and one other member of management), and the other five are part-time directors, including academic and other experts.
- 10.8 Of the part-time Directors, three are associated with Clearing Participants or their affiliates, one is associated with JSCC’s parent company, JPX, and one is not employed by any of the Clearing Participants, their affiliates, JPX or JSCC (the “outside directors”).
- 10.9 JSCC’s Governance Guidelines set out the roles and responsibilities of the Board of Directors and independent directors’ qualifications.⁸ Pursuant to the specific nominating criteria established by the Board of Directors, JSCC appoints board members who have a broad range of relevant financial markets industry experience, qualifications, and industry knowledge. Pursuant to the Governance Guidelines, the Board must include “independent directors” that satisfy certain independence criteria.
- 10.10 Of the part-time directors, JSCC has determined that four are independent in accordance with the standards set out in JSCC’s Governance Guidelines, and that one is not independent by virtue of the fact that the person is currently an executive officer of JSCC’s parent company.
- 10.11 The members of the JSCC Board, with their current affiliations, are as follows:
- Konuma Yasuyuki President & CEO¹
 - Isomoto Naoki Executive Officer¹
 - Asai Kunihiro Senior Corporate Managing Director, Nikko Asset Management CO., Ltd.²
 - Ohashi Kazuhiko Professor, Graduate School of Business Administration, Hitotsubashi University²
 - Kato Izuru President, Representative Director, Chief Economist of Totan Research CO., Ltd. ²
 - Sakata Hideki Senior Managing Director, Global Markets, Nomura Securities CO., Ltd.²
 - Sasaki Daishi Co-Head of Global Markets Company (in charge of Fixed Income, Foreign Exchange and Equities), Mizuho Financial Group, Inc. ²
 - Futagi Satoshi Senior Executive Officer, Japan Exchange Group, Inc.

Notes:

1. Full-time executive directors.
2. Independent under the Governance Guidelines

- 10.12 More information regarding the background of the members of the Board is available at: <https://www.jpx.co.jp/jsc/en/company/profile.html>.
- 10.13 JSCC believes that the outside directors, other than the outside director that is an officer of JPX, satisfy the independence criteria set out in NI 24-102 section 4.1(2).
- 10.14 **Documented procedures regarding risk spill-overs** (section 4.2 of NI 24-102)

The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.

⁸ Available at: https://www.jpx.co.jp/jsc/en/risk/cimhl00000005q9-att/GG_E.pdf.

10.15 This provision is not applicable to JSCC. JSCC only provides clearing services.

10.16 **Chief Risk Officer and Chief Compliance Officer** (section 4.3 of NI 24-102)

- (1) *A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors of the clearing agency.*
- (2) *The chief risk officer must*
 - (a) *have full responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency,*
 - (b) *make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,*
 - (c) *monitor the effectiveness of the clearing agency's risk management framework, and*
 - (d) *report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.*
- (3) *The chief compliance officer must*
 - (a) *establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,*
 - (b) *monitor compliance with the policies and procedures described in paragraph (a),*
 - (c) *report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:*
 - (i) *the non-compliance creates a risk of harm to a participant;*
 - (ii) *the non-compliance creates a risk of harm to the broader financial system;*
 - (iii) *the non-compliance is part of a pattern of non-compliance;*
 - (iv) *the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,*
 - (d) *prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,*
 - (e) *report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and*
 - (f) *concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of the report with the securities regulatory authority.*

Comparable provisions under Japanese laws and regulations

- 10.17 The FIEA and the CCP Supervisory Guidelines establish a comprehensive framework regarding governance, risk management and oversight for JSCC. Although these regulations do not stipulate the specific requirements found in section 4.3 of NI 24-102, as a practical matter, they may be viewed as analogous policy to section 4.3 of NI 24-102.
- 10.18 Article 156-4(1)(iv) of FIEA makes it a condition of granting a license of clearing organization, among other requirements, that the clearing organization ensure the procedures specified in its Business Rules conform to applicable laws and regulations and are sufficient to conduct the clearing services appropriately and with certainty.
- 10.19 CCP Supervisory Guidelines Section III-1-1 requires that a licensed clearing organization establish effective disciplines for management and proper governance, in order to ensure appropriate business operations and sound management, and in turn, financial system stability. Such provision provides further that "[e]ffective functioning of governance presumes that the components of the organization are fulfilling their primary roles." For example, the CCP Supervisory Guidelines indicate that it is important that the board of directors and the Board of Statutory Auditors are able to check management, and checks and balances among divisions and the internal audit section are functioning properly.

- 10.20 Further, Articles 356 and 365 of the Companies Act⁹ provide for managing conflicts of interest between the Board of Directors and individual directors by requiring the disclosure of material facts to and approval from the Board in cases where a director seeks to engage in transactions competing against JSCC's business, or which would result in a conflict of interest.
- 10.21 Auditors are obligated by Article 381, Paragraph 1 and Article 384 of the Companies Act to report to the Board of Directors, without delay, illegal actions, violations of laws, regulations, or the Articles of Incorporation, or significantly inappropriate facts in relation to the duties of directors, as well as report the results of their investigations to the general shareholders meeting. As such, auditors investigate transactions involving conflicts of interest when preparing audit reports annually.
- 10.22 Article 369, Paragraph 2 of the Companies Act contains provisions prohibiting a director with a special interest in a subject matter from voting on such matter.
- 10.23 Pursuant to Article 335 of the Companies Act, a statutory auditor may not concurrently serve as a director, manager or other employee of a stock company or its subsidiary, or as an accounting counselor or executive officer of such subsidiary. In addition, in a company with a board of statutory auditors, there shall be at least three corporate auditors, at least half of whom shall be outside statutory auditors.

Compliance by JSCC

- 10.24 JSCC has a CRO who is independent from each Clearing Business and is the officer in charge of risk management. The CRO is accountable, and provides recommendations, to the Board of Directors and the Risk Oversight Committee.
- 10.25 As required by the CCP Supervisory Guidelines, JSCC's Board has developed a Risk Appetite Statement upon consultation with Clearing Participants, their customers, regulatory authorities, the officers and employees of JSCC, and other stakeholders. The Risk Appetite Statement clarifies the attitude towards risk management and the type and quantity of risk (including credit risk and liquidity risk, among others) that JSCC accepts, in order to realize its Corporate Philosophy and management policies.
- 10.26 The Risk Oversight Committee is an internal forum for the discussion and information-sharing of risk management issues, the status of implementation of the risk management system, compliance with JSCC's Risk Appetite Statement, the identification of material risks, and any required countermeasures. On a monthly basis, the Risk Oversight Committee reviews the results of stress tests and back-tests, and the status of compliance with risk management policies related to operational risk, system risk, and business continuity. The Risk Oversight Committee also receives and reviews various other reports, including the results of default fire drills, the results of investigations into the causes of operational errors or system failures and any mitigation measures, and confirmation of processing capacity targets and actual performance for each clearing system. The Risk Oversight Committee is comprised of the President & CEO, executive officers supervising each business unit, division heads, the CRO and other Risk Management Office staff, and auditors. The Risk Oversight Committee meets at least once per month.
- 10.27 The CRO reports the status of compliance with the Risk Management Policy on a monthly basis to the Risk Oversight Committee and offers proposals as necessary. Additionally, the CRO reports the status of compliance with the Risk Management Policy to the Board of Directors at least once per quarter and offers proposals as necessary.
- 10.28 In accordance with the Risk Management Policy, JSCC's Risk Management Division validates the overall risk management model at least annually, making recommendations regarding revisions to the relevant Clearing Business, as necessary. The reporting line of the Risk Management Division is independent from each Clearing Business, reporting directly to the CRO. This helps to ensure that the validation process conducted by the Risk Management Division is independent from the Clearing Businesses. The validation process verifies the effectiveness of the margin and clearing fund loss compensation model and specifications according to the prevailing market environment, and makes recommendations regarding revisions, as necessary. The results of the validations are reported to the Board of Directors and the advisory committees of each Clearing Business.
- 10.29 JSCC does not have a Chief Compliance Officer. However, JSCC has a Board of Statutory Auditors, in accordance with Article 326, Item 2 of the Companies Act, composed of three highly independent auditors nominated by the Board of Directors for election every four years at the general shareholders meeting. The Board of Statutory Auditors is independent from the board of directors and consists of Statutory Auditors each of whom is directly accountable to the company itself. The Statutory Auditors have the authority under the Companies Act to investigate company business and

⁹ An English translation of this legislation is available at:
<https://www.japaneselawtranslation.go.jp/en/laws/view/4135>;
<https://www.japaneselawtranslation.go.jp/en/laws/view/4136>.

assets, to request a meeting of the Board of Directors, and to report on the improper conduct of a director, as well as the obligation and responsibility to report results of audits to shareholders, to ensure the lawfulness of director's activities.

10.30 The Auditor's Office is a division within JSCC that supports the duties of the Statutory Auditors and works to facilitate smooth execution of the audit by the Statutory Auditors. It is independent from the Board and management of JSCC, reporting directly to the Statutory Auditors.

10.31 Separately, JSCC's Internal Audit Office reports to the President & CEO and is responsible for conducting audits to confirm the proper execution of JSCC's business. It reports its audit results to both the President & CEO and the Board of Statutory Auditors.

10.32 **Board or advisory committees** (section 4.4 of NI 24-102)

(1) *The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.*

(2) *If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.*

(3) *Subject to subsection (4), a committee must have an appropriate representation by individuals who are independent of the clearing agency.*

(4) *An audit or risk committee must have an appropriate representation by individuals who are:*

(a) *independent of the clearing agency, and*

(b) *neither employees nor executive officers of a participant nor their immediate family members.*

(5) *For the purpose of this section, an individual is independent of a clearing agency if the individual has no relationship with the agency that could, in the reasonable opinion of the clearing agency's board of directors, be expected to interfere with the exercise of the individual's independent judgment.*

Comparable provisions under Japanese laws and regulations

10.33 CCP Supervisory Guidelines Section III-1-1 requires that the CCP's Board of Directors take measures to objectively ensure the appropriateness and fairness of, for example, important management decisions and management judgments related to compliance and credit risk management, such as utilizing the advice of outside experts and discretionary committees whose members consist of outside experts, as necessary, when making such decisions and judgments.

10.34 JSCC has a Board of Statutory Auditors in accordance with Article 326, Item 2 of the Companies Act. This requirement is discussed above.

Compliance by JSCC

10.35 JSCC executes business plans based on resolutions of the Board of Directors, realizing JSCC's corporate philosophy, and overseeing day-to-day operations. The advisory committees of each Clearing Business, which are composed of representatives of Clearing Participants of the relevant Clearing Business and other individuals, also function to incorporate the opinions of Clearing Participants into JSCC's governance. The Articles of Incorporation include provisions to the effect that the Board of Directors will respect the opinions of advisory committees to establish proper governance.

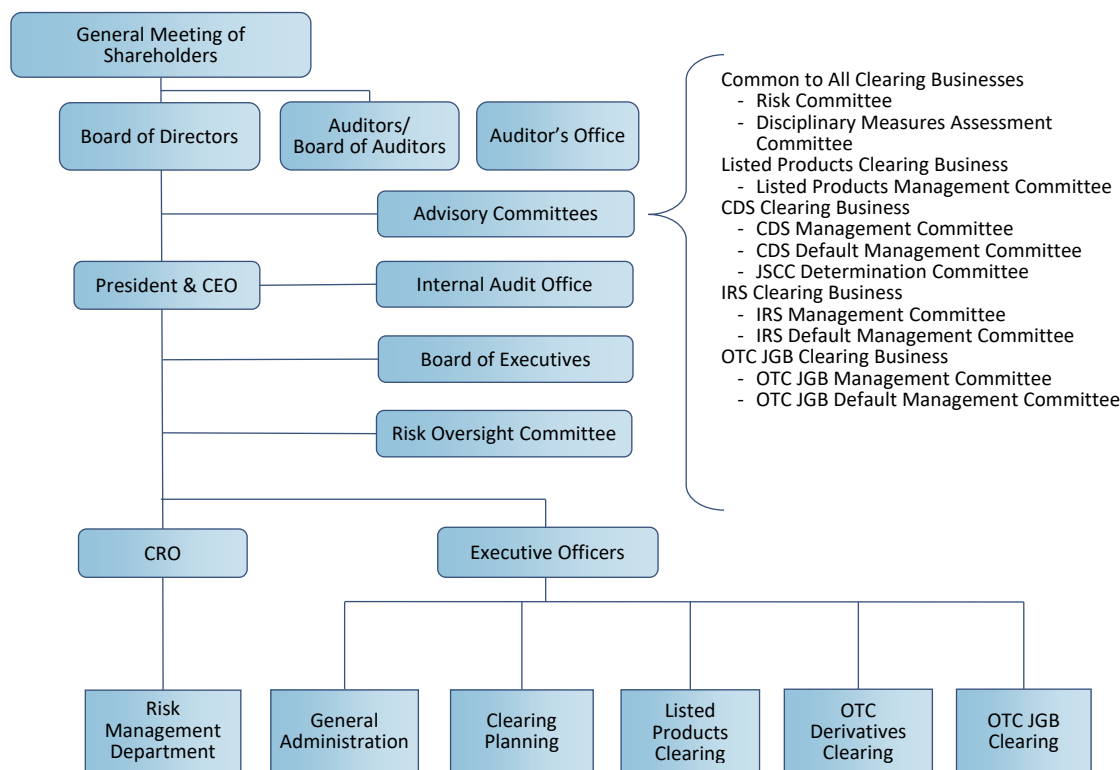
10.36 JSCC has the following advisory committees that provide input to the IRS Clearing Business: Risk Committee, Disciplinary Measures Assessment Committee, IRS Management Committee, and IRS Default Management Committee.

10.37 In cases where JSCC intends to make decisions on any matter considered necessary in the performance of its responsibilities related to risks of the Clearing Businesses, JSCC would seek advice from the Risk Committee. The committee is composed of members that are external directors of JSCC, Clearing Participants, their customers, and other persons with excellent knowledge and experience in the matter under consultation. Currently, the total number of committee members is five, chaired by an independent director; JSCC appoints committee members from among (1) outside directors, (2) executives of clearing participants or clients who have excellent insight and are capable of making fair judgments regarding the matters to be consulted, and (3) persons other than those in (1) and (2) who have excellent insight and are capable of making fair judgments regarding the matters to be consulted.

10.38 As required by Article 2, Item 10 of the Companies Act, JSCC maintains a Board of Statutory Auditors, which serves the corresponding function as an audit committee. The duties of the Board of Statutory Auditors are defined in the Companies Act (in Article 390, Paragraph 2), and include duties such as preparing audit reports, appointing and removing full-time

statutory auditors, deciding audit policy, deciding the method to investigate the status of business and assets of the company, and other matters related to the execution of the auditor's duties.

10.39 The following chart summarizes JSCC's organizational structure:



Note:

1. Effective as of April 1, 2024, "Clearing Planning" in the chart is planned to be divided into two separate divisions: "Clearing Planning Department" and "Strategic Planning for Clearing IT Innovation".

Division 2 – Default management

10.40 Use of own capital (section 4.5 of NI 24-102)

A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults.

Comparable provisions under Japanese laws and regulations

10.41 The applicable Japanese regulations covering JSCC, while not mandating that a clearing organization apportion its own capital to cover default losses, impose a comprehensive framework and set of requirements addressing sound management by CCPs of participant default.

10.42 CCP Supervisory Guidelines section III-2-1 requires directors/board of directors of a licensed clearing organization to:

- (1) have a general understanding of the nature and level of the risks taken by the clearing organization as well as the relationship between risk and the appropriate level of capital;
- (2) understand that an appropriate capital plan is an essential component in order to achieve their strategic objectives, and formulate the capital plan according to the management issues of the clearing organization; and
- (3) be sufficiently involved in formulating the aforementioned capital plan, and adopt a process for evaluating capital adequacy and implementing appropriate measures for maintaining a sufficient level of capital.

Compliance by JSCC

- 10.43 JSCC has established a financial safeguards system to provide robust risk management protections. The default waterfall of the IRS Clearing Business in respect of losses following participant defaults is described above in Part 7 of this application, and includes, at Steps 3 and 4, contributions by JSCC of specified amounts of JSCC Compensation Capital. Up to half of the JSCC Compensation Capital is required to be consumed before applying the IRS Clearing Fund deposits of non-defaulting Clearing Participants to cover such losses.
- 10.44 The total JSCC Compensation Capital in respect of the IRS Clearing Business amounts to JPY 4 billion. As of March 31, 2024, shareholders' equity for JSCC's IRS Clearing Businesses was JPY 12.7 billion (and for all JSCC's Clearing Businesses was JPY 98.5 billion).

Division 3 – Operational risk**10.45 Systems requirements** (section 4.6 of NI 24-102)

For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must

- (a) *develop and maintain*
 - (i) *adequate internal controls over that system, and*
 - (ii) *adequate cyber resilience and information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,*
- (b) *in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually*
 - (i) *make reasonable current and future capacity estimates, and*
 - (ii) *conduct capacity stress tests to determine the processing capability of that system to perform in an accurate, timely and efficient manner, and*
- (c) *promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates to the regulator or, in Québec, the securities regulatory authority regarding the following:*
 - (i) *any change in the status of the failure, malfunction, delay or security incident;*
 - (ii) *the resumption of service, if applicable;*
 - (iii) *the results of any internal review, by the clearing agency, of the failure, malfunction, delay or security incident; and*
- (d) *keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.*

Comparable provisions under Japanese laws and regulations

- 10.46 Under article 156-4(1)(iv) of the FIEA, a clearing organization is required to, as part of the approval process for licensing, demonstrate to the JFSA that the clearing organization has established an adequately developed structure and system for managing highly reliable facilities in order to facilitate settlement properly and reliably. Additionally, Paragraph 4 (ii) of Article 48 of the Cabinet Office Order on Financial Instruments Clearing Organizations (Cabinet Office Order No. 76 of December 6, 2002) requires CCPs to immediately report to the JFSA any "Incident(s)", which includes suspension of whole or part of clearing service due to a failure in an electronic data processing system or any other accidental cause. Once details of a reported Incident have become clear, a CCP must submit a report to the JFSA without delay with details of the Incident, improvement measures in response to the Incident, and other necessary matters pursuant to Paragraph 5 of the said Article 48.
- 10.47 CCP Supervisory Guideline Section III-3-4 requires that a clearing organization build a robust control environment for managing information technology risks. More specifically, it includes the following requirements applicable to CCPs such as JSCC:

Recognition of Information Technology Risk

- (1) The board of directors shall formulate a basic policy for company-wide management of information technology risk based on a full recognition of information technology risk.
- (2) The board of directors shall recognize that prevention and efforts for speedy recovery from system troubles and cybersecurity incidents ("system trouble, etc.") is an important issue and has developed an appropriate control environment.
- (3) There shall be arrangements and procedures for ensuring that information regarding information technology risk is properly reported to the management team.

Establishment of Appropriate Control Environment for Risk Management

- (4) The clearing organization shall specify a basic policy for the management of information technology risk and developed a relevant control environment.
- (5) The clearing organization shall designate the types of risk that should be managed according to specific criteria and has identified the location of the risk.
- (6) The control environment for managing information technology risk is effective enough to enable the clearing organization to identify and analyze the actual state of its business operations and system troubles, and minimize the frequency and scale of system troubles in a manner suited to the system environment and other factors, thereby maintaining an appropriate level of computer system quality.

Assessment of information technology risk

- (7) The division managing information technology risk shall recognize and assess risks periodically or in a timely manner by recognizing the fact that risks are becoming diversified due to changes in the external environment, such as seen in the examples of system troubles induced by large-scale transactions as a result of increased customer channels and efforts to enhance information networks that bring more diverse and broad-based impacts. Also, clearing organizations must take sufficient measures to address the risks that have been identified.

Management of information security

- (8) The clearing organization shall develop a policy to appropriately manage information assets, prepare organizational readiness, introduce in-house rules, etc., and develop an internal control environment. Also, a clearing organization must make continuous efforts to improve its information security control environment through the PDCA cycle, taking notice of illegal incidents or lapses at other companies.
- (9) The clearing organization shall manage information security by designating individuals responsible and clarifying their roles/responsibilities in efforts to maintain the confidentiality, integrity and availability of information. Also, the individuals responsible for information security shall be tasked to handle the security of system, data and network management.
- (10) The clearing organization shall take measures to prevent unauthorized use of computer systems, unauthorized access, and intrusion by malicious computer programs such as computer viruses.
- (11) The clearing organization shall identify important information of participants it is responsible for protecting in a comprehensive manner, keep its records and manage them. The clearing organization shall, in identifying important information of participants, set business operations, systems and external contractors as the scope of protection and include data, such as listed below, in the scope where it tries to identify those calling for protection.
 - (a) Data stored in the areas within the system that are not used in ordinary operations
 - (b) Data output from the system for analyzing system troubles, etc.
- (12) The clearing organization shall assess importance and risks regarding important information of participants that has been identified. Also, the clearing organization shall develop rules to manage information, such as those listed below, in accordance with the importance and risks of each piece.
 - (a) Rules to encrypt or mask information
 - (b) Rules for utilizing information

- (c) Rules on handling data storage media, etc.
- (13) The clearing organization shall introduce measures to discourage or prevent unauthorized access, unauthorized retrieval, data leakage, etc. such as listed below, for important information of participants.
 - (a) Provision of access authorizations that limits access to the scope necessary for the person's responsibility
 - (b) Storage and monitoring of access logs
 - (c) Introduction of mutual checking functions such as by separating the individuals in charge of development and those responsible for operations, administrators and those responsible for operations, etc.
- (14) The clearing organization shall introduce rules for controlling confidential information, such as encryption and masking. Also, whether it has introduced rules regarding the management of encryption programs, encryption keys, and design specifications for encryption programs.
- (15) Note that "confidential information" refers to information, such as PIN, passwords, etc., whose misuse could lead to losses by participants.
- (16) The clearing organization shall give due consideration to the necessity of holding/disposing of, restricting access to, and taking outside, of confidential information, and treat such information in a stricter manner.
- (17) The clearing organization shall periodically monitor its information assets to see whether they are managed properly according to management rules, etc. and reviews the control environment on an ongoing basis.
- (18) The clearing organization shall conduct security education (including by external contractors) to all officers and employees in order to raise awareness of information security.

Management of cybersecurity

- (19) The board of directors shall recognize the importance of cybersecurity amid increasingly sophisticated and cunning cyberattacks and introduce the necessary control environment.
- (20) The clearing organization shall introduce systems to maintain cybersecurity, such as listed below, in addition to making the organization more secure and introducing in-house rules, etc.
 - (a) Monitoring systems against cyberattacks
 - (b) Systems to report cyberattacks and public-relation systems when attacks occur
 - (c) Emergency measures by Computer Security Incident Response Teams and systems for early detection
 - (d) Systems of information collection and sharing through information-sharing organizations, etc.
- (21) The clearing organization shall introduce a multi-layered defense system against cyberattacks that combines security measures respectively for inbound perimeter control, internal network security control and outbound perimeter control.
 - (a) Security measures for inbound perimeter control (e.g. introduction of a firewall, anti-virus software, Intrusion Detection System, Intrusion Protection System etc.)
 - (b) Security measures for internal network security control (e.g. proper management of privileged IDs/passwords, deletion of unnecessary IDs, monitoring of execution of certain commands, etc.)
 - (c) Security measures for outbound perimeter control (e.g. retrieval and analysis of communication/event logs, detecting/blocking inappropriate communication, etc.)
- (22) The clearing organization shall implement measures to prevent damage from expanding when cyberattacks occur as listed below.
 - (a) Identification of IP addresses from which the cyberattacks originate and blocking off of attacks
 - (b) Functions to automatically spread out accesses when under DDoS attacks
 - (c) Suspension of the entire system or its part, etc.

- (23) The clearing organization shall introduce necessary measures for vulnerabilities in the system, such as updating of the operating system and application of security patches in a timely manner.
- (24) The clearing organization shall, as part of cybersecurity measures, assess its security levels by taking advantage of tests on network intrusion, vulnerability scanning or penetration tests, etc. and make efforts to improve security.
- (25) The clearing organization shall, when carrying out business operations using communication methods such as the Internet, introduce appropriate authentication methods in line with the risks associated with such transactions, such as listed below.
 - (a) Authentication methods that do not rely on fixed IDs or passwords, such as variable passwords and digital certificates
 - (b) Transaction authentication using transaction signatures by means of a hardware token, etc.
- (26) The clearing organization shall, when carrying out business operations using communication methods such as the Internet, introduce preventative measures in line with operations, such as listed below.
 - (a) Introduction of software that allows the clearing organization to detect virus infection of the participant's PC and issue a warning
 - (b) Adoption of methods to store digital certificates in mediums or devices separate from PCs used in the relevant business operation, such as IC cards
 - (c) Introduction of a system that allows the clearing organization to detect unauthorized log-ins, abnormal input, etc. and immediately notify such abnormalities to participants
- (27) The clearing organization shall develop contingency plans against potential cyberattacks, conduct exercises and review such plans. Also, the clearing organization shall participate in industry-wide exercises as necessary.
- (28) The clearing organization shall formulate plans to train the personnel responsible for cybersecurity and implement them.

System Planning, Development and Operational Management

- (29) The clearing organization shall formulate a medium/long-term development plan after having clarified its strategic policy for systems as part of its management strategy. The medium/long-term development plan shall be approved by the board of directors.
- (30) The clearing organization shall reveal the risks inherent to its existing systems on an ongoing basis, and make investments to maintain and improve the systems in a planned manner.
- (31) The clearing organization shall clarify its rules for approval of plans, development and transition in development projects.
- (32) The clearing organization shall specify the responsible person with respect to each development project and manage the progress based on the development plan.
- (33) Upon system development, the clearing organization shall conduct tests in an appropriate and sufficient manner, such as by preparing test plans and making user divisions participate.
- (34) For human resources development, the clearing organization shall formulate and implement specific plans to pass on the mechanism and development technologies of its existing systems and train personnel with expertise.

Computer System Audits

- (35) An internal audit section that is independent from the computer system division shall conduct periodic audits of the computer system.
- (36) The clearing organization shall conduct internal audits by subject matter about computer systems and take of (i.e., obtain) external audits by information system auditors.
- (37) The audited division shall account for all business operations involving information technology risk.

Management of Outsourcing of Business Operations

- (38) The clearing organization shall select outsourcees (including system subsidiaries) by evaluating and examining them based on selection criteria.
- (39) The clearing organization shall prescribe the allocation of roles and responsibilities, audit authority, subcontracting procedures, level of services rendered, etc. with the outsourcee in an outsourcing agreement. Also, the clearing organization shall present to outsourced contractors rules their employees are required to adhere to and security requirements, as well as defines them in contract forms, etc.
- (40) The clearing organization shall properly conduct risk management regarding outsourced business operations (including work further subcontracted) related to the computer system. In cases where system-related administrative processes are outsourced, the clearing organization shall properly conduct risk management according to the outsourced business operations related to the computer system.
- (41) The clearing organization shall periodically monitor the outsourced business operations (including work further subcontracted) to determine, as the outsourcer, that the outsourced business operations are properly conducted. Also, the clearing organization shall implement a system that allows the consigner to monitor and track the status of data of investors and participants being processed at outsourced contractors.

Contingency Plan

- (42) The clearing organization shall formulate a contingency plan and establish arrangements and procedures for dealing with emergencies.
- (43) The clearing organization shall base the details of its contingency plan on guides that allows it to judge objective levels of its details (such as "Guide to Formulate Contingency Plans at Financial Institutions" compiled by the Center for Financial Industry Information Systems).
- (44) The clearing organization shall, in developing a contingency plan, assume not only contingencies due to natural disasters but also system troubles, etc. due to internal or external factors. Also, the clearing organization shall assume risk scenarios of sufficient extent for cases such as a major delay in batch processing.
- (45) The clearing organization shall review assumed scenarios in its contingency plan by, for example, taking into consideration case studies of system troubles, etc. at other financial institutions, clearing organizations, fund clearing organizations, book-entry transfer institutions and trade repositories, and the results of deliberations at the Central Disaster Management Council, etc.
- (46) The exercises in accordance with the contingency plan shall involve the entire company and be periodically conducted jointly with outsourced contractors, etc.
- (47) The clearing organization shall introduce off-site backup systems for important systems whose failure could seriously affect business operations so that normal business operations can be speedily brought back.

Risk of System Updates, etc.

- (48) The clearing organization shall manage the risk of building new systems and updating existing systems ("system updates, etc."), and ensure that its officers and employees fully recognize the risk.
- (49) The clearing organization shall establish arrangements and procedures for conducting tests. The test plan shall be suited to the nature of the system development necessitated by the system updates, etc.
- (50) The clearing organization shall enable itself to be proactively involved in the system updates, etc. when this task is outsourced.
- (51) The clearing organization shall make use of third-party evaluation, such as evaluation by a system auditor, when making judgment regarding important matters related to the system updates, etc.
- (52) The clearing organization shall develop a contingency plan for dealing with an unexpected incident.

Response to System Troubles

- (53) The clearing organization shall implement appropriate measures to avoid creating unnecessary confusion among investors, participants, etc. when system troubles, etc. occur and performs tasks towards the prompt recovery and operation of alternatives. Also, the clearing organization shall develop a worst-case scenario in preparation for system troubles and be prepared to take necessary measures accordingly.

- (54) The clearing organization shall prepare procedures that also subjects outsourced contractors to reporting system troubles, and have a clearly defined system of command and supervision.
- (55) The clearing organization shall be prepared to immediately notify the representative director and other directors when a system trouble that may significantly affect business operations occurs, and report the largest potential risk it poses under the worst-case scenario (for example, if there is a possibility that the failure could gravely affect investors or participants, the reporting persons should not underestimate the risk but immediately report the biggest risk scenario). In addition, the clearing organization shall be prepared to launch a task force, have the representative director issue appropriate instructions and orders, and seek resolution of the issue in a swift manner.
- (56) The clearing organization shall, after system troubles, etc. have occurred, analyze the cause and implement measures based on the analysis to prevent recurrence. Also, the clearing organization shall periodically analyze tendencies of factors that have led to system troubles, etc. and introduce measures to address them.
- (57) The clearing organization shall immediately report system troubles, etc. to the authorities.

Compliance by JSCC

- 10.48 JSCC has established a Risk Management Policy that clarifies the purpose, policies, and management of the risk management framework, including sound risk governance, stringent participant eligibility requirements, a robust margin framework, clearing fund and Loss Compensation Scheme, liquidity risk management, default management, and business continuity plan. The Risk Management Policy stipulates its basic policies for managing systemic risk, being that JSCC must:
 - (1) secure sufficient system processing capacity;
 - (2) conduct system development based on an appropriate plan with sufficient testing;
 - (3) prepare a contingency plan for the occurrence of system failures and cyber security incidents;
 - (4) establish information security measures; and
 - (5) manage outsourcing arrangements.
- 10.49 JSCC stipulates the details of these basic policies in the following internal policies and procedures:
 - (1) System Risk Management Policy;
 - (2) System Risk Management Rules;
 - (3) Information Security Basic Policies;
 - (4) Information Security Countermeasures Standards;
 - (5) Outsourcing Management Rules; and
 - (6) Manual for Handling Incidents Suspected of Cyberterrorism.
- 10.50 The System Risk Management Policy and System Risk Management Rules address risks arising from IT system use. The Information Security Basic Policies and Information Security Countermeasure Standards provide for access control and information protection. The Rules for Management of Outsourcing provide for vendor selection processes and continuous monitoring and control of outsourced activities.
- 10.51 Pursuant to JSCC's incident management procedures, should an unexpected event occur, such as a system failure, JSCC would investigate the cause and devise measures to prevent reoccurrence. If JSCC's management determines the event to be significant, the event would be reported to the Risk Management Committee. The following levels of impact with respect to system failures are subject to reporting to the Risk Management Committee:
 - (1) Level S: Severe system failure that affects the core CCP operations;
 - (2) Level A: System failure that affects the core CCP operations;
 - (3) Level B: System failure that affects external parties, but does not affect the core CCP operations; and
 - (4) Level C: System failure with limited external impact or no external impact, but internal impact.

In addition to such event reporting, JSCC reports system capacity and processing capabilities, system development status, and outsourcing management status to the Risk Oversight Committee. Through these processes, JSCC continuously controls System Risk.

- 10.52 JSCC has Operational Procedures in place for each Clearing Business. The Operational Procedures prescribe operational procedures for Clearing Participants based on JSCC's Business Rules. The objective of the Operational Procedures is to realize smooth clearing operations with Clearing Participants. Additionally, JSCC stipulates certain "System Connection Specifications" to realize stable system operations with Clearing Participants. These Operational Procedures and System Connection Specifications clarify operational details and deadlines to avoid misunderstanding with Clearing Participants, and facilitate operational risk management. When changing operational procedures and implementing new products, these documents are revised as necessary and system testing is performed with Clearing Participants in advance to evaluate the performance of the changes. Furthermore, for the replacement of critical systems, or similar large development projects, JSCC seeks evaluation by external experts, when necessary.
- 10.53 JSCC regularly confirms that all critical systems have sufficient processing capacity for current levels of utilization and forecasted future requirements. On a monthly basis, management of JSCC presents capacity targets and actual performance data regarding JSCC systems to the Risk Oversight Committee, allowing it to monitor and evaluate the sufficiency of system capacity and processing capabilities.
- 10.54 JSCC has put in place the following measures to ensure its systems have sufficient processing capabilities:
- (1) all critical systems are required to have sufficient processing capacity to handle a steep increase in processing volume; and
 - (2) a warning threshold has been implemented into monitoring procedures, which triggers if utilization exceeds certain threshold set according to the features of each system. This ensures that measures can be implemented to increase the system capacity well in advance of the required time frame.
- 10.55 JSCC conducts stress testing at least daily to determine whether pre-funded loss compensation financial resources, including margin, clearing fund, and JSCC's contribution, are sufficient to cover potential losses, as well as whether the total loss compensation resources, comprised of the aforementioned pre-funded resources plus additional contributions from Clearing Participants, are sufficient to cover the potential losses.
- 10.56 JSCC stipulates the retention period of documents related to important meetings (i.e., general meetings of shareholders, meetings of the board of directors, meetings of the executive officers, meetings of each committee, and similar meetings) and such documents are retained permanently. Documents deemed important for the performance of the core business of each department are retained for 20 years.
- 10.57 **Auxiliary systems** (section 4.6.1 of NI 24-102)
- (1) *In this section, "auxiliary system" means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement or depository functions.*
 - (2) *For each auxiliary system, a recognized clearing agency must*
 - (a) *develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,*
 - (b) *promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on*
 - (i) *any change in the status of the incident,*
 - (ii) *the resumption of service, if applicable, and*
 - (iii) *the results of any internal review, by the clearing agency, of the security incident, and*
 - (c) *keep a record of any security incident and whether or not it is material.*

Comparable provisions under Japanese laws and regulations

- 10.58 The requirements described above in paragraphs 10.46 and 10.47 apply to all systems of a clearing organization, regardless of whether the systems directly support the clearing organization's clearing, settlement and depository functions or are only auxiliary systems.

Compliance by JSCC

- 10.59 Pursuant to the definition under section 4.6.1 of NI 24-102, auxiliary systems of JSCC are those that, if breached, would pose a security threat to the "core" system operated by or on behalf of JSCC that supports JSCC's clearing, settlement or depository functions. JSCC has no auxiliary systems because its core system is strictly segregated from other associated systems pursuant to its System Risk Management Policy and associated rules. Non-core systems can affect JSCC in other ways, however; for example, if the OTC trade reporting tool, which creates trade reporting files in the format of the relevant trade repositories from the trade data delivered from the core system via standalone terminals, experiences technical issues, this would impact JSCC's ability to timely comply with its reporting obligations. JSCC applies certain information security standards to those systems, including maintaining antivirus software protections.

- 10.60 **Systems reviews** (section 4.7 of NI 24-102)

- (1) *A recognized clearing agency must*
- (a) *on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report, in accordance with established audit standards and best industry practices, that assesses the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9, and*
 - (b) *on a reasonably frequent basis and, in any event, at least annually, engage a qualified party to perform assessments and testing to identify any security vulnerability and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a).*
- (2) *The clearing agency must provide the report resulting from the review conducted under paragraph (1)(a) to*
- (a) *its board of directors, or audit committee, promptly upon the report's completion, and*
 - (b) *the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.*

Comparable provisions under Japanese laws and regulations

- 10.61 As described above in paragraphs 10.47 (35) through (37), CCP Supervisory Guideline Section III-3-4(2)(vii) requires a clearing organization to have an internal audit section that is independent from the computer system division that conducts periodic audits of the computer system, and to engage external auditors to perform audits of the information system. The clearing organization is not specifically required to provide the external auditors' report to the board or JFSA; however, as described above in paragraphs 10.47 (1), (2), (19) and (29), Section III-3-4 of the CCP Supervisory Guideline imposes responsibilities of the board of directors of clearing organizations, including to have a "full recognition of information technology risk" and to develop an appropriate control environment with respect to prevention of and speedy recovery from system troubles and cybersecurity incidents, and to achieve them, the board of directors needs to be well informed. In practice, TSE, which owns the primary system processes used in JSCC's Clearing Businesses, periodically conducts outside auditing and reports the outcomes to JSCC (and the JFSA, if necessary).

Compliance by JSCC

- 10.62 JSCC applies industry best practice for development, implementation, operations, monitoring, management and maintenance of IT systems, using industry-standard hardware and processes for which experienced resources are readily available.
- 10.63 JSCC's Risk Management Division is responsible for confirming each division's compliance with the Risk Management Policy, while the Internal Audit Office is responsible for conducting audits to confirm the proper execution of business by each department, including the Risk Management Division. The auditing of each Clearing Business is conducted with cooperation between both the Risk Management Division and the Internal Auditing Office.
- 10.64 For systems developed by external companies, JSCC has established a workflow to obtain internal and external audit-related materials from the external contractor and evaluate them. If audit-related materials cannot be obtained from the

external contractor on a regular basis, JSCC would carry out an evaluation to confirm the appropriateness of the business execution status, including system maintenance, operation, and monitoring, and outsourced system risk is evaluated against JSCC's monitoring standards for outsourced operations. Such evaluations are reported to the CEO.

10.65 JSCC's "Information Security Basic Policies" provides policies and a management framework for appropriately handling information assets. In the "Information Security Countermeasure Standards", which is based on the "Information Security Basic Policies", JSCC stipulates information security matters to be handled in relation to its information and information systems. These include management of connections to external networks, anti-virus measures, and the establishment of system access procedures. When establishing the "Information Security Basic Policies" and "Information Security Countermeasure Standards," JSCC consulted with experts on industry standards. On an annual basis, the Division responsible for JSCC's information security confirms compliance conditions with the "Information Security Basic Policies" and "Information Security Countermeasure Standards". If it is determined that the current criteria are not appropriate, due to a change in industry standards, advancement of technology, or other reasons, the criteria would be revised and updated. Additionally, JSCC has confirmed that the outsourcee for the clearing system has stipulated technology security objectives for JSCC's clearing system, which satisfies the certification criteria of ISO27001/ISMS.

10.66 **Clearing Agency technology requirements and testing facilities** (section 4.8 of NI 24-102)

- (1) *A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency*
 - (a) *if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*
 - (b) *if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*
- (2) *After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency*
 - (a) *if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*
 - (b) *if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*
- (3) *The clearing agency must not begin operations before*
 - (a) *it has complied with paragraphs (1)(a) and (2)(a), and*
 - (b) *the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the clearing agency have been tested according to prudent business practices and are operating as designed.*
- (4) *The clearing agency must not implement a material change to the systems referred to in section 4.6 before*
 - (a) *it has complied with paragraphs (1)(b) and (2)(b), and*
 - (b) *the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.*
- (5) *Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if*
 - (a) *the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and*
 - (b) *the clearing agency discloses to its participants the changed technology requirements as soon as practicable.*

Comparable provisions under Japanese laws and regulations

10.67 CCP Supervisory Guideline section III-3-8 (2)(i) requires a clearing organization to formulate clear and comprehensive rules and procedures, disclose them to Clearing Participants and publicly disclose key rules and procedures.

Compliance by JSCC

- 10.68 JSCC's Operational Procedures have been established to facilitate smooth clearing operations with Clearing Participants. They set out detailed procedures, including for clearing, transfer of funds, and the deposit of margin. JSCC also provides System Connection Specifications to new and existing Clearing Participants, which set out technology requirements regarding interfacing with or accessing JSCC systems with a view to realizing stable system operations with Clearing Participants. These Operational Procedures and System Connection Specifications clarify operational details and deadlines to avoid misunderstanding with Clearing Participants, and facilitate operational risk management. They are available to all Clearing Participants in final form.
- 10.69 When changing operational procedures and implementing new products, these documents are revised as necessary and system testing is performed with applicable Clearing Participants in advance, allowing for verification and evaluation. JSCC provides explanatory sessions to familiarize Clearing Participants with JSCC's rules and procedures, when required, such as when revising rules or introducing new products. Also, JSCC reports to the JFSA on system testing related to any material system developments and modifications.

10.70 **Testing of business continuity plans** (section 4.9 of NI 24-102)

A recognized clearing agency must

- (a) *develop and maintain reasonable business continuity plans, including disaster recovery plans, and*
- (b) *test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.*

Comparable provisions under Japanese laws and regulations

- 10.71 Section III-3-2 of the CCP Supervisory Guidelines require a CCP to formulate an appropriate business continuity plan ("BCP") in order to recover its operations as soon as possible and continue its operations even in the event of an emergency, e.g., acts of terrorism or large-scale disasters. CCPs are required to back up business data in a timely manner and periodically conduct drills such as switching over to the backup center.

Compliance by JSCC

- 10.72 To handle operational risk, JSCC has defined a "Business Continuity Basic Plan" and its related documents (collectively, the "**BCP Basic Plan**") to minimize the impact of interruptions to operations and lay out business continuity measures in case of the realization of various risk factors. If an event occurs that threatens JSCC's business continuity, JSCC would take measures based on the BCP Basic Plan to prevent and control factors that could harm business continuity.
- 10.73 The BCP Basic Plan stipulates that, if a risk event causes entire or partial operation interruption, JSCC would take measures to enable prompt recovery and resumption of material business operations. To facilitate this, the BCP Basic Plan stipulates that JSCC should employ secure system redundancy and establish back-up data centers and back-up offices. Therefore, JSCC expects to be able to continue its operations even in the event of a BCP scenario.
- 10.74 The BCP Basic Plan is designed to enable full recovery of its business operations within two hours of the occurrence of a risk event such as a terrorist attack or natural disaster. It also sets forth communication flow with internal and external critical stakeholders and regulators.
- 10.75 JSCC maintains a secondary site in addition to its primary site. Clearing systems are located at both sites and are equipped with the same level of processing capacity. The secondary site is maintained as an active site, which allows for swift switchover from the primary site. Full-time system operations personnel are assigned to the secondary site. JSCC's primary and secondary sites are geographically separated with different power and communications infrastructure. JSCC believes there is an extremely low probability of both sites simultaneously being affected by disasters. A full detailed analysis of the risk profile of the site was conducted at the time the secondary site was selected.
- 10.76 To verify the adequacy and effectiveness of the BCP Basic Plan, JSCC conducts BCP fire-drills at least once a year. These fire-drills include data synchronization to the back-up data center, regular data center switchover tests, back-up office maintenance, running operations from the back-up center, updating manuals based on the BCP Basic Plan, and staff BCP education.
- 10.77 JSCC participates, alongside other FMIs, such as the BOJ and Japan Securities Depository Center, Inc., in an industry-wide BCP exercise organized by the Japan Securities Dealers Association and Japanese Bankers Association, or BCP exercise organized by another FMI, at least once per year. These exercises assume a wide-area disaster and involve a broad scope of institutions. Based on the results and opinions or recommendations arising from these exercises, JSCC amends the BCP Basic Plan as necessary.

10.78 JSCC makes reports regarding the matters above to the Risk Oversight Committee. Through this process, JSCC continually confirms the effectiveness of its business continuity framework.

10.79 **Outsourcing** (section 4.10 of NI 24-102)

If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:

- (a) *establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;*
- (b) *identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;*
- (c) *enter into a written contract with the service provider to which a critical service or system is outsourced that*
 - (i) *is appropriate for the materiality and nature of the outsourced activities,*
 - (ii) *includes service level provisions, and*
 - (iii) *provides for adequate termination procedures;*
- (d) *maintain access to the books and records of the service provider relating to the outsourced activities;*
- (e) *ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;*
- (f) *ensure that all persons conducting audits or independent reviews of the clearing agency under this Instrument have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;*
- (g) *take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests a reasonable business continuity plan, including a disaster recovery plan;*
- (h) *take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;*
- (i) *establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.*

Comparable provisions under Japanese laws and regulations

10.80 Section III-3-3(2)(iii) of the CCP Supervisory Guidelines requires a clearing organization, in cases where it outsources part of its administrative processes to service providers or other third parties or relies on them, to confirm that the outsourcee fulfills the requirements that would have to be met if such processes were carried out by the clearing organization itself.

10.81 CCP Supervisory Guidelines section III-3-4(2)(viii) require a clearing organization:

- (1) to select outsourcees (including system subsidiaries) by evaluating and examining them based on selection criteria;
- (2) to prescribe the allocation of roles and responsibilities, audit authority, subcontracting procedures, level of services rendered, etc. with the outsourcee in an outsourcing agreement;
- (3) to present to outsourced contractors rules their employees are required to adhere to and security requirements, as well as define them in contract forms, etc.;

- (4) to conduct risk management regarding outsourced business operations (including work further subcontracted) related to the computer system properly;
- (5) to conduct risk management according to the outsourced business operations related to the computer system properly, in cases where system-related administrative processes are outsourced;
- (6) to monitor the outsourced business operations (including work further subcontracted) periodically to determine, as the outsourcer, that the outsourced business operations are properly conducted; and
- (7) to establish a system that allows the consigner to monitor and track the status of data of investors and participants being processed at outsourced contractors.

Compliance by JSCC

- 10.82 JSCC appropriately manages outsourcing arrangements according to clearly defined outsourcing guidelines and criteria. JSCC's Risk Management Policy stipulates the basic policies for managing System Risk, and JSCC maintains detailed policies and procedures to achieve these basic policies. These are discussed in more detail in paragraphs 5.4, 10.48 and 10.49 above.
- 10.83 Further to the Risk Management Policy, JSCC has established Outsourcing Management Rules that stipulate the management operations for an outsourcee, including JSCC's management system, selection and contracting of an outsourcee, ordering and management of subcontracted work, monitoring and review of subcontracted content, reporting of an outsourcee's management status, and responses after contract expiration. JSCC also maintains Outsourcing Selection Criteria that stipulate the risk assessment to be used for outsourcing, the clarification of necessary measures, and the confirmation of contractual details with an outsourcee.
- 10.84 JSCC outsources primary system processes for its Clearing Businesses to TSE pursuant to an outsourcing agreement. TSE is a JPX subsidiary, and therefore affiliated with JSCC. JSCC evaluates the associated risks according to its Outsourcing Management Rules and Outsourcing Selection Criteria. JSCC usually develops non-primary systems, such as end-user computing and trade reporting tools, by itself.
- 10.85 Should an unexpected event occur, such as a system failure, JSCC would investigate the cause and devise measures to prevent their reoccurrence, which would be reported to the Risk Management Committee, depending on significance and impact. In addition to this, JSCC reports system capacity and processing capabilities, system development status, and outsourcing management status to the Risk Oversight Committee. Through this process, JSCC continuously controls System Risk.
- 10.86 Additionally, JSCC has confirmed that the outsourcee for the clearing system has stipulated technology security objectives for JSCC's clearing system, and satisfies the certification criteria of ISO27001/ISMS.
- 10.87 Further, JSCC identifies risks related to system development and operations on the side of outsourcees and regularly confirms the status of response measures, in addition to confirming the satisfaction of reliability and contingency criteria by regularly holding switchover drills with such outsourcees.

Division 4 – Participation requirements

10.88 Access requirements and due process (section 4.11 of NI 24-102)

- (1) *A recognized clearing agency must not*
 - (a) *unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,*
 - (b) *unreasonably discriminate among its participants or indirect participants,*
 - (c) *impose any burden on competition that is not reasonably necessary and appropriate,*
 - (d) *unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and*
 - (e) *impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.*
- (2) *For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that*

- (a) *the participant or applicant is given an opportunity to be heard or make representations, and*
- (b) *it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.*
- (3) *Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.*

Comparable provisions under Japanese laws and regulations

- 10.89 Under article 156-7.2(3) of the FIEA, a clearing organization is required to, as part of the approval process for licensing, demonstrate to the JFSA that the clearing organization has participation requirements/criteria for the admission of clearing participants in its Business Rules. Article 156-9 of the FIEA prohibits a clearing organization from giving unjust discriminatory treatment to a particular clearing participant.
- 10.90 Sections III-3-1-2(1) and (2) of the CCP Supervisory Guidelines require a clearing organization, given the role of clearing organizations, which is to contribute to the stable and efficient business operations of market participants by intensively processing clearing service in financial transactions, to provide fair and open services to participants as follows:
- (1) a clearing organization shall examine whether its participation requirements are fair from the viewpoint of providing clearing services in a stable manner in the market of operations, and disclose the participation requirements to the public; and
 - (2) a clearing organization shall not abuse its position in such circumstance as using information received from clearing operations in other services and concluding contracts on services incidental to clearing operations.

Compliance by JSCC

- 10.91 JSCC has established criteria for the acquisition and maintenance of Clearing Qualifications for each of JSCC's Clearing Businesses. In respect of the IRS Clearing Business, such qualifications are set out in Chapter 2 of the Rules. Each Clearing Business' criteria are rationally aligned with the risks and nature of that business, do not impose excessive restrictions on entities' eligibility for participation, and ensure open access to those applying for Clearing Qualification. JSCC places no limitations on the attributes of Clearing Participants' customers and does not charge fees that limit participation.
- 10.92 Participation criteria broadly cover a Clearing Participant's management structure, financial requirements and business structure.
- 10.93 The participation criteria are stipulated in the Business Rules of each Clearing Business and have been approved by JSCC's domestic regulators. This approval is based on the FIEA's prohibition of discriminatory treatment (FIEA Article 156-9), and affirms the requirement for open access.
- 10.94 When JSCC determines that a Clearing Participant does not satisfy the participation criteria or has violated JSCC's rules, JSCC would take disciplinary measures against the Clearing Participant according to the methods prescribed in the Business Rules¹⁰. Before determining the measures, JSCC would consult with the Disciplinary Measures Assessment Committee regarding the appropriateness of the measures. The Disciplinary Measures Assessment Committee is composed of multiple experts, including lawyers and academics, and is independent from JSCC. The Disciplinary Measures Assessment Committee Rules stipulates that a committee member having any special interest in an agenda item is not allowed to participate in the relevant deliberation. These measures include issuing instructions on business structure or position improvement, the suspension of all or part of its clearing services and revocation of a Clearing Qualification for the relevant Clearing Participant. Prior to undertaking these measures, JSCC may request the submission of materials or conduct an on-site examination to gain a better understanding of the Clearing Participant's finances, management, and business structure, if JSCC deems such a request necessary to ensure the stable operations of the Clearing Business. In order to promote improvement at the Clearing Participant, JSCC may recommend appropriate measures based on its rules. If JSCC suspends clearing for a Clearing Participant or revokes a Clearing Participant's Clearing Qualification, it would notify all relevant stakeholders, including other Clearing Participants and market operators, and make a public announcement. In reviewing a Participant's application, JSCC would conduct hearings prior to any rejection, and would keep records appropriately.

¹⁰ See IRS Clearing Business Rules Chapter 2, Section 6.

11. Additional Information to Demonstrate that it is in the Public Interest for the OSC to Exempt the Applicant

- 11.1 JSCC has confirmed that it is committed to operating as a clearing agency in accordance with applicable Japanese laws and regulatory requirements and relevant public interest considerations and that it recognises the importance of maintaining the highest standards of corporate governance. JSCC's Corporate Philosophy highlights its commitment to maintaining a solid risk-management framework, and to contributing to the sustainable development of the markets by improving the efficiency, serviceability and safety of the markets as a post-trade processing infrastructure.
- 11.2 We respectfully submit that it is in the public interest for Ontario market participants to be able to facilitate protection of their assets and reduce risk by becoming Clearing Participants of JSCC or customers of Clearing Participants of JSCC. This will also have the advantage of furthering the goal of efficient and competitive capital markets in Canada by placing Ontario market participants on an equal footing with their global competitors.

12. Certification Regarding Books and Records as well as Onsite Inspection and Examination

- 12.1 Pursuant to paragraph 2.1(2) of NI 24-102, JSCC has provided a certification that it will, if so requested, (a) assist the OSC in accessing JSCC's books and records and in undertaking an onsite inspection and examination at JSCC's premises and (b) provide the OSC with an opinion of legal counsel that JSCC has, as a matter of law, the power and authority to (i) provide the OSC with prompt access to its books, records and other documents; and (ii) submit to onsite inspection and examination by the OSC.

13. Form 24-102F1 Submission to Jurisdiction and Appointment of Agent for Service

- 13.1 Pursuant to subsection 2.1(3) of NI 24-102, JSCC has provided an executed Form 24-102F1 *Submission to Jurisdiction and Appointment of Agent for Service*.

14. Notice Regarding Material Change to Information Provided in Application

- 14.1 Pursuant to subsection 2.1(4) of NI 24-102, JSCC agrees to inform the OSC in writing of any material change to the information provided in this application, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or JSCC becomes aware of any material inaccuracy.

15. Filing of Audited Financial Statements

- 15.1 Pursuant to subsection 2.4(1) of NI 24-102, JSCC will provide audited financial statements prepared in accordance with Japanese GAAP for the most recently completed financial year. Such audited financial statements and the accompanying auditor's report will meet the standards prescribed in subsections 2.4(2) and (3) of NI 24-102, respectively.

16. Publication of JSCC's Application Letter

- 16.1 JSCC acknowledges that the OSC may publish this application letter for a 30-day public comment period.

* * * * *

We have attached a certificate of verification signed by JSCC as Schedule A and a draft of the Exemption Order for your consideration as Schedule B.

JSCC acknowledges that the scope of the order granted pursuant to this application and the terms and conditions imposed by the order may change as a result of the monitoring by the Ontario Securities Commission of developments in international and domestic capital markets or JSCC's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities.

Payment of the filing fee of C\$83,000 has been previously submitted to you.

Should you have any questions on this application, please contact the undersigned at (416) 863-3842 or tim.phillips@blakes.com.

Yours very truly,

"Tim Phillips"

Tim Phillips

c: Mr. Konuma Yasuyuki, President & CEO, JSCC
Mr. Otashiro Tetsuo, Director, Global Policy and Regulation, JSCC
Chris Barker, Blake, Cassels & Graydon LLP

SCHEDULE A

CERTIFICATE OF VERIFICATION

To: Ontario Securities Commission

The undersigned hereby authorizes the making and filing of the attached application and confirms the truth of the facts contained therein.

Dated this 1st day of July, 2024.

Japan Securities Clearing Corporation

By: "KONUMA Yasuyuki" (signed)

Name: Mr. KONUMA Yasuyuki

Title: President & CEO

APPENDIX A

Form of Exemption Order

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

AND

IN THE MATTER OF
JAPAN SECURITIES CLEARING CORPORATION

ORDER
(Section 147 of the OSA)

WHEREAS the Ontario Securities Commission (**Commission**) has received an application (**Application**) from the Japan Securities Clearing Corporation (**JSCC**) pursuant to section 147 of the OSA requesting an order exempting JSCC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA in order to provide its central counterparty (**CCP**) clearing service for interest rate swaps (**IRS**) to Ontario-resident entities (**Order**);

AND WHEREAS on September 29, 2023, the Commission issued an order that exempted JSCC on an interim basis (**Interim Order**) from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA, until the earlier of (i) September 28, 2024, and (ii) the effective date of a subsequent order exempting JSCC from the requirement to be recognized as a clearing agency under section 147 of the OSA;

AND WHEREAS the Interim Order will be replaced by this Order;

AND WHEREAS JSCC has represented to the Commission that:

- 1.1 JSCC is a joint-stock company formed under the *Companies Act* of Japan on July 1, 2002, and is a majority-owned subsidiary of the Japan Exchange Group, Inc., a publicly traded company listed on the Tokyo Stock Exchange, Inc.
- 1.2 JSCC is licensed as a CCP to perform clearing services ("Financial Instruments Obligation Assumption Services"), including IRS clearing services, under the *Financial Instruments and Exchange Act* (Japan) (**FIEA**). JSCC is obligated under the FIEA to conduct its IRS clearing business in accordance with its IRS Business Rules, which are subject to approval by the Prime Minister of Japan. The IRS Business Rules set out the rights and obligations in relation to the IRS clearing business, including the risk-management framework, to ensure the stable performance of JSCC's clearing operations. The FIEA and Cabinet Office Order on the Regulation of Over-the-Counter Derivatives Transactions requires certain types of IRS and credit default swaps denominated in Japanese yen to be cleared in a licensed clearinghouse. In addition, these laws and regulations require certain over-the-counter (**OTC**) derivative contracts to be reported to (i) trade repositories licensed in Japan or (ii) those incorporated in a foreign jurisdiction and designated by the Prime Minister.
- 1.3 JSCC is regulated and supervised by the Japanese Financial Services Agency (**JFSA**) and is subject to the oversight of the Bank of Japan in respect of its IRS clearing activities. Pursuant to the FIEA, changes to JSCC's articles of incorporation, reductions to its stated capital and the acquisition by any person of 20% or more of the outstanding shares of JSCC are subject to approval by the JFSA. The FIEA also imposes on JSCC a duty of confidentiality and a prohibition on unfairly differential treatment of its clearing participants. The JFSA has the power under the FIEA to take certain actions in respect of JSCC as a regulated CCP, including to conduct inspections, to require reporting, to make business improvement orders and to rescind the CCP's license in certain circumstances. JSCC is also subject to oversight by the Bank of Japan of financial market infrastructures, as provided in the *Bank of Japan Act*.
- 1.4 JSCC is of the opinion that it fully observes the international standards applicable to financial market infrastructures described in the April 2012 report named *Principles for financial market infrastructures* (**PFMIs**) as discussed in its PFMi Disclosure Report dated as of March 31, 2024.
- 1.5 JSCC is recognized by the European Securities and Markets Authority as a Third Country CCP under the European Market Infrastructure Regulation and is subject to an order issued by the U.S. Commodity Futures Trading Commission that exempts JSCC from the requirement to register as a Derivatives Clearing Organization under the U.S. *Commodity Exchange Act*. In Australia, JSCC has received designation as a "prescribed facility" under the Corporations Amendment (Central Clearing and Single Sided Reporting) Regulation 2015. JSCC has obtained from the Hong Kong Securities and Futures Commission authorization to provide Automated Trading Services, as well as designation as a central

counterparty, which can be used for the observance of mandatory clearing obligations under the Securities and Futures Ordinance. JSCC has obtained recognition as a Foreign Central Counterparty under the Financial Market Infrastructure Act from the Swiss Financial Market Supervisory Authority to offer IRS Clearing Services to those trading entities. JSCC has obtained temporary recognition from the Bank of England for the provision of all its clearing services in the U.K. as a Third Country CCP under the *Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018*, to provide services to clearing participants and trading facilities established in the U.K.

- 1.6 Entities that satisfy the participant criteria set forth in JSCC's Interest Rate Swap Clearing Business Rules (**IRS Business Rules**) are eligible to apply for qualification as clearing participants in JSCC's IRS clearing business (**Clearing Participants**). Each Clearing Participant must enter into a Clearing Participant Agreement with JSCC, and the IRS Business Rules are binding on Clearing Participants by virtue of the Clearing Participant Agreement.
- 1.7 JSCC has a single clearing model for IRS and a single category of IRS Clearing Participant. JSCC's participation criteria cover financial integrity, the regulated status of an applicant, and the appropriateness of the applicant's management structure and business execution structure to meet and continue to meet the standards set out by JSCC. The IRS Business Rules impose additional obligations on a Clearing Participant that engages in clearing on behalf of its customers.
- 1.8 JSCC anticipates that banks, pension plans, asset managers, insurance companies and other entities that have a head office or principal place of business in Ontario and that are "local customers" as defined in National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions (NI 94-102)* may be interested in using JSCC's customer clearing services in respect of certain OTC IRS derivatives (each an **Ontario Customer**). JSCC also anticipates that entities that have a head office or principal place of business in Ontario may be interested in becoming Clearing Participants (each an **Ontario Clearing Participant**) in JSCC's IRS clearing service.
- 1.9 Each Clearing Participant is required to provide JSCC with, and maintain on a daily basis for so long as it is a Clearing Participant, eligible collateral with a collateral value sufficient to satisfy its margin and clearing fund requirements as calculated by JSCC in accordance with the IRS Business Rules.
- 1.10 JSCC will only offer Ontario Customers an individual segregated account structure for client clearing. JSCC segregates each Clearing Participant's proprietary positions and margin from the positions and margin of each customer of the Clearing Participant. The positions and margin of each Ontario Customer will be segregated in individual customer accounts with JSCC at all times, regardless of whether or not the Ontario Customer is an affiliate of the Clearing Participant. A Clearing Participant must deposit the full amount of customer margin with JSCC without delay when it receives margin from a customer unless otherwise agreed by the customer. The IRS Business Rules do not allow for the netting of positions recorded in different customer accounts. JSCC will not permit any Ontario Customer to clear through any "indirect intermediary" as defined in NI 94-102 or permit any Ontario Customer to on-board any indirect client that would clear through the Ontario Customer.
- 1.11 The IRS Business Rules (including in particular the default procedures contained within them) govern the processes that apply to Clearing Participants in the case of a Clearing Participant default. Clearing Participants remain responsible for the credit risk of their customers. JSCC has established a financial safeguards system to provide optimal risk management protections including the establishment of a segregated financial safeguard waterfall for cleared IRS that is designed to ensure that JSCC has sufficient resources to cover defaulting Clearing Participant losses in a wide range of potential stress scenarios including the extreme scenario where the two largest Clearing Participants (including any affiliated entities) default at the same time.
- 1.12 Upon the default of a Clearing Participant, JSCC will take action to contain losses by halting clearing of new transactions from the defaulter and liquidating the defaulter's positions. JSCC's methods for disposing of positions vary according to the nature of the product cleared. For JSCC's IRS clearing business, an auction involving non-defaulting Clearing Participants is used. In addition, hedge transactions may be promptly executed for the defaulter's portfolio to minimize the risk of losses prior to the disposal of the defaulter's positions. For the IRS clearing business, hedge transactions are executed based on the advice of the IRS Default Management Committee.
- 1.13 A Clearing Participant must successfully complete simulated default tests to demonstrate they have the appropriate expertise and operational processes in place prior to beginning clearing operations. Once live, all Clearing Participants are required to participate in fire drills regularly to confirm their operational readiness to manage a Clearing Participant default.
- 1.14 JSCC currently offers portfolio margining (also known as cross-margining) of (a) cleared IRS, (b) certain Japanese Government Bond futures contracts (**JGB Futures**), and (c) certain Japanese interest rate futures contracts (together with JGB Futures, the **Cross-Margined Instruments**), in each case, in customer accounts in accordance with the IRS Business Rules (the **Cross-Margining Service**). JSCC proposes to make its Cross-Margining Service available to Ontario Clearing Participants and Ontario Customers that use JSCC's IRS clearing services and the applicable clearing services for Cross-Margined Instruments.

- 1.15 By combining positions in both IRS and Cross-Margined Instruments into a single portfolio for margin purposes, JSCC's Cross-Margining Service allows the overall risk of that portfolio to be determined. Because IRS and Cross-Margined Instruments experience pricing changes that are correlated with variations in Japanese yen interest rates, which may result in offsetting changes in the aggregate potential future exposure of a portfolio of positions, cross-margining can result in a margin requirement that is more proportionate to the aggregate risk of the portfolio. Thus, the benefit of JSCC's cross-margining of IRS and Cross-Margined Instruments for Ontario Customers and Ontario Clearing Participants, through the margin savings on the same basis as is available to entities outside Ontario, may be significant.
- 1.16 Pursuant to the Interim Order, the Commission exempted JSCC on an interim basis from the requirement to be recognized as a clearing agency under section 21.2 of the OSA with the condition that JSCC's activities in Ontario would be limited to providing customer clearing services for IRS transactions for and on behalf of Ontario Customers clearing IRS transactions through a Clearing Participant that is resident outside of Ontario and is a "clearing intermediary" that is a "direct intermediary" as defined in NI 94-102. JSCC applied for the Interim Order to permit a bank listed in Schedule I of the *Bank Act* (Canada) (Schedule I Bank) to clear IRS transactions through a Clearing Participant resident outside of Ontario.
- 1.17 JSCC would provide its services to Ontario Customers and Ontario Clearing Participants without establishing an office or having a physical presence or employees in Ontario or elsewhere in Canada.
- 1.18 JSCC submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

AND WHEREAS JSCC has agreed to the terms and conditions as set out in Schedule "A" to this order;

AND WHEREAS JSCC is required to comply with National Instrument 24-102 *Clearing Agency Requirements*;

AND WHEREAS based on the Application and the representations that JSCC has made to the Commission, in the Commission's opinion the granting of the Order to exempt JSCC from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS JSCC has acknowledged to the Commission that the scope of and the terms and conditions imposed by the Commission attached hereto as Schedule "A" to this Order, or the determination whether it is appropriate that JSCC continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets, JSCC's activities, or as a result of any changes to the laws in Japan or Ontario affecting trading in or clearing and settlement of derivatives or securities;

IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the OSA, JSCC is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA;

PROVIDED THAT JSCC complies with the terms and conditions attached hereto as Schedule "A".

DATED this [●] day of [●], 2024.

[Name]

[Title]

Ontario Securities Commission

SCHEDULE "A"

Terms and Conditions

Unless the context requires otherwise, the terms used in this Schedule "A" have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this order).

COMPLIANCE WITH ONTARIO LAW

1. JSCC must comply with Ontario securities law (as defined in the OSA).
2. JSCC's IRS clearing services must comply with National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (NI 94-102), except where and to the extent that JSCC has obtained an order exempting JSCC from the requirements of NI 94-102 and complies with the terms of such order.

SCOPE OF PERMITTED CLEARING SERVICES IN ONTARIO

3. JSCC's activities in Ontario will be limited to providing CCP clearing services for IRS transactions for and on behalf of Ontario Clearing Participants and Ontario Customers (**Permitted Clearing Services**).
4. Prior to first admitting a Clearing Participant that is an Ontario-resident entity, JSCC shall obtain a legal opinion that confirms the closeout netting and collateral enforcement provisions of the IRS Business Rules are effective in respect of such proposed Ontario-resident Clearing Participant under applicable laws of Ontario and the federal laws of Canada applicable therein.

REGULATION OF JSCC

5. JSCC must maintain its license as a CCP to perform clearing services in Japan ("Financial Instruments Obligation Assumption Services"), including IRS clearing services under the FIEA. JSCC is regulated and supervised by the JFSA and is subject to the oversight of the Bank of Japan in respect of its IRS clearing activities and will continue to be subject to the regulatory oversight of the JFSA and the Bank of Japan or any successors.
6. JSCC must continue to comply with its ongoing regulatory requirements as an entity licensed to perform IRS clearing services under the FIEA or any comparable successor legislation, and with the ongoing regulatory requirements of the JFSA, as applicable. For so long as JSCC maintains its existing licenses, authorizations, and recognition or exemption orders in certain jurisdictions outside Japan as described in representation 1.5 above, JSCC must continue to comply with its ongoing regulatory requirements as a CCP in such jurisdictions pursuant to such licenses, authorizations, and recognition or exemption orders.

GOVERNANCE

7. JSCC must promote within JSCC a governance structure that minimizes the potential for any conflict of interest between JSCC and its shareholders that could adversely affect the Permitted Clearing Services or the effectiveness of JSCC's risk management policies, controls and standards.

REPORTING REQUIREMENTS

Reporting with JFSA

8. JSCC must promptly provide staff of the Commission with the following information, to the extent that it is required to provide or submit such information to JFSA or any successor:
 - (a) details of any material legal proceeding instituted against JSCC;
 - (b) notification that JSCC has failed to comply with an undisputed obligation to pay money or deliver property to an Ontario Clearing Participant or an Ontario Customer for a period of thirty days after receiving notice from the applicable Clearing Participant of JSCC's past due obligation;
 - (c) notification that JSCC has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate JSCC or has a proceeding for any such petition instituted against it;
 - (d) notification that JSCC has initiated its recovery plan;
 - (e) the appointment of a receiver or the making of any voluntary arrangement with creditors;
 - (f) the entering of JSCC into any resolution regime or the placing of JSCC into resolution by a resolution authority;

- (g) material changes to the IRS Business Rules where such changes would impact the Permitted Clearing Services used by Ontario Clearing Participants or Ontario Customers;
- (h) new services or clearing of new types of products in the Permitted Clearing Services to be offered to Ontario Clearing Participants or Ontario Customers or services or types of products that will no longer be available to Ontario Clearing Participants or Ontario Customers; and
- (i) any new category of membership in respect of the Permitted Clearing Services if JSCC expects that category of membership would be available to Ontario Clearing Participants or Ontario Customers;

Financial Statements

9. JSCC must promptly provide staff of the Commission with the following information:
- (a) English translations of interim financial statements, if available; and
 - (b) English translations of annual audited financial statements, within 30 days of providing the Japanese version of any such statements to the JFSA.

Prompt Notice

10. JSCC must promptly notify staff of the Commission of any of the following:
- (a) any material change to its business or operations;
 - (b) any material change or proposed material change in JSCC's status as an entity licensed to perform "Financial Instruments Obligation Assumption Services" under the FIEA or in its regulation and supervision by JFSA or any successor;
 - (c) any material problems with the clearing and settlement of transactions that could materially affect the safety and soundness of JSCC;
 - (d) the admission of any new Ontario Clearing Participant or Ontario Customer;
 - (e) any event of default by, or removal from Permitted Clearing Services of, an Ontario Clearing Participant or an Ontario Customer;
 - (f) any material system failure of a Permitted Clearing Service used by an Ontario Clearing Participant or an Ontario Customer, including cybersecurity breaches; and
 - (g) any default by a Clearing Participant clearing Cross-Margined Instruments on behalf of an Ontario Clearing Participant that uses the Cross-Margining Service.

Quarterly Reporting

11. JSCC must maintain and submit the following information to the Commission in a manner and form acceptable to the Commission on a quarterly basis within 30 days of the end of each calendar quarter, and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Clearing Participants and Ontario Customers and the legal entity identifier (**LEI**), if any, of each such Ontario Clearing Participant and Ontario Customer;
 - (b) a list of all Ontario Clearing Participants and Ontario Customers against whom disciplinary or legal action has been taken in the quarter by JSCC with respect to activities at JSCC, or to the best of JSCC's knowledge, by JFSA or any other authority in Japan that has or may have jurisdiction with respect to the relevant Ontario Clearing Participant or Ontario Customer's clearing activities at JSCC, provided that the Commission will maintain the confidentiality of the identity of any such Ontario Clearing Participant and Ontario Customer, unless (i) required by a court of competent jurisdiction, law, regulation or memorandum of understanding with a regulatory authority to release such identity, (ii) disclosure is permitted by or consistent with the purposes of the OSA, or (iii) such identity is publicly available;
 - (c) a list of all investigations by JSCC in the quarter relating to Ontario Clearing Participants and Ontario Customers, provided that the Commission will maintain the confidentiality of the identity of any such Ontario Clearing Participant and Ontario Customer, unless (i) required by a court of competent jurisdiction, law, regulation or memorandum of understanding with a regulatory authority to release such identity, (ii) disclosure is permitted by or consistent with the purposes of the OSA, or (iii) such identity is publicly available;

- (d) quantitative information in respect of the Permitted Clearing Services used by the Ontario Clearing Participants and Ontario Customers broken down by each Clearing Participant (identified by LEI) that (i) is an Ontario Clearing Participant, or (ii) is not an Ontario Clearing Participant but provides the Permitted Clearing Services to an Ontario Customer, if applicable, including the following:
 - i. the end of quarter level, maximum and average daily open interest, number of transactions and notional value of transactions cleared during the quarter for each Ontario Clearing Participant and Ontario Customer, by product type;
 - ii. the percentage of end of quarter level and average daily open interest, number of transactions and the notional value cleared during the quarter for all Clearing Participants that represents the end of quarter and average daily open interest, number of transactions and the notional value of transactions cleared during the quarter for each Ontario Clearing Participant and Ontario Customer, by product type;
 - iii. the aggregate total margin amount required by JSCC on the last trading day during the quarter for each Ontario Clearing Participant and Ontario Customer; and
 - iv. the percentage of the total margin required by JSCC, on the last trading day of the quarter, for all Clearing Participants that represents the total margin required for each Ontario Clearing Participant and Ontario Customer;
- (e) the IRS clearing fund contribution, for each Ontario Clearing Participant on the last trading day of the quarter, and its proportion to the total IRS clearing fund contributions;
- (f) the percentage of IRS positions, in terms of notional value and number, held by each Ontario Clearing Participant that are cross-margined as of the last trading day of the quarter;
- (g) the notional value and number of Cross-Margined Instruments positions that are cross-margined via JSCC's Cross-Margining Service with the IRS positions held by each Ontario Clearing Participant as of the last trading day of the quarter; and
- (h) a summary of risk management analysis related to the adequacy of the required margin and the IRS clearing fund requirement, including but not limited to stress testing and backtesting results.

INFORMATION SHARING

- 12. JSCC must promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws that would prevent the sharing of such information and subject to the application of solicitor-client privilege.
- 13. Unless otherwise prohibited under applicable law, JSCC must share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

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