

The Ontario Securities Commission

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

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

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A. Capital Markets Tribunal

A.1 Notices of Hearing

A.1.1 Aimia Inc. and Mithaq Capital SPC – ss. 104, 127

FILE NO.: 2024-2

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
MITHAQ CAPITAL SPC

NOTICE OF HEARING

Sections 104 and 127 of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Transactional Proceeding

HEARING DATE AND TIME: February 15, 2024 at 9:30 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider the Application filed by Aimia Inc. dated February 13, 2024, requesting an order declaring that Mithaq Capital SPC breached securities law and directing Mithaq Capital SPC to comply with National Instrument 62-104 *Take Over Bids and Issuer Bids*.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 7(1) of the *Capital Markets Tribunal Practice Guideline*.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 13th day of February 2024.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

A.1: Notices of Hearing

For more information

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

**IN THE MATTER OF
A HEARING AND REVIEW UNDER SECTION 104 OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5**

AND

**IN THE MATTER OF
MITHAQ CAPITAL SPC**

**APPLICATION OF
AIMIA INC.**

(In connection with a proceeding under sections 104 of the *Securities Act*, RSO 1990, c. S.5)

A. ORDER SOUGHT

1. The Applicant, Aimia Inc., requests the following:
 - (a) a declaration under s. 104 of the *Securities Act* that Mithaq Capital SPC breached ss. 2.8 and 5.2(2) of National Instrument 62-104;
 - (b) an order under s. 104 of the *Securities Act* directing Mithaq Capital SPC to comply with s. 2.8 of National Instrument 62-104 by making the take-over bids it offered in February 2023 available to all holders of common shares of Aimia at the highest price per share that Mithaq paid during the period from February 2, 2023 through to February 21, 2023; and
 - (c) such further and other relief under s. 127 of the *Securities Act* as the Tribunal may deem appropriate.

B. GROUNDS

I. The Parties and Other Persons

2. The Applicant, Aimia Inc., is a corporation formed pursuant to the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, with its head office in Toronto, Ontario. Aimia's common shares are listed on the Toronto Stock Exchange. Aimia is a holding company, which makes long-term investments in other business through minority or controlling stakes.
3. The Respondent, Mithaq Capital SPC, is a company existing under the laws of the Cayman Islands, and is an investment vehicle of a family office based in Saudi Arabia. Mithaq is an Aimia shareholder, currently holding approximately 28.42% of Aimia's common shares.
4. Turki Saleh AlRajhi and Asif Seemab are the directors of Mithaq. Mr. AlRajhi is the Chairman and Chief Executive Officer of Mithaq.
5. Milkwood Capital (UK) Ltd. is an asset manager based in the United Kingdom. Milkwood is a former shareholder of Aimia.
6. Christopher Mittleman was the Chief Investment Officer of Mittleman Investment Management, a subsidiary of Aimia, until his termination on March 27, 2023. At all material times, Mr. Mittleman held approximately 0.53% of Aimia's shares personally and controlled the voting rights associated with a further approximately 6% of Aimia's shares.

II. Mithaq, Milkwood and Mr. Mittleman Plan to Change Aimia's Board and Business

7. In late 2022, Mithaq and Mr. Mittleman were displeased with Aimia's investment strategy, and wanted to change Aimia's business model to focus on public market investments, rather than private equity.
8. In and around the same period, Mr. Seemab approached Milkwood, an experienced activist investor, about Aimia. Mr. Seemab advised Milkwood that Aimia had significant cash resources and was pursuing a misguided investment strategy. By early December, Milkwood was rapidly purchasing Aimia shares for the purpose of engaging in activism and was sharing information with Mithaq.
9. By at least February 2, 2023, Mithaq, Milkwood and Mr. Mittleman had developed a plan to change Aimia's board and senior management. At this point, Mithaq, Milkwood and Mr. Mittleman collectively held control or direction over more than 20% of Aimia's shares. In furtherance of their plans, Mithaq, Milkwood and Mr. Mittleman:
 - (a) jointly drafted and edited press releases, letters, requisitions and other documents in support of their aims;

- (b) coordinated their purchases of shares to avoid increasing Aimia's share price;
- (c) exchanged advice and information about applicable securities rules and strategies for engaging in successful shareholder activism;
- (d) proposed potential new directors for Aimia and interviewed candidates;
- (e) contacted other Aimia shareholders to solicit their support; and
- (f) communicated regularly with each other through phone, email and WhatsApp.

III. The Joint Actors Take Action

10. On February 2, 2023, Mr. Seemab emailed Mr. Mittleman and asked him about the "process/implications if an investor exceeds the 20% equity threshold in the Canadian market?" Mr. Mittleman replied that he thought "an activist's goals can be achieved without incurring the complications of crossing the mandatory build (sic) threshold", so staying at 19.9% was "probably sufficient." Following this email, Mr. Seemab and Mr. Mittleman began to communicate through WhatsApp – an encrypted message service.
11. That same day, February 2, 2023, Mithaq made its first purchase of Aimia shares since May 2022, purchasing 1,974,700 shares, at the time its single largest purchase of Aimia shares. This brought its ownership stake to 14.91%.
12. Mr. Mittleman proceeded to direct Mithaq to a lawyer at Torys and suggested that Mithaq should ask Torys whether it would be better to requisition a special meeting or nominate directors at the next AGM. Mr. Mittleman also offered his views on some pros and cons of both approaches.
13. Mr. Seemab and Mr. Mittleman also discussed their strategy for nominating directors, how many directors Aimia should have and plans to gain support from other shareholders. Mr. Seemab asked Mr. Mittleman "what kind of poison pills they can use to stop us". Mr. Mittleman, who was still employed by Aimia at the time, insisted that they be careful about how they communicate, as he did not want to "give them an ounce of ammunition to undermine your effort, which they would seek to do by claiming it's just a front for my personal grievance against them."
14. On February 8, 2023, Mr. Mittleman provided Mr. Seemab with a confidential study that identified Aimia's major shareholders as of June 2021. Mr. Mittleman suggested it was preferable to use this older list than demand a new one from Aimia, because "obviously that would reveal an intent to take action."
15. Meanwhile, Milkwood was taking a lead role. Mr. Seemab advised Mr. Mittleman that "our British friend is taking lead so he is finalizing best option with his own lawyer." The "British friend" to whom Mr. Seemab referred was Mr. Summerton of Milkwood. Mr. Seemab assured Mr. Mittleman that Mr. Summerton "has done plenty of activism before."
16. Mr. Seemab described Milkwood's role as follows:
 - he would play the activist role for us and would let Mithaq manage afterwards. However we'll lay down the roadmap with mutual consent. He will have board representation. We intend to reduce the size of the board so we will see whether Rhys appoints 1 or 2 directors.
17. On March 1, 2023, Mr. Mittleman sent Mr. Seemab a draft press release on behalf of Mithaq and Milkwood, announcing the requisitioning of a special meeting of Aimia's shareholders for the purpose of replacing Aimia's board of directors and CEO/President. Mr. Seemab and Mr. Mittleman discussed the content of the release.
18. On March 3, 2023, Aimia announced that it would hold its annual general meeting of shareholders on April 18, 2023. Over the course of March, Mithaq and Milkwood took steps to jointly prepare a slate of directors. Among other things, they:
 - (a) contacted and jointly interviewed potential director nominees;
 - (b) engaged in communications which they claim were protected by common interest privilege;
 - (c) jointly prepared a draft letter to be sent to Aimia nominating candidates, including Mr. AlRajhi, Mr. Seemab, and Mr. Summerton, to stand for election at the AGM;
 - (d) jointly prepared a draft letter to be addressed to Aimia shareholders from Mithaq, outlining Mithaq and Milkwood's "action plan" to reconstitute the board. The letter outlined that Mithaq had intended to acquire up to 30% of Aimia's shares, but was unable to do so before Aimia's surprise AGM; and
 - (e) communicated with other Aimia shareholders, including the University of Michigan, in order to have them join the "group".

A.1: Notices of Hearing

19. Mithaq, Milkwood and Mr. Mittleman ended up not nominating an alternate slate of directors. Instead, they urged shareholders to vote against the incumbent board. All but one member of the incumbent board was re-elected at the AGM.

IV. Mithaq's Breaches of the Early Warning Disclosure Regime

20. At all material times, Mithaq held more than 10% of Aimia's issued and outstanding shares and was required to file early warning reports (**EWRs**). Mithaq filed EWRs on February 3, February 9, April 6 and April 19 of 2023.

21. Those EWRs were materially deficient as they failed to disclose:

(a) **That Mithaq was acting jointly or in concert with Milkwood and Mr. Mittleman.** Instead, each of the four EWRs stated "not applicable" in response to the requirement to disclose the names of any joint actors.

(b) **Mithaq's plan to change the members of Aimia's board and management, reduce the size of Aimia's board and to change Aimia's business model.** Instead, Mithaq's EWRs issued on February 3 and February 9 stated that Mithaq had acquired its shares for "investment purposes" and merely reserved Mithaq's right to take other actions in the future. Mithaq did not disclose its plans to change the company, even though it was actively pursuing that plan. In its April 6 EWR, Mithaq disclosed its plan to vote against the re-election of Aimia's board, but still failed to disclose its intentions to reduce the size of the board, change management and change Aimia's business. Mithaq's EWR on April 19 reverted to simply asserting that Mithaq was acquiring shares for investment purposes.

(c) **Mithaq's plans to acquire additional Aimia shares.** As early as February 2, 2023, Mithaq planned to acquire up to 19.9% of Aimia's shares (which it accomplished by February 21, 2023), but it never disclosed this plan. By March 8, 2023 at the latest, Mithaq planned to acquire up to 30% of Aimia's shares – a goal it achieved on May 25, 2023 – but again never disclosed that intention.

22. Pursuant to s. 5.2(2), Mithaq was required to make disclosure of all of the above facts upon either: (i) the acquisition of an additional 2% of Aimia's outstanding shares; or (ii) a material change from its most recent disclosure. All of these facts—the joint actor relationship, Mithaq's plans for Aimia and its board and Mithaq's intention to acquire further shares—were material, and had to be disclosed immediately.

23. Mithaq bought shares on the following occasions on or after February 2, all of which occurred while its disclosure was deficient:

Date	Number of Shares	Percent of Aimia
February 2, 2023	1,974,700	2.35%
February 3, 2023	5,900	0.01%
February 7, 2023	191,800	0.23%
February 8, 2023	537,100	0.64%
February 9, 2023	2,498,500	2.97%
February 13, 2023	339,300	0.4%
February 14, 2023	142,200	0.17%
February 15, 2023	87,100	0.1%
February 16, 2023	153,000	0.18%
February 17, 2023	45,100	0.05%
February 21, 2023	204,300	0.24%
May 25, 2023	3,519,000	4.18%
May 25, 2023	5,715,500	6.79%
Total	15,413,500	18.31%

V. Mithaq's Breach of the Take-over Bid Regime

24. By February 2, 2023, Mithaq, Milkwood, and Mr. Mittleman were joint actors with control or direction over more than 20% of Aimia's shares. Mithaq's purchase of 2,498,500 shares on February 9, 2023 caused it to hold 20% in conjunction with Milkwood alone, even if Mr. Mittleman was not acting jointly or in concert with Mithaq.
25. Given this collective shareholding, pursuant to NI 62-104, any offer Mithaq subsequently made to a person in the local jurisdiction was a take-over bid, and had to comply with the take-over bid regime. Mithaq was not able to purchase additional shares, unless pursuant to a take-over bid or exemption.
26. Each of Mithaq's purchases between February 2, 2023 and February 21, 2023 were take-over bids under the definition in NI 62-104. They were offers made to persons in the local jurisdiction at a time when Mithaq, jointly with Milkwood and Mr. Mittleman, held 20% or more of Aimia's common shares. Even if Mr. Mittleman was not a joint actor, the purchases Mithaq made between February 9, 2023 and February 21, 2023 were take-over bids as a result of the joint actor relationship between Mithaq and Milkwood.
27. Mithaq was prohibited from making these purchases without also making the offers available to all of Aimia's shareholders, unless one of the exemptions in Division 1 of NI 62-104 applied. No exemption applied, and Mithaq never purported to rely on any exemption for these purchases.
28. Mithaq should never have acquired the 6,179,000 shares it purchased during this period.

VI. Impact of Mithaq's Breaches

29. Mithaq's breaches of securities laws detailed above allowed it to amass a holding of more than 30% of Aimia's common shares without: (i) providing shareholders with proper disclosure; or (ii) presenting shareholders with an offer to purchase their shares pursuant to the take-over bid regime.
30. The evidence in this application will demonstrate that Mithaq plainly breached ss. 2.8 and 5.2(2) of National Instrument 62-104. Those breaches were hidden from the market and the OSC and were only uncovered because of complicated litigation proceedings. Mithaq went as far as to delete records of its communications with Milkwood that occurred via WhatsApp. Mithaq's efforts to hide its breaches nearly succeeded.
31. While Mithaq ended up commencing a take-over bid on October 5, 2023, that bid was made at a lower price than what Mithaq was required to offer as a result of its unlawful purchases in February 2023.
32. Mithaq improperly purchased shares between February 2, 2023 and February 21, 2023. On February 16, 2023, the selling price of Aimia's shares reached a height of \$4.13 a share. On that day, Mithaq itself accounted for 153,000 of the 199,945 shares sold over the market. Mithaq's purchases on this day were take-over bids. It was obligated to present an offer of \$4.13 to all shareholders but did not do so, depriving shareholders of the opportunity to tender to such a price.
33. The take-over bid Mithaq commenced in October was for a price of only \$3.66, almost 50 cents per share lower than what Mithaq was required to offer on February 16, 2023.
34. Mithaq's actions have prejudiced Aimia's shareholders. The shareholders are now offered a bid at a materially lower price, but the alternative to tendering into the bid is to remain shareholders of a company of which Mithaq owns almost 30% of the issued shares without having paid any control premium. Mithaq's outsized shareholding and efforts to take control of Aimia have depressed Aimia's share price.
35. Given Mithaq's shareholding and historically low voter turnout at Aimia's shareholder meetings, it is possible that Mithaq will be able to replace Aimia's board at the next annual general meeting with the support of very few other shareholders. If Mithaq successfully replaces Aimia's board of directors at the company's next annual general meeting, Aimia's shareholders will be stuck in a company controlled by Mithaq. This is an untenable outcome in light of Mithaq's multiple breaches of its disclosure obligations and its unlawful share acquisitions.
36. Aimia's shareholders should not be forced to make the unpalatable choice of either: (i) continuing to hold their investment in a company controlled by an entity that has no respect for Ontario's securities laws; and (ii) selling their shares at a depressed price. The relief sought in this application would provide shareholders with a third option.
37. An order directing Mithaq to comply with NI 62-104 and present an offer of \$4.13 to all Aimia shareholders will restore the choice that shareholders always should have had. If Mithaq successfully replaces Aimia's board, any shareholder that does not wish to invest in a company controlled by Mithaq will have the option to tender into the take-over bid. Shareholders will have the opportunity to make an informed choice as to whether to tender for the first time.

C. EVIDENCE

38. Aimia intends to rely upon written submissions and the following evidence at the hearing:

- (a) affidavit evidence, to be filed; and
- (b) such further and other evidence as counsel for Aimia may advise.

February 13, 2024

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A.2 Other Notices

A.2.1 Aimia Inc. and Mithaq Capital SPC

FOR IMMEDIATE RELEASE
February 13, 2024

**AIMIA INC. AND
MITHAQ CAPITAL SPC,
File No. 2024-2**

TORONTO – On February 13, 2024, the Tribunal issued a Notice of Hearing pursuant to sections 104 and 127 of the *Securities Act*, RSO 1990, c S.5, to consider the Application filed by Aimia Inc. dated February 13, 2024, requesting an order declaring that Mithaq Capital SPC breached securities law and directing Mithaq Capital SPC to comply with National Instrument 62-104 *Take Over Bids and Issuer Bids*.

A preliminary attendance will be held on February 15, 2024 at 9:30 a.m.

A copy of the Notice of Hearing dated February 13, 2024 and the Application dated February 13, 2024 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
February 14, 2024

**BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9**

TORONTO – The following merits hearing dates have changed in the above-named matter:

- (1) the previously scheduled days of April 30 and May 1, 2024 will not be used for the hearing; and
- (2) the hearing will continue on May 24 and May 28, 2024 at 10:00 a.m. on each day 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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A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
February 16, 2024

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

TORONTO – An attendance in the above-named matter is scheduled to be heard on March 19, 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.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.4 RAMM Pharma Corporation

FOR IMMEDIATE RELEASE
February 16, 2024

RAMM PHARMA CORPORATION,
File No. 2023-36

TORONTO – The preliminary attendance scheduled for February 21, 2024 at 10:00 a.m. in the above referenced matter is vacated.

The hearing date for the application will be set next week by order of the Tribunal.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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B. Ontario Securities Commission

B.3 Reasons and Decisions

B.3.1 Manulife Investment Management Limited and Manulife Investment Management Distributors Inc.

Headnote

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

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

February 13, 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
MANULIFE INVESTMENT MANAGEMENT LIMITED
(MIML)
AND
MANULIFE INVESTMENT MANAGEMENT DISTRIBUTORS INC.
(MIMDI and with MIML, the Filers and each, a Filer)

DECISION

Background

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

- (a) with respect to MIML only, to revoke and replace the previous exemptive relief decision dated December 31, 2021 (the **Previous Decision**) in order to add MIMDI as a Filer; and
- (b) pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), that each Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below),

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

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

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

Interpretation

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

Representations

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

1. MIML is a corporation amalgamated under the laws of Canada, with its registered head office located in Toronto, Ontario.
2. MIML is registered as a portfolio manager in each province and territory of Canada. MIML is also registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a commodity trading manager in Ontario and a derivatives portfolio manager in Québec.
3. MIMDI is a corporation existing under the laws of Canada, with its registered head office located in Toronto, Ontario.
4. MIMDI is registered as an exempt market dealer in each province and territory of Canada.
5. MIML is a wholly-owned subsidiary of The Manufacturers Life Insurance Company (**Manulife**), while MIMDI is a wholly-owned subsidiary of MIML, and the Filers are therefore affiliates.
6. Each Filer has an institutional division (respectively, the **MIML Institutional Division** and the **MIMDI Institutional Division** and, together, the **Institutional Division**). The Institutional Division offers a broad array of investment solutions across investment mandates, such as global fixed income, private market strategies, multi-asset strategies and specialized equity strategies, to non-individual institutional clients that are “permitted clients” in Canada. In the MIML Institutional Division, MIML does so as an investment adviser to separately managed accounts and as an investment fund manager and investment adviser or sub-adviser to investment funds. In the MIMDI Institutional Division, MIMDI does so as an exempt market dealer, marketing and intermediating trades in pooled funds to non-individual institutional clients that are “permitted clients”.
7. The Institutional Division does not provide services to clients who are individuals. Each Filer also has a private wealth division (respectively, the **MIML Private Wealth Division** and the **MIMDI Private Wealth Division** and, together, the **Private Wealth Division**) that offers investment management products and services to high-net-worth individuals and families, and their holding companies and trusts. The Institutional Division and the Private Wealth Division function independently, as stand-alone operations within each Filer. Each division reports through a separate and distinct senior management structure.
8. MIML is not in default of securities legislation in any of the Jurisdictions. Other than with respect to the specific subject matter of the Exemption Sought, MIMDI is not in default of securities legislation in any of the Jurisdictions.
9. Notwithstanding the Filers’ intent of having the Previous Decision apply to MIMDI, MIMDI was inadvertently omitted in MIML’s application for the Previous Decision. MIMDI has operated its Institutional Division as if it had received the Previous Decision.
10. Each Filer is the sponsoring firm for registered individuals within the Institutional Division who interact with clients, some of which use a corporate officer title without being appointed to the corporate office of the respective Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of a Filer changes. As of the date of this decision, MIML has approximately 28 Registered Individuals and MIMDI has approximately 7 Registered Individuals. All of the Registered Individuals work within the Institutional Division and will interact exclusively with clients of the Institutional Division.
11. The current titles used by the Registered Individuals include the words “Director”, “Vice President” and “Managing Director”, or variations thereof, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

B.3: Reasons and Decisions

12. Each Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by a Filer to award one of the Titles.
13. The Registered Individuals interact only with institutional clients that are, each, a non-individual "permitted client", as defined in subsection 1.1 of NI 31-103 (**Permitted Clients**). The Registered Individuals may in the future interact with institutional clients that are, each, an "institutional client" as defined in Rule 1201 of the Canadian Investment Regulatory Organization (CIRO) (**Institutional Clients** and, with Permitted Clients, the **Clients**).
14. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
15. There would be significant operational and human resources challenges for the Filers to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put each Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
16. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.
17. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, each Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual Permitted Clients or Institutional Clients.

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

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2023/0578

B.3.2 Counsel Portfolio Services Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced have not been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

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

February 14, 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
COUNSEL PORTFOLIO SERVICES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager which are available for sale to retail investors and to which National Instrument 81-102 – *Investment Funds (NI 81-102)* applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

- (a) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and
- (b) the rating or ranking is to the same calendar month end that is
 - i. not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and
 - ii. not more than three months before the date of first publication of any other sales communication in which it is included

in order to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings (each as described below) to be referenced in sales communications relating to the Funds (together, 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 subparagraph 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 the Jurisdiction, collectively referred to as the **Canadian Jurisdictions**).

Interpretation

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

Representations

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

The Filer and the Funds

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office in Mississauga, Ontario.
2. The Filer is registered as follows: (i) under the securities legislation of Ontario, as a portfolio manager; (ii) under the securities legislation of Ontario, Quebec and Newfoundland and Labrador, as an investment fund manager; and (iii) under the Commodity Futures Act (Ontario), as a commodity trading manager.
3. The Filer is, or will be, the manager, trustee and portfolio manager of each Fund.
4. Each Fund is, or will be, an open-ended mutual fund trust established under the laws of Ontario.
5. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.
6. Securities of the Funds are, or will be, offered pursuant to one or more simplified prospectuses filed in some or all of the Canadian Jurisdictions and, accordingly each Fund, is or will be, a reporting issuer in one or more of the Canadian Jurisdictions.
7. Neither the Filer nor the existing Funds are in default of securities legislation of the Canadian Jurisdictions.

Fundata FundGrade A+ Awards Program

8. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.
9. Fundata Canada Inc. (**Fundata**) is not a member of the Funds' organization. Fundata is a "mutual fund rating entity" as that term is defined in NI 81-102. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.
10. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.
11. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk-adjusted performance measured by three well-known and widely used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.
12. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a fund must show consistently high scores for all ratios across all time periods.
13. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

B.3: Reasons and Decisions

14. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.
15. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Lipper Leader Ratings and Lipper Awards

16. The Filer also wishes to include in sales communications of the Funds references to Lipper Leader Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Ratings for Consistent Return, Lipper Ratings for Total Return, Lipper Ratings for Preservation and the Lipper Ratings for Expense, which are described below) and Lipper Awards (as described below) where such Funds have been awarded a Lipper Award.
17. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102. Lipper is part of the Refinitiv group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.
18. One of Lipper's programs is the Lipper Fund Awards from Refinitiv program (the **Lipper Awards**). This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper Awards take place in approximately 17 countries.
19. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in a number of individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three and five year periods, and it is expected that awards for the ten year period will be given in the future.
20. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by CIFSC (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three or five years of performance history, as applicable) will claim a Lipper ETF Award.
21. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.
22. In Canada, the Lipper Leader Rating System includes Lipper Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), Lipper Ratings for Total Return (reflecting funds' historical total return performance relative to funds in the same classification), Lipper Ratings for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification) and Lipper Ratings for Expense (reflecting funds' expense minimization relative to funds with similar load structures). In each case, the categories for fund classification used by Lipper for the Lipper Leader Ratings are those maintained by CIFSC (or a successor to CIFSC). Lipper Leader Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an unweighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.
23. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 and 60 month periods only) wins a Lipper Award.

Sales communication disclosure

FundGrade Ratings and FundGrade A+ Awards

24. The FundGrade Ratings fall within the definition of “performance data” under NI 81-102, as they constitute “a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund”, given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be “overall ratings or rankings”, given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
25. Paragraph 15.3(4)(c) of NI 81-102 imposes a “matching” requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or “match”, each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e., for one, three, five and ten year periods, as applicable).
26. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years, and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the “matching” requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.
27. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication “otherwise complies” with the requirements of subsection 15.3(4). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the “matching” requirement in subsection 15.3(4) because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is, therefore, required in order for the Funds to reference the FundGrade A+ Awards and the FundGrade Ratings in sales communications.
28. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.
29. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

Lipper Leader Ratings and Lipper Awards

30. The Lipper Leader Ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leader Ratings as described above. Therefore, references to Lipper Leader Ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
31. In Canada and elsewhere, Lipper Leader Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader Rating cannot comply with the “matching” requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader Ratings in sales communications.
32. In addition, a sales communication referencing the overall Lipper Leader Ratings and the Lipper Awards, which are based on the Lipper Leader Ratings, must disclose the corresponding Lipper Leader Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader Ratings, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.

33. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader Ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) of NI 81-102 is available only if a sales communication otherwise complies with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying Lipper Leader Ratings are not available for the one year period, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for the Funds to reference overall Lipper Leader Ratings and the Lipper Awards in sales communications.
34. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The paragraph provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.
35. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.
36. The Exemption Sought is required in order for the FundGrade Ratings, FundGrade A+ Awards, Lipper Leader Ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

General***The Exemption Sought will provide investors with helpful information***

37. The FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings provide important tools for investors, as they provide them with context when evaluating investment choices.
38. The FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata or Lipper, as applicable, in fund analysis and alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings to be referenced in sales communications relating to a Fund provided that:

1. The sales communication that refers to the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, or Lipper Leader Ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:
 - a. the name of the category for which the Fund has received the award or rating;
 - b. the number of mutual funds in the category for the applicable period;
 - c. the name of the ranking entity, i.e., Fundata or Lipper;
 - d. the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Awards, FundGrade Rating, Lipper Awards or Lipper Leader Ratings is based;
 - e. a statement that FundGrade Ratings and Lipper Leader Ratings are subject to change every month;
 - f. in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Award, as applicable;
 - g. in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award) or a Lipper Leader Rating (other than Lipper Leader Ratings referenced in connection with a Lipper Award), a brief overview of the FundGrade Rating or Lipper Leader Rating, as applicable;

B.3: Reasons and Decisions

- h. where Lipper Awards are referenced, the corresponding Lipper Leader Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;
 - i. where a Lipper Leader Rating is referenced, the Lipper Leader Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;
 - j. disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category) or Lipper Leader Ratings from 1 to 5 (e.g., rating of 5 indicates a fund is in the top 20% of its category), as applicable; and
 - k. reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Fundata or Lipper, as applicable;
2. The FundGrade A+ Awards and Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and
3. The FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

Application File #: 2024/0063
SEDAR File #: 6081257

B.3.3 Gran Tierra Energy Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 62-104 Take-Over Bids and Issuer Bids – relief from the formal issuer bid requirements in NI 62-104 – issuer conducting a normal course issuer bid through the facilities of the TSX and NYSE American – relief granted, provided that purchases are subject to a maximum aggregate limit mirroring the TSX NCIB rules.

Applicable Legislative Provisions

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

Citation: *Re Gran Tierra Energy Inc.*, 2024 ABASC 24

February 12, 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
GRAN TIERRA ENERGY INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements contained in the Legislation relating to issuer bids (the **Issuer Bid Requirements**) shall not apply to purchases of the Filer's shares of Common Stock, par value \$0.001 per share (the **Shares**) made by the Filer through the facilities of the NYSE American and over alternative trading platforms based in the United States (together with the NYSE American, the **U.S. Markets**) in connection with an issuer bid made in the normal course through the facilities of the Toronto Stock Exchange (the **TSX**) that the Filer may implement from time to time (such bids, the **Normal Course Issuer Bids**, and such exemption, 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 British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador; 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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the laws of the State of Delaware and is in good standing.
2. The principal executive offices of the Filer are located in Calgary, Alberta.
3. The Filer is a reporting issuer in each of the provinces of Canada and is an “SEC foreign issuer” as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of securities legislation in any of the jurisdictions in which it is a reporting issuer.
4. The Shares are registered under the 1934 Act and the Filer is subject to the requirements of the 1934 Act. The Filer is not in default of any applicable securities laws in the United States.
5. The authorized capital of the Filer consists of 82 million shares of capital stock, of which 57 million is designated as Shares, and 25 million is designated as Preferred Stock, par value \$0.001 per share. As at December 31, 2023, there were 32,246,501 Shares and no Preferred Stock issued and outstanding.
6. The Shares are listed and posted for trading on each of the TSX, the NYSE American and the London Stock Exchange under the trading symbol “GTE”.
7. On October 31, 2023, the Filer announced that the TSX had accepted its Notice of Intention to Make a Normal Course Issuer Bid (the **Current Notice**) for the 12-month period commencing on November 3, 2023 and ending on November 2, 2024, to purchase up to 3,234,914 Shares, representing approximately 10% of the Filer’s public float as defined in the TSX Company Manual (the **Public Float**) as of the date specified in the Current Notice (the **Current Bid**). The Current Notice specifies that purchases under the Current Bid will be made through the facilities of the TSX, the NYSE American or alternative trading platforms in Canada or the United States, if eligible, or by such other means as may be permitted by the TSX, the NYSE American and applicable securities laws.
8. Issuer bid purchases made in the normal course through the facilities of the TSX by the Filer are, and will be, conducted in reliance on the exemption from the Issuer Bid Requirements set out in section 4.8(2) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**), and such exemption, the **Designated Exchange Exemption**). The Designated Exchange Exemption provides that an issuer bid made in the normal course through the facilities of a designated exchange is exempt from the Issuer Bid Requirements if the bid is made in accordance with the by-laws, rules, regulations and policies of that exchange. The TSX is a designated exchange for the purposes of the Designated Exchange Exemption.
9. The TSX’s rules governing the conduct of normal course issuer bids (the **TSX NCIB Rules**) are set out, inter alia, in sections 628 to 629.3 of Part VI of the TSX Company Manual. The TSX NCIB Rules permit a listed issuer to acquire, over a 12-month period commencing on the date specified in the Notice of Intention to Make a Normal Course Issuer Bid (a **Notice**), up to the greater of (a) 10% of the Public Float as at the date specified in the Notice, or (b) 5% of such class of securities issued and outstanding as at the date specified in the Notice.
10. Other than purchases made on U.S. Markets in reliance on this decision, purchases by the Filer under issuer bids made in the normal course through U.S. Markets and alternative trading platforms in Canada are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set forth in section 4.8(3) of NI 62-104 (the **Other Published Markets Exemption**). The Other Published Markets Exemption provides that an issuer bid made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer, and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.
11. As at December 31, 2023, the Filer had purchased an aggregate of 1,041,804 Shares under the Current Bid. Of those 1,041,804 Shares, 740,762 Shares were purchased on the TSX, 243,818 Shares were purchased on alternative trading platforms located in Canada, nil Shares were purchased on the NYSE American, and 57,224 Shares were purchased on U.S. Markets other than the NYSE American.
12. For the 12-month period ended December 31, 2022, an aggregate of 245,609,676 Shares were traded over published markets in Canada and the United States, with trading volumes having occurred as follows:
 - (a) 38,080,003 Shares (or approximately 16% of total aggregate trading) over the facilities of the TSX;

B.3: Reasons and Decisions

- (b) 42,367,747 Shares (or approximately 17% of total aggregate trading) over alternative trading platforms in Canada;
 - (c) 10,943,708 Shares (or approximately 4% of total aggregate trading) over the facilities of the NYSE American; and
 - (d) 154,218,218 Shares (or approximately 63% of total aggregate trading) over the U.S. Markets other than the NYSE American.
13. For the 12-month period ended December 31, 2023, an aggregate of 123,386,010 Shares were traded over published markets in Canada and the United States, with trading volumes having occurred as follows:
- (a) 15,551,893 Shares (or approximately 13% of total aggregate trading) over the facilities of the TSX;
 - (b) 17,823,728 Shares (or approximately 14% of total aggregate trading) over alternative trading platforms in Canada;
 - (c) 10,072,666 Shares (or approximately 8% of total aggregate trading) over the facilities of the NYSE American; and
 - (d) 79,937,723 Shares (or approximately 65% of total aggregate trading) over the U.S. Markets other than the NYSE American.
14. The Filer's daily trading volume of the Shares on the U.S. Markets is greater than on the TSX for a significant majority of trading days. Compared to the TSX, trading volume of the Shares on the U.S. Markets was greater on approximately 75% of the trading days in 2022 and approximately 97% of the trading days in 2023 on which both the TSX and the NYSE American were open for trading. The Filer expects that, over the course of the Proposed Bids, the trading volume of the Shares on the U.S. Markets will continue to be significantly greater than the trading volume of the Shares on the TSX.
15. As a significant volume of Shares have historically traded through the U.S. Markets, the Filer wishes to have the ability to make repurchases under the Current Bid and any Normal Course Issuer Bid that may be implemented by the Filer following expiry of the Current Bid (collectively, with the Current Bid, the **Proposed Bids**) over the U.S. Markets in excess of the maximum allowable in reliance on the Other Published Markets Exemption up to the maximum aggregate share limit authorized and approved by its board of directors and permissible by the TSX.
16. Purchases in the U.S. under the Proposed Bids will be effected in accordance with all applicable securities laws, including the 1934 Act and the rules and regulations of the SEC made pursuant thereto, and any applicable by-laws, rules, regulations or policies of the U.S. Markets on which the purchases are carried out (collectively, the **Applicable U.S. Rules**).
17. In connection with the Proposed Bids, the Filer will rely on the "safe harbour" from liability for manipulation under the 1934 Act provided by Rule 10b-18 under the 1934 Act (**Rule 10b-18**) for purchases made on U.S. Markets and will conduct any such purchases in accordance with the parameters set forth therein. Pursuant to Rule 10b-18, all purchases made by or on behalf of the Filer through U.S. Markets:
- (a) are required to be made through only one broker or dealer on any single day;
 - (b) cannot be the opening purchase of a trading session and cannot be made during the 10 minutes before the scheduled close of a trading session;
 - (c) cannot exceed the highest published independent bid or last reported independent transaction price on the relevant U.S. Market (whichever is higher); and
 - (d) cannot exceed, on any single day, an aggregate amount equal to 25% of the average daily trading volume over the U.S. Markets, calculated in accordance with Rule 10b-18 (provided one block purchase per week may be effected in compliance with the calculation in Rule 10b-18(b)(4)).
18. Purchases of Shares by the Filer of up to 10% of the Public Float on U.S. Markets are permitted under the Applicable U.S. Rules. Under the Applicable U.S. Rules, there is no aggregate limit on the number of Shares that may be purchased by the Filer through the facilities of U.S. Markets.
19. The purchase of Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.
20. The Filer believes that the Proposed Bids are in the best interests of the Filer.

21. No other exemptions exist under the Legislation that would permit the Filer to continue to make purchases pursuant to the Proposed Bids through the U.S. Markets on an exempt basis once the Filer has purchased, within a 12-month period, 5% of the outstanding Shares in reliance on the Other Published Markets Exemption.

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 Proposed Bids are permitted under the Applicable U.S. Rules, and are established and conducted in accordance and compliance with the Applicable U.S. Rules and in reliance on Rule 10b-18;
- (b) the Notice of Intention to Make a Normal Course Issuer Bid accepted by the TSX in respect of any Proposed Bid that may be implemented by the Filer specifically contemplates that purchases under such bid will also be effected through the U.S. Markets;
- (c) purchases of Shares under a Proposed Bid in reliance on this decision shall only be made:
 - (i) in compliance with Part 6 (Order Protection) of National Instrument 23-101 *Trading Rules*;
 - (ii) at a price which complies with the requirements of paragraph 4.8(3)(c) of NI 62-104; and
 - (iii) in accordance with the TSX NCIB Rules.
- (d) the Exemption Sought applies only to the acquisition of Shares by the Filer completed within 36 months of the date of this decision pursuant to a Proposed Bid in effect at such time;
- (e) prior to purchasing Shares under a Proposed Bid in reliance on this decision, the Filer issues and files a press release setting out the terms of the Exemption Sought and the conditions applicable thereto;
- (f) the Filer does not acquire Shares in reliance on the Other Published Markets Exemption if the aggregate number of Shares purchased by the Filer, and any person or company acting jointly or in concert with the Filer, in reliance on this decision and the Other Published Markets Exemption within any period of 12 months exceeds 5% of the outstanding Shares on the first day of such 12 month period; and
- (g) the aggregate number of Shares purchased pursuant to a Proposed Bid in reliance on this decision, the Designated Exchange Exemption and the Other Published Markets Exemption does not exceed, over the 12-month period specified in the Notice of Intention to Make a Normal Course Issuer Bid in respect of the relevant Proposed Bid, 10% of the Public Float as specified in such Notice of Intention to Make a Normal Course Issuer Bid.

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

B.3.4 Exxon Mobil Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities – less than 10% of any class or series of filer's securities are beneficially owned by residents of Canada – filer to remain a U.S. issuer and a SEC foreign issuer – relief conditional on filer complying with oil and gas disclosure requirements of the SEC and the NYSE and filing such disclosure, and other conditions.

Applicable Legislative Provisions

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

Citation: *Re Exxon Mobil Corporation*, 2024 ABASC 27

February 14, 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
EXXON MOBIL 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**) exempting the Filer from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**).

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province of Canada, other than Ontario, 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**) or National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) 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 governed by the laws of the State of New Jersey, with its head office in Spring, Texas.
2. The Filer is a reporting issuer in each province of Canada (collectively, the **Reporting Jurisdictions**) and is not in default of securities legislation in any of the Reporting Jurisdictions. The Filer became a reporting issuer in the Reporting Jurisdictions following its acquisition of all issued and outstanding common shares of Denbury Inc., pursuant to an agreement and a plan of merger, which was completed on November 2, 2023.
3. The Filer's authorized capital stock consists of 9 billion shares of common stock of the Filer (**Common Shares**) and 200 million shares of preferred stock, without par value (**Preferred Shares**). As of December 31, 2023, there were approximately 3.973 billion Common Shares and no Preferred Shares outstanding.
4. The Filer has issued the following notes under its U.S. shelf registration statement, which remain outstanding in the following principal amounts: (a) USD 1.0 billion aggregate principal amount of 3.176% notes due 2024; (b) USD 1.0 billion aggregate principal amount of 2.019% notes due 2024; (c) USD 1.75 billion aggregate principal amount of 2.709% notes due 2025; (d) USD 2.781 billion aggregate principal amount of 2.992% notes due 2025; (e) USD 2.5 billion aggregate principal amount of 3.043% notes due 2026; (f) USD 1.0 billion aggregate principal amount of 2.275% notes due 2026; (g) USD 1.0 billion aggregate principal amount of 3.294% notes due 2027; (h) USD 1.25 billion aggregate principal amount of 2.440% notes due 2029; (i) USD 2.0 billion aggregate principal amount of 3.482% notes due 2030; (j) USD 2.0 billion aggregate principal amount of 2.610% notes due 2030; (k) USD 0.75 billion aggregate principal amount of 2.995% notes due 2039; (l) USD 2.084 billion aggregate principal amount of 4.227% notes due 2040; (m) USD 1.0 billion aggregate principal amount of 3.567% notes due 2045; (n) USD 2.5 billion aggregate principal amount of 4.114% notes due 2046; (o) USD 1.5 billion aggregate principal amount of 3.095% notes due 2049; (p) USD 2.75 billion aggregate principal amount of 4.327% notes due 2050; (q) USD 2.75 billion aggregate principal amount of 3.452% notes due 2051; (r) EUR 1.5 billion aggregate principal amount of 0.142% notes due 2024; (s) EUR 1.0 billion aggregate principal amount of 0.524% notes due 2028; (t) EUR 1.0 billion aggregate principal amount of 0.835% notes due 2032; and (u) EUR 1.0 billion aggregate principal amount of 1.408% notes due 2039 (collectively, the **Notes**).
5. None of the Notes are convertible or exchangeable into other voting or equity securities of the Filer. All of the Notes were initially issued primarily in the United States.
6. The Common Shares and the Notes are registered under the 1934 Act. The Common Shares are listed on the New York Stock Exchange (the **NYSE**) under the symbol "XOM".
7. 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 NYSE (collectively, the **U.S. Rules**).
8. 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.
9. 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.
10. Based on the Filer's list of registered shareholders provided by its registrar and transfer agent, as of December 15, 2023, the Applicant had 3.994 billion Common Shares outstanding, of which 753,000 Common Shares (representing approximately 0.02% of the total outstanding Common Shares) are held by 1,026 registered shareholders resident in Canada.
11. Beneficial holders of the Common Shares as of December 31, 2023 held approximately 3.763 billion Common Shares (representing approximately 95% of the total outstanding Common Shares) on that date. Based on information obtained by the Filer from Broadridge Financial Solutions Inc. (**Broadridge**), which conducted geographical surveys of beneficial holders of the Common Shares as of December 15, 2023, Canadian beneficial shareholder accounts held approximately 94,665,000 Common Shares, which equated to approximately 2.37% of the total outstanding Common Shares on the register and approximately 2.5% of the Common Shares represented in the beneficial shareholder information.
12. The Filer has made a good faith investigation to confirm the residency of the holders of its outstanding securities. The investigation included obtaining geographical surveys of beneficial holders of Common Shares and Notes from Broadridge, a list of registered holders of Common Shares from Computershare Trust Company, N.A. and a breakdown of the residency of initial investors for each series of the Notes from J.P. Morgan Securities LLC. Based on this investigation, the Filer has concluded that residents of Canada

B.3: Reasons and Decisions

- (a) do not directly or indirectly beneficially own more than 10% of the Common Shares,
 - (b) do not directly or indirectly beneficially own more than 10% of the aggregate principal amount of any class or series of the Notes, and
 - (c) do not directly or indirectly comprise more than 10% of the aggregate number of registered and beneficial holders of the Common Shares or any class or series of the Notes.
13. Neither the Common Shares nor the Notes are 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 or the Notes 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.

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2024/0007

B.3.5 Kingwest & Company et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) and 15.1.1 of National Instrument 81-102 Investment Funds to permit a prospectus qualified alternative mutual fund that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months to include in its sales communications past performance data relating to a period when the fund's securities were previously distributed to investors on a prospectus-exempt basis and to use this past performance data to calculate its investment risk level in accordance with Appendix F Investment Risk Classification Methodology – Alternative mutual fund is managed substantially similarly after it became a reporting issuer as it was during the period prior to becoming a reporting issuer and has similar fee and expense structure.

Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus to permit the alternative mutual fund to use the past performance data for a period when its securities were offered on a prospectus-exempt basis to calculate its investment risk rating in its simplified prospectus, and Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document to permit the alternative mutual fund to include in its fund facts document past performance data for a period when the fund was offered on a prospectus-exempt basis.

Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, to permit the alternative mutual to include in its annual and interim management reports of fund performance the past performance and financial data relating to a period when the fund was previously offered on a prospectus-exempt basis.

Statutes Cited

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1 and 19.1.

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

Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus.

Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document.

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.

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

February 14, 2024

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

AND

**IN THE MATTER OF
KINGWEST & COMPANY
(the Filer)**

AND

**IN THE MATTER OF
THE KINGWEST CANADIAN EQUITY PORTFOLIO
THE KINGWEST U.S. EQUITY PORTFOLIO
THE KINGWEST AVENUE PORTFOLIO
(the Portfolios)**

DECISION

Background

The regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Portfolios (where a **Portfolio** shall mean any one of the Portfolios) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Portfolios from:

- (a) Sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), and 15.8(3)(a.1) of National Instrument 81-102 *Investment Funds (NI 81-102)* to permit each Portfolio to include its past performance data in sales communications notwithstanding that: (i) the performance data will relate to a period prior to the Portfolio offering its securities under a simplified prospectus; and (ii) the Portfolio has not distributed its securities under a simplified prospectus for 12 consecutive months;
- (b) Section 15.1.1(a) of NI 81-102 and Items 2 and 4 of Appendix F - *Investment Risk Classification Methodology* to NI 81-102 (**Appendix F**) to permit each Portfolio to include its past performance data in determining its investment risk level in accordance with Appendix F;
- (c) Section 15.1.1(b) of NI 81-102 and Item 4(2)(a) and Instruction (1) of Item 4 of Form 81-101F3 *Contents of Fund Facts Document (Form 81-101F3)* to permit each Portfolio to disclose its investment risk level as determined by including its past performance data in accordance with Appendix F;
- (d) With respect to Form 81-101F1 *Contents of Simplified Prospectus (Form 81-101F1)*, Item 10(b) of Part B of Form 81-101F1 to permit each Portfolio to use its past performance data to calculate its investment risk rating in its simplified prospectus;
- (e) Section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)* for the purposes of the relief requested herein from Form 81-101F1 and Form 81-101F3;
- (f) Items 5(2), 5(3), and 5(4), and Instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with Sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), and 15.8(3)(a.1) of NI 81-102 to permit each Portfolio to include in its fund facts documents past performance data of the Portfolio notwithstanding that: (i) the performance data relates to a period prior to the Portfolio offering its securities under a simplified prospectus; and (ii) the Portfolio has not distributed its securities under a simplified prospectus for 12 consecutive months;
- (g) Section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)* for the purposes of the relief requested herein from Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance (Form 81-106F1)*; and
- (h) Items 3.1(7) and 4.1(1) in respect of the requirement to comply with Sections 15.3(2) and 15.3(4)(c) of NI 81-102, 4.1(2), 4.2(1), 4.3(1), and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit each Portfolio to include in its annual and interim management reports of fund performance (individually, a **MRFP** and, collectively, the **MRFPs**) past performance data and financial highlights notwithstanding that such performance data and financial highlights relate to a period prior to the Portfolio offering its securities under a simplified prospectus;

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

Interpretation

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

Representations

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

The Filer and the Portfolios

1. The Filer is a partnership organized under the laws of Province of Ontario with its head office and principal place of business located in Toronto, Ontario.
2. The Filer is registered as an investment dealer and investment fund manager in the provinces of Ontario, Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia and as an investment dealer, investment fund manager and derivatives dealer in the Province of Québec.
3. The Filer initially launched each Portfolio as an open-end investment fund established as a trust under the laws of Ontario, on June 16, 1995 (the **Inception Date**) pursuant to a master trust agreement, as amended, restated, and/or supplemented from time to time.
4. Each Fund is, or will be, a mutual fund to which NI 81-102 applies.

5. The Filer is the manager, portfolio advisor, promoter and principal distributor of the Portfolios. RBC Investor Services Trust is the trustee of the Portfolios.
6. The Filer and the Portfolios are not in default of securities legislation in any Canadian Jurisdiction.

The Exemption Sought

7. Since the Inception Date, units of the Portfolios have been offered to investors on a private placement basis in accordance with National Instrument 45-106 *Prospectus Exemptions* in one or more Jurisdictions other than Ontario and in accordance with the *Securities Act* (Ontario) in Ontario.
8. The Portfolios intend to offer one or more series units to the public in the Province of Ontario pursuant to a simplified prospectus and fund facts documents (the **Public Offering**). Each of the Portfolios has filed a preliminary simplified prospectus and preliminary fund facts documents with the regulator in the Jurisdiction and expects to file a final simplified prospectus and final fund facts documents as soon as practicable thereafter. Upon issuance of a receipt for the final simplified prospectus, each Portfolio will become a reporting issuer in the Province of Ontario and will become subject to the requirements of NI 81-102 and NI 81-106.
9. Since the Inception Date, each Portfolio has prepared audited annual financial statements and unaudited interim financial statements in accordance with NI 81-106.
10. Since the Inception Date, each Portfolio has complied with the investment restrictions and practices contained in NI 81-102 applicable to mutual funds.
11. Each Portfolio will be managed in substantially the same manner after it becomes a reporting issuer as it was prior to becoming a reporting issuer.
12. In connection with each Portfolio becoming a reporting issuer:
 - (a) the investment objective of the Portfolio will not change;
 - (b) the management fees charged on the series of units of the Portfolio offered under the Public Offering will not be higher than the management fees charged on the series of units of the Portfolio that are offered on a private placement basis;
 - (c) the day-to-day administration of each Portfolio will not change, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which will impact the portfolio management of the Portfolio) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the simplified prospectus and fund facts documents of the Portfolio; and
 - (d) the management expense ratio of each Portfolio is not expected to increase by more than 0.40%, which the Filer considers to be an immaterial amount.
13. The Filer proposes to present the performance data of the Portfolios for the time period since the Inception Date in sales communications pertaining to the Portfolios. Without the Exemption Sought, sales communications pertaining to the Portfolios could not include performance data of a Portfolio that relate to a period prior to it becoming a reporting issuer, and a Portfolio could not provide performance data in its sales communications until the Portfolio has distributed securities under a simplified prospectus for at least 12 consecutive months.
14. As a reporting issuer, each Portfolio will be required under NI 81-101 to prepare and file fund facts documents.
15. The Filer proposes to use the past performance data of each Portfolio to determine its investment risk level and to disclose that investment risk level in the simplified prospectus and the fund facts documents for each series of units of the Portfolio. Without the Exemption Sought, the Filer, in determining and disclosing a Portfolio's investment risk level in the simplified prospectus and the fund facts documents for each series of units of the Portfolio, could not use performance data of the Portfolio that relates to a period prior to the Portfolio becoming a reporting issuer.
16. The Filer proposes to include in the fund facts documents for each series of units of the Portfolios past performance data in the disclosure required by Items 5(2), 5(3) and 5(4) under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to the applicable Portfolio becoming a reporting issuer. Without the Exemption Sought, the fund facts document for each series of units of a Portfolio could not include performance data of the Portfolio that relate to a period prior to it becoming a reporting issuer.
17. As a reporting issuer, each Portfolio will be required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Exemption Sought, the MRFP of a Portfolio could not include financial highlights and performance data of the Portfolio that relate to a period prior to it becoming a reporting issuer.

18. The performance data and other financial data of each Portfolio for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors in the Portfolio.

Decision

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

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

- (a) any sales communication, fund facts document, and MRFP that contains performance data of units of a Portfolio relating to a period prior to when the Portfolio was a reporting issuer discloses:
 - (i) that the Portfolio was not a reporting issuer during such period;
 - (ii) that the expenses of the Portfolio would have been higher during such period had the Portfolio been subject to the additional regulatory requirements applicable to a reporting issuer;
 - (iii) that the Filer obtained exemptive relief on behalf of the Portfolio to permit the disclosure of performance data of the units of the Portfolio relating to a period prior to when the Portfolio was a reporting issuer; and
 - (iv) with respect to any MRFP, that the financial statements of the Portfolio for such period are posted on the Portfolio's website and are available to investors upon request; and
- (b) the Filer posts the annual financial statements of each Portfolio since the Inception Date on the Portfolio's designated website and makes those financial statements available to investors upon request.

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

Application File #: 2024/0058
SEDAR+ File #: 6080830

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
THERE IS NOTHING TO REPORT THIS WEEK.		

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

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

B.4.3 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
PlantFuel Life Inc.	January 30, 2024	
Odd Burger Corporation	January 30, 2024	

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B.7 Insider Reporting

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

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

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

B.9 IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:

BMG BullionFund
BMG Gold BullionFund
BMG Silver BullionFund
Principal Regulator – Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Feb 14, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06041719

Issuer Name:

Desjardins American Equity Index ETF
Desjardins Canadian Corporate Bond Index ETF
Desjardins Canadian Equity Index ETF
Desjardins Emerging Market Equity Index ETF
Desjardins International Equity Index ETF
Principal Regulator – Quebec

Type and Date:

Combined Preliminary and ProForma Long Form Prospectus dated Feb 8, 2024
NP 11-202 Preliminary Receipt dated Feb 15, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06082697

Issuer Name:

NewGen Alternative Income Fund
NewGen Focused Alpha Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated Feb 15, 2024
NP 11-202 Final Receipt dated Feb 16, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06084667

Issuer Name:

Mackenzie Portfolio Completion ETF
Principal Regulator – Ontario

Type and Date:

Amendment #2 to Final Long Form Prospectus dated July 27, 2023

NP 11-202 Final Receipt dated Feb 15, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #003545384

Issuer Name:

Desjardins 1-5 year Laddered Canadian Corporate Bond Index ETF
Desjardins 1-5 year Laddered Canadian Government Bond Index ETF
Desjardins Alt Long/Short Equity Market Neutral ETF
Desjardins Alt Long/Short Global Equity Markets ETF
Desjardins Canadian Preferred Share Index ETF
Desjardins Canadian Short Term Bond Index ETF
Desjardins Canadian Universe Bond Index ETF
Desjardins RI Developed ex-USA ex-Canada - Net-Zero Emissions Pathway ETF
Desjardins RI Emerging Markets - Net-Zero Emissions Pathway ETF
Desjardins SocieTerra American Equity ETF
Principal Regulator – Quebec

Type and Date:

Amendment #3 to Final Long Form Prospectus dated March 15, 2023

NP 11-202 Final Receipt dated Feb 16, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #03488817

B.9: IPOs, New Issues and Secondary Financings

Issuer Name:

Ridgewood Canadian Investment Grade Bond Fund
Principal Regulator – Ontario

Type and Date:

Combined Preliminary and ProForma Long Form
Prospectus dated Feb 15, 2024
NP 11-202 Preliminary Receipt dated Feb 16, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06085182

Issuer Name:

Mulvihill Canadian Bank Enhanced Yield ETF
Mulvihill U.S. Health Care Enhanced Yield ETF
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated Feb 15, 2024
NP 11-202 Final Receipt dated Feb 16, 2024

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Filing #06072020

NON-INVESTMENT FUNDS

Issuer Name:

Abaxx Technologies Inc.
Principal Regulator – Ontario

Type and Date:

Preliminary Shelf Prospectus dated Feb 15, 2024
NP 11-202 Preliminary Receipt dated Feb 15, 2024

Offering Price and Description:

\$100,000,000.00 - Common Shares, Warrants,
Subscription Receipts, Units, Debt Securities, Share
Purchase Contracts

Filing # 06084945

Issuer Name:

BriaCell Therapeutics Corp.
Principal Regulator – British Columbia

Type and Date:

Final Shelf Prospectus dated Feb 8, 2024
NP 11-202 Final Receipt dated Feb 13, 2024

Offering Price and Description:

US\$200,000,000.00 - Common Shares, Debt Securities,
Subscription Receipts, Warrants, Rights, Units

Filing # 06074282

Issuer Name:

Foran Mining Corporation
Principal Regulator – British Columbia

Type and Date:

Final Shelf Prospectus dated Feb 16, 2024
NP 11-202 Final Receipt dated Feb 16, 2024

Offering Price and Description:

\$200,000,000.00 - COMMON SHARES, WARRANTS,
SUBSCRIPTION RECEIPTS, UNITS, DEBT SECURITIES,
SHARE PURCHASE CONTRACTS

Filing # 6081068

Issuer Name:

Chicane Capital II Corp.
Principal Regulator – Ontario

Type and Date:

Preliminary CPC PROSPECTUS dated Feb 14, 2024
NP 11-202 Preliminary Receipt dated Feb 15, 2024

Offering Price and Description:

Minimum Offering: \$200,000.00 (2,000,000 Common
Shares)
Maximum Offering: \$250,000.00 (2,500,000 Common
Shares)

Price: \$0.10 per Common Share

Filing # 06084406

Issuer Name:

Double Deuce Exploration Corp.
Principal Regulator – British Columbia

Type and Date:

Preliminary Long Form dated Feb 15, 2024
NP 11-202 Preliminary Receipt dated Feb 16, 2024

Offering Price and Description:

4,000,000 Common Shares at a price of \$0.10 per
Common Share

Filing # 6085133

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B.10 Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	Citibank Canada Investment Funds Limited	From: Portfolio Manager, Exempt Market Dealer and Mutual Fund Dealer To: Portfolio Manager and Exempt Market Dealer	February 20, 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) – Housekeeping Amendments to the Auditor’s Report and Agreed-upon Procedures Report – Notice of Commission Deemed Approval

NOTICE OF COMMISSION DEEMED APPROVAL

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

HOUSEKEEPING AMENDMENTS TO THE AUDITOR’S REPORT AND AGREED-UPON PROCEDURES REPORT

The Ontario Securities Commission did not object to CIRO’s proposed housekeeping amendments that amend the auditor’s reports and agreed-upon procedures reports in Mutual Fund Dealer (**MFD**) Form 1 and Investment Dealer and Partially Consolidated (**IDPC**) Form 1, and update the relevant MFD and IDPC Rules to reflect the current name of the agreed-upon procedures report (the **Housekeeping Amendments**). The main objective of the Housekeeping Amendments is to conform the auditor’s report and agreed-upon procedures report in MFD Form 1 and IDPC Form 1 to new auditing standards, including the requirement in paragraph 30(m) of the Canadian Standard on Related Services 4400, *Agreed-upon Procedures Engagements* for the auditor to include a statement that the audit firm applied Canadian Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements or Other Assurance of Related Services Engagements*. As a result, the Housekeeping Amendments were deemed approved or non-objected to.

The Housekeeping Amendments are effective immediately.

In addition, the Alberta Securities Commission; the Autorité des marchés financiers; the British Columbia Securities Commission; the Financial and Consumer Affairs Authority of Saskatchewan; the Financial and Consumer Services Commission of New Brunswick; the Manitoba Securities Commission; the Northwest Territories Office of the Superintendent of Securities; the Nova Scotia Securities Commission; the Nunavut Office of the Superintendent of Securities; the Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; the Office of the Yukon Superintendent of Securities; and the Prince Edward Island Office of the Superintendent of Securities (together with the Ontario Securities Commission, the Recognizing Regulators) did not object to the classification of the Housekeeping Amendments and therefore the Housekeeping Amendments were deemed approved or non-objected to.

A copy of the CIRO Notice of Approval/Implementation, including the text of the approved Housekeeping Amendments, is also published on our website at www.osc.ca.

B.11.1.2 Canadian Investment Regulatory Organization (CIRO) – Amendments Regarding Margin Requirements for Structured Products – Notice of Commission Approval

NOTICE OF COMMISSION APPROVAL

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

AMENDMENTS REGARDING MARGIN REQUIREMENTS FOR STRUCTURED PRODUCTS

The Ontario Securities Commission has approved CIRO's proposed amendments to the Investment Dealer and Partially Consolidated (**IDPC**) Rules and IDPC Form 1 that allow qualifying structured products to be margin eligible (**Amendments**).

The main purpose of the Amendments is to set a margin methodology for structured products which considers the different risk profiles of the two main structured product types. The Amendments:

- require a fixed margin rate of 50% for principal at risk notes and 30% of principal protected notes that meet eligibility criteria;
- clarify the requirements for reporting concentration exposures in structured products on IDPC Form 1; and
- allow an alternative component-based margin methodology for structured products with a principal protection component.

The Investment Industry Regulatory Organization of Canada (**IIROC**), a predecessor entity to CIRO, initially published proposed amendments for comment in IIROC Rules Notice 21-0032, followed by a republication for comment in CIRO Rules Bulletin 23-0095. No comment letters were received in response to the second publication for comment. Non-material changes were made following the second publication to reflect the renumbering of certain rule subsections.

A copy of the CIRO Implementation Bulletin, including text of the Amendments, can be found at www.osc.ca.

The Amendments are effective immediately.

In addition, the Alberta Securities Commission; the Autorité des marchés financiers; the British Columbia Securities Commission; the Financial and Consumer Affairs Authority of Saskatchewan; the Financial and Consumer Services Commission of New Brunswick; the Manitoba Securities Commission; the Northwest Territories Office of the Superintendent of Securities; the Nova Scotia Securities Commission; the Nunavut Office of the Superintendent of Securities; the Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; the Office of the Yukon Superintendent of Securities; and the Prince Edward Island Office of the Superintendent of Securities have either not objected to or have approved the Amendments.

B.11.3 Clearing Agencies

B.11.3.1 CDS Clearing and Depository Services Inc. (CDS) – Proposed Amendments to CDS Fee Schedule – Lynx High-Value Payment System Fees – Notice of Material Rule Submission

NOTICE OF MATERIAL RULE SUBMISSION

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

**PROPOSED AMENDMENTS TO
CDS FEE SCHEDULE – LYNX HIGH-VALUE PAYMENT SYSTEM FEES**

CDS has submitted to the Commission proposed amendments to the CDS fee schedule related to the Lynx High-Value Payment System Fees.

CDS proposes to amend its fee schedule to pass through to CDS Participants the fees that the Bank of Canada charges CDS for Lynx System transactions.

The proposed amendments have been posted for public comment on CDS's [website](#). The comment period ends on March 25, 2024.

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