

August 8, 2023

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

AND

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

AND

IN THE MATTER OF
CAMBRIDGE MERCANTILE CORP.
(the Filer)

DECISION

Background

The Principal Regulator (as defined below) in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer and its officers, directors and representatives be exempt from

- (a) the dealer registration requirement (the **Dealer Registration Relief**), and
- (b) the prospectus requirement (the **Prospectus Relief**),

in the Legislation in respect of distributions of or other trades in OTC Derivatives (as defined below) in connection with the Filer's foreign exchange risk management and payment services business (the **Filer's FX Business**) made by

- i. the Filer to or with a "Permitted Counterparty" (as defined below) or an "Eligible Commercial Hedger" (as defined below), and
- ii. a Permitted Counterparty or an Eligible Commercial Hedger to or with the Filer

as the case may be, subject to the terms and conditions below (the **Requested Relief**).

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

1. the Ontario Securities Commission is the principal regulator for the Application (the **Principal Regulator**); and
2. the Filer has provided notice that, in the case of the Dealer Registration Relief and, in the jurisdictions where required, the Prospectus Relief, section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in

Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon (collectively, with Ontario, the **Applicable Jurisdictions**).

Interpretation

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

In this decision, the following terms have the following meanings:

“**Client**” means an Existing Client (as defined below) or a New Client (as defined below), as applicable;

“**Commercial Hedger**” means a person or company that carries on a business and that transacts in an OTC Derivative to hedge a risk in respect of that business associated with any of the following:

- (a) an asset that the person or company owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising;
- (b) a liability that the person or company incurs or reasonably anticipates incurring; or
- (c) a service which the person or company provides, purchases, or reasonably anticipates providing or purchasing;

“**Eligible Commercial Hedger**” means a person or company, other than an individual, that

- (a) is a Commercial Hedger in relation to the OTC Derivative that it transacts with the Filer; and
- (b) has represented to the Filer in writing that it has the requisite knowledge and experience to evaluate the information provided to the person or company about OTC Derivatives by the Filer, the suitability of the OTC Derivatives for the person or company, and the characteristics of the OTC Derivatives to be transacted on the person or company’s behalf;

“**OTC Derivative**” has the meaning ascribed to that term in Appendix A to this decision;

“**Option**” has the meaning ascribed to that term in Appendix A to this decision;

“**Permitted Counterparty**” means a person or company that is a “permitted client”, as that term is defined in section 1.1 [*Definition of terms used throughout this Instrument*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103); and

“**Underlying Interest**” has the meaning ascribed to that term in Appendix A to this decision.

Representations

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

The Filer

1. The Filer is incorporated under the *Business Corporations Act* (Ontario).
2. The Filer does business in Canada predominantly under the name Corpay.
3. The Filer was acquired by FLEETCOR Technologies, Inc. (**Fleetcor**) in August 2017. Fleetcor is a leading global provider of digital payment solutions that enables businesses to control purchases and make payments more effectively and efficiently. Fleetcor has been a member of the S&P 500 since 2018 and trades on the New York Stock Exchange under the ticker FLT.
4. The Filer is part of the Cross-Border Payments business of the Corporate Payments category of Fleetcor's portfolio of businesses known as Corpay Cross-Border.
5. The group of companies that make up Corpay Cross-Border have global operations with offices in Canada, the United States, the United Kingdom, Ireland, Spain, Italy, Sweden, Jersey, Australia, Singapore and Indonesia.
6. As part of the services offered, the Filer markets various financial products that allow businesses and, in some cases, individuals to hedge specific risks, including the risk of currency value fluctuations and to send and receive international payments. Such products include Forward Contracts and Options.
7. Affiliated entities of the Filer who are engaged in such businesses hold varying licenses and registrations in multiple jurisdictions, including those pertaining to money services businesses, money transmission and financial product service providers.
8. In Canada, Corpay Cross-Border currently operates predominantly through the Filer.
9. On June 9, 2022, Fleetcor agreed to acquire Global Reach Group (the **Acquisition**), the parent company of Global Reach Financial Solutions Inc. (**GRFS**). The Acquisition was completed on January 3, 2023. Currently, the Filer and GRFS will continue to operate as stand-alone entities until GRFS' clients are transitioned to the Filer and GRFS ceases to operate a cross-border payments business in Canada. GRFS operates its business pursuant to the following discretionary exemption rulings: *Global Reach Financial Solutions Inc. (Re)* (2020) 43 OSCB 8754 (the **GRFS 2020 Order**) and *Global Reach Financial Solutions Inc. (Re)* (2021) 44 O.S.C.B. 6847 (the **GRFS 2021 Order** and, together with the GRFS 2020 Order, the **GRFS Orders**) which provided that certain over-the-counter foreign exchange derivatives entered into between GRFS and certain counterparties were exempt from dealer registration and prospectus requirements on the terms and conditions set out in the GRFS Orders including business conduct and risk mitigation terms and conditions. The Filer operates and will continue to operate its business as a stand-alone entity and is not able to rely on the relief granted pursuant to the GRFS Orders.

10. The Filer is classified as a Money Services Business (**MSB**) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (**PCMLTFA**) and associated regulations. As a MSB, the Filer fully complies with anti-money laundering and anti-terrorist financing laws and regulations in Canada and, in particular, the Guidelines produced by the Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**).
11. The Filer is licensed as a MSB in the categories of currency exchange and fund transfer under the *Money-services Businesses Act (Quebec)* (**MSBA**).
12. The Filer is not registered under the securities, commodity futures or derivatives legislation of any of the provinces or territories of Canada in any capacity.
13. The Filer is currently offering foreign exchange and payment services to businesses in all provinces.
14. In respect of the provinces outside of the Jurisdiction, Quebec, Newfoundland and Labrador and Prince Edward Island, the Filer relies on exemptions for trading in OTC Derivatives with “Qualified Parties” set out in the following instruments:

Alberta	ASC Blanket Order 91-507 <i>Over-the-Counter Trades in Derivatives</i>
British Columbia	Blanket Order 91-501 <i>Over-the-Counter Derivatives</i>
Manitoba	Blanket Order 91-501 <i>Over-the-Counter Trades in Derivatives</i>
New Brunswick	Local Rule 91-501 <i>Derivatives</i>
Nova Scotia	Blanket Order 91-501 <i>Over the Counter Trades in Derivatives</i>
Saskatchewan	General Order 91-908 <i>Over-the-Counter Derivatives</i>

15. In Quebec, the Filer relies on the exemption for trading in OTC Derivatives with “accredited counterparties” set out in section 7 of the *Derivatives Act (Quebec)*.
16. The Filer does not currently trade in OTC Derivatives with Clients in Prince Edward Island.
17. The Filer is seeking the Requested Relief in the Applicable Jurisdictions in connection with the Application because the Principal Regulator and the regulators in the other Applicable Jurisdictions have not adopted blanket orders or local rules comparable to the above instruments and there is no comparable exemption in the *Securities Act (Ontario)* (**OSA**) or the securities legislation of the other Applicable Jurisdictions. Rather, the Filer understands that the Principal Regulator has historically considered applications for exemptive relief by firms seeking to trade OTC Derivatives on a case-by-case basis, pending the development of modernized derivatives business conduct and registration rules.

18. The Filer currently enters into OTC Derivatives with counterparties in the Jurisdiction and Newfoundland and Labrador which meet certain internally specified criteria and can demonstrate conclusively that they are hedging actual or anticipated commercial risks associated with fluctuations in the exchange rate between currencies (**Existing Clients**).
19. The Filer has outstanding OTC Derivatives transactions with Existing Clients and which have expiry or maturity dates beyond the effective date of this Decision (**Existing Transactions**). The Filer seeks to continue Existing Transactions pursuant to the terms under which such Existing Transactions were undertaken and consistent with the applicable requirements of the Terms and Conditions of the Relief.
20. The Filer intends to enter into arrangements for OTC Derivatives transactions (**New Transactions**) with counterparties in the Applicable Jurisdictions with whom it does not currently have arrangements (**New Clients**) consistent with all the requirements of the Terms and Conditions of the Relief.
21. The Filer does not and will not offer OTC Derivatives linked to bitcoin, ether or anything commonly considered a crypto asset, digital or virtual currency, or other novel or emerging asset classes to its Clients in the Applicable Jurisdictions.
22. The Filer is applying for the Requested Relief on a without prejudice basis and in the interest of obtaining regulatory certainty as to their status in the Applicable Jurisdictions. Other than in connection with the subject matter of this Application in the Jurisdiction and Newfoundland and Labrador, in respect of which the Filer makes no admission, the Filer is not in default of securities, commodity futures or derivatives legislation in any province or territory of Canada.

OSC staff position

23. OSC staff have advised the Filer that OTC Derivatives may, depending on the nature of the contract, the manner in which it is offered, the nature of the client, and the manner in which the underlying or reference asset is delivered or custodied, constitute or involve “securities” and “derivatives” for the purposes of Ontario securities law.
24. In support of this view, OSC staff have referred the Filer to the following OSC and CSA staff guidance and caselaw:
 - OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Staff Notice 91-702**) and the cases cited therein, including *Pacific Coast Coin Exchange v. Ontario (Securities Commission)* (the **Pacific Coast decision**), and subsequent exemptive relief decisions that have granted exemptive relief to investment dealers based on the guidance in OSC Staff Notice 91-702;
 - CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets*;

- Commission and Court decisions involving online trading platforms and evidences of ownership of a commodity, including “warehouse receipts”, for investment or speculative purposes;
 - Principal Regulator guidance in the Companion Policy to OSC Rule 91-506 *Derivatives: Product Determination (OSC Rule 91-506)* on when an FX derivative may be considered to qualify for the “spot currency exclusion” in s. 2(1)(c) of OSC Rule 91-506;
 - The GRFS Orders; and
 - *Convera Canada ULC (Re)* (2022) 45 O.S.C.B. 7269.
25. OSC staff have also advised the Filer that as rules are developed and implemented by the CSA that are specifically tailored to over-the-counter derivatives, the Filer will be subject to those rules or instruments in respect of the Filer’s trades in OTC Derivatives with Clients.

Proposed Conduct of OTC Derivative Transactions

26. Consistent with its Existing Transactions, the Filer proposes that New Transactions will be bilateral OTC Derivative transactions with counterparties located in the Applicable Jurisdictions that consist exclusively of persons or companies that are Permitted Counterparties or Eligible Commercial Hedgers. The Filer understands that the Permitted Counterparties and Eligible Commercial Hedgers would be entering into the OTC Derivative transactions for hedging purposes and not for speculative or investment purposes.
27. GRFS clients which are transitioned to the Filer and enter into New Transactions with the Filer (**Former GRFS Clients**) will be subject to the terms of the Requested Relief rather than the GRFS Orders. The Filer will provide each of the Former GRFS Clients with the terms of the Requested Relief and explain the differences between the Requested Relief and the GRFS Orders.
28. The Underlying Interest of the OTC Derivatives to be entered into between the Filer and a Permitted Counterparty or Eligible Commercial Hedger will consist of an actual or anticipated commercial or financial foreign currency asset or liability.
29. The Filer may provide early settlement limits and mark-to-market (**MTM**) limits before requiring margin or collateral, and may require a Client to deposit margin or collateral with the Filer in respect of its obligations in connection with an OTC Derivative transaction that is out of the money (**OTM**), as a means of managing the MTM risk that the Filer faces with Clients on OTM positions (where the MTM value of the OTC Derivative reflects a credit exposure to the Filer). A Client will be credit risk assessed to determine the maximum MTM exposure acceptable to the Filer. If the MTM exposure of a Client which is subject to margin terms exceeds the acceptable MTM limit, they will be required to post

additional collateral (or variation margin) to the Filer in order to maintain their position in the OTC Derivative.

30. Since Clients are not entering into OTC Derivatives transactions for speculative purposes, the Filer may stipulate a threshold amount in its contracts, which is the reference value of the MTM exposure of the OTC Derivative above which collateral has to be posted to the Filer. Higher credit risk Clients may additionally be required to post initial margin at the outset of an OTC Derivative transaction, as an extra cushion of support to protect the Filer against unexpected credit and operational risks. These risks can include problems such as operational error, large changes in MTM value of an OTC Derivative, as well as delays in receiving collateral.
31. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada.

Development of a modernized framework for OTC Derivatives

32. The Jurisdiction is in the process of establishing a framework for regulating the trading of derivatives in the Jurisdiction (the **Ontario Derivatives Framework**) through amendments to the OSA. The amendments to the OSA establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed.
33. On April 19, 2018, the Canadian Securities Administrators (the **CSA**) published a Notice and Request for Comment on the Proposed National Instrument 93-102 *Derivatives: Registration* (**Proposed NI 93-102**), and on January 20, 2022, the CSA published a Notice and Third Request for Comment on the Proposed National Instrument 93-101 *Derivatives: Business Conduct* (**Proposed NI 93-101**), which, together, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives.

Rationale for Requested Relief

34. The Filer acknowledges that the definitions of the terms “security” and “derivative” in the OSA are broad and agrees that Clients could benefit from the protection of additional risk disclosure delivered in connection with the exemption order. Accordingly, the Filer is willing to electronically deliver or make available an information statement or other offering document to Clients in order to more fully explain the structure, features and risks of the Filer’s OTC Derivatives, as more fully set out in Appendix B.
35. The Requested Relief would substantially address, for the Filer and its Clients, the regulatory uncertainty and fragmentation that is currently associated with the regulation of

OTC Derivative transactions in Canada, by permitting these parties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation of the Jurisdiction and each Applicable Jurisdiction on the basis of certain terms and conditions that are set forth in Proposed NI 93-101 and Proposed NI 93-102.

36. If the Requested Relief is granted, the Filer will comply with the terms and conditions of the Requested Relief including the Business Conduct and Risk Mitigation Terms and Conditions in Appendix B (collectively, the **Terms and Conditions of the Relief**).
37. The Filer acknowledges that the scope of the Requested Relief and the Terms and Conditions of the Relief may change as a result of developments in international and domestic capital markets or the Filer's activities, or as a result of any changes to the laws in the Applicable Jurisdictions affecting trading in derivatives, commodity futures contracts, commodity futures options or securities.

Books and Records

38. The Filer acknowledges that it is or will become a "market participant" for the purposes of the OSA if the Requested Relief is granted. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.
39. For the purposes of its compliance with subsection 19(1) of the OSA, the Filer will keep books and records that comply with the Terms and Conditions of the Relief.

Proficiency

40. The Filer represents that the third-party derivatives training courses which are currently available (such as the Canadian Securities Institute's Derivatives Fundamentals Course) are not well-suited to the nature of its OTC Derivatives activities. Such courses cover a wide variety of products and assets classes (including exchange-traded products), whereas the Filer's business is limited to over-the-counter foreign exchange derivative products used solely for commercial hedging purposes.
41. In order to ensure that the Filer's individual dealers (**Dealers**) have the proficiency required to carry out the Filer's OTC Derivatives activities, the Filer has developed a robust internal training program, focused on the fundamentals of commercial foreign exchange hedging, the specific OTC Derivatives products which it offers to Clients, and the policies and procedures implemented by the Filer.

42. The Filer provides a structured onboarding program for newly-hired Dealers which includes in-class markets compliance regulatory training as well as training related to the Filer's products, policies, and procedures (including its employee Code of Conduct). This is followed by annual markets compliance refresher modules which are delivered to Dealers through the Filer's online training platform. With respect to OTC Derivatives, the Filer's dealer training program is made up of three internal "courses" – Forward Foreign Exchange Contracts, Options Introduction (with modules covering foreign exchange market fundamentals, hedging principles, Options terminology, pricing considerations, and credit qualification/financial analysis), and Options Structures (with modules covering the Filer's more sophisticated hedging products, restructuring, and advanced hedging tools).
43. In addition to its training programs, leveraging the training methodology that the Filer's affiliated entities have applied in other highly-regulated jurisdictions, the Filer has implemented a Risk Management Accreditation Exam (the **Exam**) for Dealers. Dealers must achieve a passing mark on the Exam before they are considered suitable by their supervisor for dealing in derivative products. The Exam consists of approximately 40 questions focused on the three training modules relating to Forwards and Options products. The exam questions are varied in topic, including questions relating to definitions and terminology, scenario outcomes, product pricing, advantages and disadvantages of products. Supervisors are also required to pass the Exam.

Trade reporting

44. To the extent necessary and in respect of the OTC Derivative transactions, the Filer will comply or continue to comply with the derivatives trade reporting rules and instruments in effect in the Applicable Jurisdictions.

Decision

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

The decision of the Principal Regulator is that the Requested Relief is granted, provided that:

- (a) the Filer takes reasonable steps and documents such steps in writing to ensure that the Filer solicits and transacts in OTC Derivatives only with Clients in the Applicable Jurisdictions that are Permitted Counterparties or Eligible Commercial Hedgers;
- (b) the Filer conducts all OTC Derivatives transactions with Clients including Former GRFS Clients in compliance with the Terms and Conditions of the Relief;
- (c) prior to first entering into an OTC Derivative transaction with a Client, the Filer has

- (i) provided to the Client the Risk Disclosure Document (as defined in Appendix B) and has delivered, or has previously delivered, a copy of the form of Risk Disclosure Document provided to that Client to the Principal Regulator; and
 - (ii) obtained a written or electronic acknowledgement from such Client, confirming that such Client has received, read and understood the Risk Disclosure Document;
- (d) the Filer remains in compliance with the requirements of the PCMLTFA, the MSBA and FINTRAC that apply to the Filer;
 - (e) the Filer has furnished to the Principal Regulator the name and principal occupation of its officers and directors, together with the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information* completed by any officer or director;
 - (f) the Filer will not provide advice or make a recommendation to a client or prospective client in relation to securities or derivatives, other than in connection with the Filer's FX Business and in accordance with the Terms and Conditions of the Relief. For clarity, the Filer may provide general information through its website or other marketing materials about the merits of an FX transaction provided the general advice is fair, balanced and not misleading, and the Filer may provide Clients with risk management advice and recommendations incidental to its FX products in accordance with the Terms and Conditions of the Relief. The Filer will not operate a managed account as that term is defined in section 1.1 of NI 31-103;
 - (g) the Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Filer, being any change in the business, activities, operations or financial results or condition of the Filer that may reasonably be perceived by a client to be material;
 - (h) the Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Filer concerning the conduct of activities with respect to OTC Derivatives;
 - (i) the Filer shall promptly inform the Principal Regulator in writing of the issuance of an order or decision by a court, a Commission or other similar regulatory body in or outside of Canada, that suspends or terminates the ability of any member of Corpay Cross-Border to trade OTC Derivatives;
 - (j) the Requested Relief shall immediately expire upon the earliest of
 - A. four years from the date that this Decision is issued;
 - B. 90 days after the date of registration of the Filer under securities, commodity futures or derivatives legislation in any jurisdiction in Canada; and

C. the coming into force of legislation or a rule in the Applicable Jurisdictions regarding business conduct obligations for OTC Derivatives

(the **Interim Period**).

“Elizabeth King”

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

APPENDIX A
Definitions

“Clearing Corporation” means an association or organization through which Options or futures contracts are cleared and settled.

“Forward Contract” means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (a) make or take delivery of the Underlying Interest of the agreement; or
- (b) settle in cash instead of delivery.

“Option” means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

- (a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.
- (b) purchase a specified quantity of the Underlying Interest of the Option.
- (c) sell a specified quantity of the Underlying Interest of the Option.

“OTC Derivative” means one or more of, or any combination of, an Option, a Forward Contract, or any instrument of a type commonly considered to be a derivative, in which:

- (a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, swap or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;
- (b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and
- (c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

“Underlying Interest” means, for a derivative, the commodity, interest rate, actual or anticipated commercial or financial foreign currency asset or liability, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if

applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

APPENDIX B
Business Conduct and Risk Mitigation
Terms and Conditions

Part I – Risk disclosure [*All Clients*]

Risk Disclosure Document

1. The Filer will, prior to a New Client’s first OTC Derivatives Transaction with the Filer, and as part of the account-opening process, provide the New Client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the **Risk Disclosure Document**). The Filer will also provide the Risk Disclosure Document to all Existing Clients. The Risk Disclosure Document will include a plain language description of the structure, features and risks of the OTC Derivative, and the potential risks to the Client in the event of the bankruptcy or insolvency of the Filer.
2. The Risk Disclosure Document will clearly explain, in plain language, that the Filer is not registered under the securities, commodity futures or derivatives laws of any jurisdiction of Canada and that client assets are not protected under the Canadian Investor Protection Fund (**CIPF**), the U.S. Securities Investor Protection Corporation, or equivalent protections.
3. Prior to each New Client’s first OTC Derivatives Transaction, the Filer will also obtain a written or electronic acknowledgement from such New Client confirming that such New Client has received, read and understood the Risk Disclosure Document. Such acknowledgment will be separate from and prominent among other acknowledgements provided by the New Client as part of the account-opening process.
4. For each Existing Client the Filer will also obtain a written or electronic acknowledgement from such Existing Client confirming that such Existing Client has received, read and understood the Risk Disclosure Document.
5. Within two weeks of the Principal Regulator granting the Decision, the Filer will ensure
 - (a) that the Risk Disclosure Document to be provided to the Filer’s Clients is updated to include a reference to and a copy of or link to this Decision; and
 - (b) a complete copy of the Risk Disclosure Document to be provided to the Filer’s Clients is delivered to the Principal Regulator.

Part II – Core business conduct obligations [*All Clients*]

Acting fairly, honestly and in good faith

6. The Filer shall act and shall take reasonable steps to cause each individual acting on its behalf to act fairly, honestly and in good faith with Clients.

Conflicts of interest

7. The Filer will establish, maintain and apply reasonable policies and procedures to identify existing material conflicts of interest, and material conflicts of interest that the Filer in its reasonable opinion would expect to arise, between the Filer, including each individual acting on behalf of the Filer, and a Client of the Filer.
8. The Filer will respond to an existing or potential conflict of interest identified under the preceding paragraph. If a Client of the Filer, acting reasonably, would expect to be informed of a conflict of interest identified under the preceding paragraph, the Filer will disclose, in a timely manner, the nature and extent of the conflict of interest to the Client whose interest conflicts with the interest identified.
9. The Filer will comply, and will take reasonable steps to cause each individual acting on its behalf to act to comply, with the enhanced conflicts of interest provisions in section 13.4 and 13.4.1 of NI 31-103 as if the Filer were a “registered firm” and individuals acting on behalf of the Filer were “registered individuals”.

Gatekeeper know-your-client (KYC) obligations

10. The Filer will establish, maintain and apply reasonable policies and procedures to
 - (a) obtain facts necessary to comply with applicable legislation, including the PCMLTFA, relating to the verification of a Client’s identity,
 - (b) establish the identity of a Client and, if the Filer has cause for concern, make reasonable inquiries as to the reputation of the Client,
 - (c) if the Filer will, as a result of its relationship with a Client have any credit risk in relation to the client, establish the creditworthiness of the Client.
11. For the purpose of establishing the identity of a Client that is a corporation, partnership or trust, the Filer will establish the following:
 - (a) the nature of the Client’s business;
 - (b) the identity of any individual who meets either of the following:
 - (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;

- (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.
- 12. The Filer will take reasonable steps to keep the information required under the preceding two paragraphs current. The requirement in the preceding two paragraphs does not apply if the client is a registered firm or a Canadian financial institution.

Proficiency

- 13. The Filer will ensure that each of its Dealers has the appropriate education, training, and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features, and risks of each OTC Derivative that the Dealer transacts.

Handling Complaints

- 14. The Filer will document and, in a manner that a reasonable person would consider fair and effective, promptly respond to each complaint made to the Filer about any OTC Derivatives product offered by the Filer or an individual acting on behalf of the Filer.
- 15. The Filer will include in the Risk Disclosure Document disclosure that clearly explains, in plain language, that the Filer is not a registered dealer in any jurisdiction in Canada and as such is not required to make available to Clients the services of an independent dispute resolution or mediation service such as the Ombudsman for Banking Services and Investments (**OBSI**).

Trade Confirmation

- 16. The Filer will promptly deliver a written confirmation of the OTC Derivatives transaction to either of the following:
 - (a) the Client;
 - (b) if the Client has consented in writing, a registered adviser acting for the client.

For purposes of this paragraph 16 delivery shall include making a confirmation available to the Client on the Filer's electronic platform.

Tied Selling Restriction

- 17. The Filer will not impose undue pressure on or coerce a person or company to obtain an OTC Derivatives-related product or service from a particular person or company, including the Filer or any of its affiliated entities, as a condition of obtaining another product or service from the Filer.

Part III – Supplemental business conduct obligations for certain Clients

18. The Filer must comply with the requirements in this Part in relation to all Clients, other than
 - (a) a Client that is a Permitted Counterparty or
 - (b) a Client that is an Eligible Commercial Hedger, if the Filer has provided the Eligible Commercial Hedger with a copy of this Decision including Appendices and the Eligible Commercial Hedger has provided the Filer with a written waiver confirming that they do not wish to receive the protections provided in this Part.

Client-specific needs and objectives

19. The Filer will take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a Client to transact in an OTC Derivative, it has sufficient information regarding all of the following to enable it to meet its obligations under paragraph 21 [*Suitability*]:
 - (a) the Client's needs and objectives with respect to its transacting in OTC Derivatives;
 - (b) the Client's financial circumstances;
 - (c) the Client's risk tolerance;
 - (d) if applicable, the nature of the Client's business and the operational risks it wants to manage.
20. The Filer will take reasonable steps to keep the information required under the preceding paragraph current.

Suitability

21. The Filer, or an individual acting on behalf of the Filer, must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a Client to transact in an OTC Derivative, both the OTC Derivative and the transaction are suitable for the Client.
22. If a Client instructs the Filer, or an individual acting on behalf of the Filer, to transact in an OTC Derivative and, in the Filer's reasonable opinion, following the instruction would result in a transaction that is not suitable for the Client, the Filer must inform the Client in writing of the Filer's opinion and must not transact in the OTC Derivative unless the Client instructs the Filer to proceed anyway.

23. The Filer will comply, and will take reasonable steps to cause each individual acting on its behalf to act to comply, with the enhanced know-your-client, know-your product and suitability obligations Division 1 of Part 13 of NI 31-103 as if the Filer were a “registered firm” and individuals acting on behalf of such Filer were “registered individuals”.

Permitted referral arrangements

24. Neither the Filer, nor any individual acting on behalf of the Filer, will, following the date of this Decision, participate in a referral arrangement in respect of an OTC Derivative with another person or company unless all of the following apply:
- (a) before a Client is referred to the Filer, the terms of the referral arrangement are set out in a written agreement between the Filer and the person or company;
 - (b) the Filer records all referral fees;
 - (c) the Filer, or the individual acting on behalf of the Filer, ensures that the information prescribed above is provided to the Client in writing before the Filer or the individual receiving the referral either opens an account for the Client or provides services to the Client.
25. The Filer, or an individual acting on behalf of the Filer, will not refer a Client to another person or company in respect of an OTC Derivative.
26. The written disclosure of the referral arrangement required by paragraph 24 must include all of the following:
- (a) the name of each party to the agreement;
 - (b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;
 - (c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;
 - (d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;
 - (e) the category of registration, or exemption from registration relied upon, of each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the agreement with a description of the activities that the derivatives firm or individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;
 - (f) any other information that a reasonable Client would consider important in evaluating the referral arrangement.

27. If there is a change to the information set out in the previous paragraph, the Filer must ensure that written disclosure of that change is provided to each Client affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.
28. The Filer will comply, and will take reasonable steps to cause each individual acting on its behalf to act to comply, with the enhanced referral arrangement provisions in sections 13.7 to 13.10 of NI 31-103 as if the Filer were a “registered firm” and individuals acting on behalf of such Filer were “registered individuals”.

Part IV –Restrictions [*All Clients*]

Restriction on lending

29. In connection with the Filer’s OTC Derivatives business, except as described in paragraphs 23 – 24, inclusive, of the Decision, the Filer will not lend money, extend credit or provide margin to a client.

Restriction on advising or managed accounts

30. The Filer is not registered to provide advice in relation to investments involving securities or derivatives. Accordingly, except as described below, the Filer will not advise a Client or prospective client about the merits of an investment in securities or derivatives or recommend or represent that an investment in securities or derivatives is a suitable investment for the Client or prospective client.
31. For clarity, the Filer may provide general information through its website or other marketing materials about the Filer’s views as to the merits of an FX transaction or strategy provided such advice is fair, balanced and not misleading and the advice is not directed at or tailored to the needs of the particular person or company receiving the information, and the Filer may provide Clients with risk management advice and recommendations as to FX products or strategies for hedging purposes relative to the Client’s specific circumstances and objectives.
32. The Filer will not operate a managed account as that term is defined in section 1.1 of NI 31-103.

Restriction on contracts linked to novel or emerging asset classes

33. The Filer will not offer OTC Derivatives linked to bitcoin, ether, cryptocurrencies or other novel or emerging asset classes, or options or other derivatives thereon, to Clients in the Applicable Jurisdictions without the prior written consent of the Principal Regulator in the Jurisdiction or the relevant regulator in the other Applicable Jurisdictions.

Part V – Client account obligations for certain Clients

34. The Filer must comply with the requirements in this Part in relation to all Clients, other than
- (a) a Client that is a Permitted Counterparty; or
 - (b) a Client that is an Eligible Commercial Hedger, if the Filer has provided the Eligible Commercial Hedger with a copy of this Decision including Appendices and the Eligible Commercial Hedger has provided the Filer with written waiver confirming that they do not wish to receive the protections provided in this Part.

Relationship disclosure information

35. For the purposes of a requirement in this Decision to deliver a document or provide disclosure to a Client, including client relationship disclosure, trade confirmations and account statements, the Filer may deliver the document or provide the disclosure to the client in electronic form if the Client has previously provided written consent to receive such documents in electronic form.
36. The Filer will, prior to a New Client's first transaction in an OTC Derivative, and as part of the account-opening process, provide the New Client with all information that a reasonable person would consider important about the New Client's relationship with the Filer.
37. Without limiting the foregoing, the information delivered to a Client described in paragraph 36 must include all of the following:
- (a) a description of the nature or type of such Client's account;
 - (b) a description of any conflicts of interest that the Filer is required to disclose to such Client under this decision;
 - (c) disclosure of the fees or other charges such Client might be required to pay related to such Client's account;
 - (d) a general description of the types of transaction fees or other charges such Client might be required to pay in relation such Client's account;
 - (e) a general description of any compensation paid to the Filer by any other party in relation to such Client's transactions in OTC Derivatives;
 - (f) disclosure of the Filer's obligations under this decision if such Client has a complaint;
 - (g) a statement that the Filer is not registered to provide advice in relation to investments involving securities or derivatives; and

- (h) the information the Filer must collect about such Client under the Decision, including the Filer's obligations to collect *Gatekeeper know-your-client (KYC) information*.

38. The Filer must deliver the information in the preceding paragraph to the New Client in writing before the Filer transacts in an OTC Derivative with, for or on behalf of the New Client. If there is a significant change in respect of the information delivered to such Client in the preceding paragraph, the Filer must take reasonable steps to notify such Client of the change in a timely manner and, if possible, before the Filer next transacts in an OTC Derivative with, for or on behalf of such Client.

Part VI – Client information [*All Clients*]

Content and delivery of transaction information

39. The Filer will promptly deliver a written confirmation of the transaction to either of the following:

- (a) the Client;
- (b) if the Client has consented in writing, a registered adviser acting for the Client.

40. If the Filer transacts with, for or on behalf of a Client that is an Eligible Commercial Hedger that has not waived its rights under this paragraph, the written confirmation required under the preceding paragraph must include all of the following, if applicable:

- (a) a description of the transaction;
- (b) a description of the agreement that governs the transaction;
- (c) the notional amount, quantity or volume of the underlying asset of the transaction;
- (d) the number of units of the transaction (if applicable);
- (e) the total price paid for the transaction and the per unit price of the transaction;
- (f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;
- (g) the particular entity that transacted with the Client and whether such entity acted as principal or agent in relation to the transaction;
- (h) the date and the name of the trading facility, if any, on which the transaction took place;
- (j) the date of the transaction;

Client statements

41. The Filer must deliver a statement to a Client, at the end of each quarterly period, if either of the following applies:

- (a) within the quarterly period the Filer transacted in an OTC Derivative with, for or on behalf of the Client;
 - (b) the Client has an outstanding position resulting from a transaction where the Filer transacted in an OTC Derivative with, for or on behalf of the Client.
42. A statement delivered under paragraph 41 must include all of the following information for each OTC Derivative made with, for or on behalf of the Client during the period covered by the statement, if applicable:
- (a) the date of the transaction;
 - (b) a description of the transaction, including notional amount, the number of units of the transaction, the per unit price and the total price;
 - (c) information sufficient to identify the agreement that governs the transaction.
43. A statement delivered under paragraph 38 may include at the Client's request any of the following information as at the date of the statement, if applicable:
- (a) a description of each outstanding OTC Derivative;
 - (b) the valuation, as at the statement date, of each outstanding OTC Derivative referred to in subparagraph 43(a);
 - (c) the final valuation, as at the expiry or termination date, of each OTC Derivative that expired or terminated during the period covered by the statement;
 - (d) a description of all client assets held or received by the Filer as collateral (**Client Collateral**), and the name of the entity holding such Client Collateral;
 - (e) any cash balance in such Client's account;
 - (f) a description of any other client asset held or received by the Filer;
 - (g) the total market value of all cash, OTC Derivatives and other assets in such Client's account, other than Client Collateral.

Part VII – Ongoing Filer Obligations [All Clients]

Custody of Client Collateral

44. The Filer will hold assets equal to the total value of a Client's Client Collateral in respect of a Client in an Applicable Jurisdiction:
- (a) segregated from the Filer's own property,
 - (b) segregated from the Client Collateral of any other Client, and
 - (c) in the case of cash, in a designated account at a Canadian custodian (as defined in NI 31-103) or a Canadian financial institution.

The Filer will not use or invest any Client Collateral without the prior written consent of the Client, which may be granted by the Client on an omnibus basis in respect of all OTC Derivatives with the Filer. The Filer, rather than any Client, will bear any loss resulting from use or investment of Client Collateral.

Insurance

45. The Filer will comply with the requirements of section 12.3 of NI 31-103 and Appendix A [*Bonding and Insurance Clauses*] to NI 31-103 as if it were a registered dealer, except modified as follows:
- A. Fidelity – cover required
 - B. On Premises – cover not required as no assets of material value are held on premises and no client assets are held on site
 - C. In transit – cover not required as there will be no physical transit of cash and securities
 - D. Forgery or alterations – cover required
 - E. Securities – cover not required as risk not applicable to the Filer’s business model.

Capital requirements

46. If, at any time, the excess working capital of the Filer, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, is less than zero, the Filer must notify the Principal Regulator as soon as possible.
47. The excess working capital of the Filer, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, must not be less than zero for 2 consecutive days.
48. For the purpose of completing Form 31-103F1 *Calculation of Excess Working Capital*, the minimum capital is the amount prescribed in section 12.1 of NI 31-103 for a registered dealer that is not also registered as an investment fund manager.
49. The Filer will establish, maintain and apply policies, procedures, controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:
- (a) the Filer and each individual acting on its behalf in relation to transacting in an OTC Derivative complies with the Terms and Conditions of the Requested Relief;
 - (b) the risks relating to its OTC Derivatives trading activities are managed in accordance with the Filer’s risk management policies and procedures;
 - (c) each individual who performs an activity on behalf of the Filer relating to transacting in an OTC Derivative, prior to commencing the activity and on an ongoing basis,
 - (i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,

- (ii) without limiting subparagraph 49(c)(i), has the understanding of the structure, features and risks of each OTC Derivative that the individual transacts in, and
- (iii) has conducted themselves with integrity.

Business continuity and disaster recovery

- 50. The Filer will establish, maintain and apply a written business continuity and disaster recovery plan that is reasonably designed to allow the Filer to minimize disruption and allow the Filer to continue its business operations.
- 51. The business continuity and disaster recovery plan must outline the procedures to be followed in the event of an emergency or other disruption of the Filer's normal business activities.
- 52. The Filer must conduct tests of its business continuity and disaster recovery plan on a reasonably frequent basis and not less than annually.

Derivatives party agreement

- 53. The Filer must ensure that, before transacting in an OTC Derivative with a counterparty (including a Client) that it enters into an agreement with that counterparty that establishes all of the material terms governing the trading relationship between the counterparties.

Records

- 54. The Filer will keep records of its transactions, including all of the following, as applicable:
 - (a) records containing a general description of its OTC Derivatives business and activities conducted with Clients, and compliance with the Terms and Conditions of the Requested Relief, including
 - (i) records of Client assets, and
 - (ii) records documenting the Filer's compliance with internal policies and procedures;
 - (b) for each OTC Derivatives transaction, material records demonstrating the existence and nature of the OTC Derivatives transaction, including
 - (i) records of communications with the Client relating to the OTC Derivatives transaction,
 - (ii) documents provided to the Client to confirm the transaction, the terms of the OTC Derivatives and each transaction relating to the OTC Derivatives,
 - (iii) correspondence relating to the OTC Derivatives and each transaction relating to the OTC Derivatives, and

- (iv) records made by staff relating to the OTC Derivatives and each transaction relating to the OTC Derivatives, including notes, memos or journals;
- (c) for each OTC Derivative, records that provide for a complete and accurate understanding of the OTC Derivative and all transactions relating to the OTC Derivative, including
 - (i) records relating to pre-execution activity for each OTC Derivative including all communications relating to quotes, solicitations, instructions, transactions and prices however they may be communicated,
 - (ii) reliable timing data for the execution of each transaction relating to the OTC Derivative, and
 - (iii) records relating to the execution of the OTC Derivative, including
 - (A) information obtained to determine whether the Client qualifies as a Permitted Counterparty or Eligible Commercial Hedger, as applicable,
 - (B) fees or commissions charged,
 - (C) any other information relevant to the transaction, and
 - (D) information used in calculating the OTC Derivative valuation;
- (d) an itemized record of post-transaction processing and events, including a record in relation to the calculation of margin and exchange of collateral;
- (e) the price and valuation of the OTC Derivative.

Form, accessibility and retention of records

- 55. The records required to be maintained in the Decision must be kept in a safe location, readily accessible and in a durable form for a period of 7 years following the date on which the OTC Derivative expires or is terminated.
- 56. A record required to be provided to the Principal Regulator must be provided in a format that is capable of being read by the Principal Regulator.

Part VI – Risk management policies and procedures [All Clients]

- 57. The Filer must establish, maintain, and apply a written framework that is reasonably designed to establish a system of controls and supervision to monitor and manage the risks associated with its OTC Derivatives-related activity.
- 58. The framework referred to in paragraph 57 must be approved by the Filer’s board of directors, or individuals acting in a similar capacity for the firm.
- 59. The risk management framework referred to in paragraph 57 must, at a minimum

- (a) identify material risks to the Filer, including risks from affiliated entities and from specific OTC Derivatives or types of OTC Derivatives,
- (b) establish risk tolerance limits,
- (c) establish requirements for the Filer to appropriately manage risks, including establishing requirements related to appropriate margining standards for OTC Derivatives,
- (d) provide for the periodic review of the Filer's risks and risk tolerance limits to ensure they reflect the Filer's OTC Derivatives related activity,
- (e) permit senior management to monitor compliance with risk management requirements and risk tolerance limits in order to detect and address non-compliance,
- (f) provide for periodic reports to the Filer's senior management and its board of directors on the Filer's material risks, risk tolerance limits, compliance with risk management requirements, compliance with risk tolerance limits and recommendations for changing the risk management framework and risk tolerance limits, and
- (g) when there is a material change to the Filer's risk exposures or a material breach of a risk limit, require the Filer to on a timely basis, provide the Filer's board of directors, or individuals acting in a similar capacity for the Filer, with a report relating to those changes.

60. The Filer must conduct an independent review of its risk management framework on a reasonably frequent basis.

Agreement for process of determining the value of a derivative

61. The Filer must agree on and clearly document the processes for determining the value of each OTC Derivative.

Agreement for process relating to disputes

62. (1) The Filer must enter into a written agreement with its counterparties (including Clients) that establishes procedures and processes to identify, record and monitor disputes relating to material terms or valuation and exchange of collateral between the Filer and its counterparties, and to resolve disputes relating to the material terms or valuation of an OTC Derivative in a timely manner.

- (2) If a dispute referred to in subparagraph 62(1) has not been resolved within 60 days of the date when the Filer should, acting reasonably, become aware of the dispute, the Filer must report the dispute to the Principal Regulator.

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