

# FASKEN

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**VIA SEDAR+**

Ontario Securities Commission  
20 Queen Street West  
P.O. Box 55  
Toronto, Ontario  
M5H 3S8

Attention: Applications Administrator

Dear Sir/Madam:

**Re: LongPoint Asset Management Inc. (the Filer) - Passport application pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203) under Section 19.1 of National Instrument 81-102 *Investment Funds* (NI 81-102)**

We are counsel to the Filer and we hereby file this application (this **Application**) with the Ontario Securities Commission (the **OSC**) on behalf of the Filer, the exchange traded funds listed in Schedule A (collectively, the **Proposed ETFs**) and any other similar exchange traded fund that is managed by the Filer, or an affiliate of the Filer, in the future (the **Future ETFs** and together with the Proposed ETFs, the **ETFs**, and each an **ETF**) for a decision under the securities legislation of Ontario (the **Legislation**).

This Application is made under NP 11-203 for a decision granting the Exemption Sought (as defined below). In accordance with Part 4 of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) and section 3.6 of NP 11-203, the OSC has been chosen as the principal regulator for the purposes of this Application as the head office of the Filer is in Toronto, Ontario.

Pursuant to subsection 5.2(1)(a)(v) of NP 11-203, notice is hereby given that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of the provinces and territories other than Ontario (collectively, and together with the Province of Ontario, the **Jurisdictions**).

**The Filer hereby respectfully requests, in accordance with section 5.4 of NP 11-203, that this Application remain confidential until such time as the Exemption Sought (as defined below) has been granted due to the resources being devoted to the development of the Proposed ETFs.**

## **Exemption Sought**

1. On behalf of the Filer and the ETFs, we hereby request exemptive relief from section 2.1(1.1) of NI 81-102 (the **Concentration Restriction**) to permit each ETF, in accordance with its fundamental investment objective, to purchase a security of an issuer (or enter into a specified derivative transaction or purchase an index participation unit) where, immediately after the



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transaction, more than 20% of the net asset value of the ETF will be invested in securities of any one issuer (the **Exemption Sought**).

## Interpretation and Defined Terms

2. Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 41-101 *General Prospectus Requirements (NI 41-101)* and NI 81-102 have the same meaning if used in the Application, unless otherwise defined herein. In addition:

**Absolute Leverage** means, with respect to an ETF, the aggregate notional absolute value of the securities and/or financial derivative positions as a ratio of the total assets held by the ETF.

**Canadian Public Issuer Requirements** has the meaning ascribed to such term in the definition of Specified Canadian Public Issuer.

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

**ETF Security** means an exchange-traded security of an ETF.

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

**Marketplace** means a “marketplace” as defined in National Instrument 21-101 - *Marketplace Operation* that is located in Canada.

**TSX** means the Toronto Stock Exchange.

**Portfolio Securities** means, in relation to an ETF, the securities of a Specified Canadian Public Issuer in which the ETF invests.

**Prospectus** means the prospectus of each ETF.

**Specified Canadian Public Issuer** means a public company (i) that is incorporated and headquartered in Canada; (ii) that is listed on a recognized Canadian stock exchange; (iii) that has a market capitalization in excess of CAD\$20 billion at the time of initial investment; and (iv) whose Portfolio Securities have an average daily trading volume in the month before the date that the ETF Securities are listed on an Exchange in excess of CAD\$75 million (collectively, the **Canadian Public Issuer Requirements**).

**Securityholders** means the beneficial or registered holders of ETF Securities.

All references herein to sections and subsections are to the provisions of NI 81-102 unless specifically identified otherwise.

## Facts

3. The following information has been provided to us by the Filer.



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## *The Filer and the ETFs*

4. The Filer is a corporation formed and organized under the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.
5. The Filer is currently registered as a portfolio manager, commodity trading manager and exempt market dealer in Ontario and as an investment fund manager in Ontario, Québec and Newfoundland and Labrador.
6. The Filer will be the investment fund manager and portfolio manager of the Proposed ETFs. The Filer or an affiliate of the Filer will be the investment fund manager of the Future ETFs.
7. The Filer is not a reporting issuer in any Jurisdiction and is not in default of securities legislation in any of the Jurisdictions.
8. Each Proposed ETF will be a separate open-ended corporate class of LongPoint ETF Corp., a mutual fund corporation established under the federal laws of Canada. Each corporate class will be a separate investment fund with specific investment objectives and a separate portfolio of investments.
9. Each Future ETF will be an exchange-traded mutual fund that is a trust, corporation or separate class of shares of a mutual fund corporation governed by the laws of a Jurisdiction.
10. Each ETF will be a reporting issuer in the Jurisdiction(s) in which it offers ETF Securities that will be distributed.
11. Each ETF will be an open-ended alternative mutual fund (as defined in NI 81-102).
12. The ETFs will be subject to NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities.
13. The Filer will file a final prospectus in respect of each ETF which will be prepared and filed in accordance with NI 41-101 or National Instrument 81-101 - *Mutual Fund Prospectus Disclosure*, subject to any exemptions that may be granted by the applicable securities regulatory authorities.
14. The ETF Securities will be (subject to satisfying the original listing requirements of the applicable Exchange) listed on an Exchange.
15. Designated Brokers will act as intermediaries between investors and the ETFs, performing a market-making function, including by standing in the market with bid and ask prices for the ETF Securities to maintain a liquid market for the ETF Securities. The majority of trading in ETF Securities will occur in the secondary market.
16. The fundamental investment objective of each Proposed ETF will be to seek to provide daily investment results, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to a multiple (the **Target Leverage**) greater than one times and that is up to or equal to two times or an inverse multiple greater than one times and that is up to or equal to two times the inverse (opposite) of the daily return (on a percentage basis) of a Specified Canadian Public Issuer.



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17. Each Proposed ETF will employ Absolute Leverage that will not exceed its Target Leverage. Use of leverage by an ETF will be in accordance with NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities. In order to ensure that a securityholder's risk is limited to the capital invested, each Proposed ETF's Absolute Leverage will be rebalanced daily and when the Absolute Leverage breaches certain bands. Specifically, each Proposed ETF's Absolute Leverage will be rebalanced back to its Target Leverage within one business day if the Proposed ETF's Absolute Leverage moves 5% below its Target Leverage or is above its Target Leverage (for example, if the Target Leverage is 200%, then rebalancing will occur if the Absolute Leverage is less than 195% or if the Absolute Leverage is greater than 200%).
18. In order to achieve its investment objective, each Proposed ETF may invest in Portfolio Securities and/or other financial instruments, including specified derivatives. Where the Filer considers it in the best interests of the ETF to do so, the ETF may purchase Portfolio Securities directly using borrowed cash.
19. Specifically, the Portfolio Securities and the Specified Canadian Public Issuer for each of the Proposed ETFs will be as follows:

<b>Proposed ETF</b>	<b>Portfolio Securities</b>	<b>Specified Canadian Public Issuer</b>
SavvyLong (X) Barrick ETF	Common stock	Barrick Mining Corporation
SavvyLong (2X) Cameco ETF	Common stock	Cameco Corporation
SavvyLong (2X) Cdn Natural Resources ETF	Common stock	Canadian Natural Resources Limited
SavvyLong (2X) CIBC ETF	Common stock	Canadian Imperial Bank of Commerce
SavvyLong (2X) Constellation Software ETF	Common stock	Constellation Software Inc.
SavvyLong (2X) National Bank ETF	Common stock	National Bank of Canada
SavvyLong (2X) Royal Bank ETF	Common stock	Royal Bank of Canada
SavvyLong (2X) Shopify ETF	Class A subordinate voting shares	Shopify Inc.
SavvyLong (2X) TD Bank ETF	Common stock	Toronto-Dominion Bank
SavvyShort (-2X) Shopify ETF	Class A subordinate voting shares	Shopify Inc.



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20. Each ETF will use a ticker symbol that the Filer believes is unlikely to be confused with the ticker symbol for the Portfolio Securities and the Specified Canadian Public Issuer for the ETF.
21. The distribution of ETF Securities (the **Distribution**) will be conducted without the knowledge or consent of the Specified Canadian Public Issuers and the Filer, as a general matter, will not have direct knowledge or access to material information regarding the Specified Canadian Public Issuers or Portfolio Securities other than publicly available information.

## *Disclosure*

22. The Prospectus will disclose:
  - (a) the name of each ETF will include language to identify the Target Leverage applicable to the ETFs (for example, an ETF with Target Leverage of 200% will include “2X” or “-2X”, as applicable);
  - (b) the investment objective and investment strategy of each ETF as well as the risk factors associated therewith, including concentration risk;
  - (c) the fact that the ETF has obtained the Exemption Sought to permit the purchase of the Portfolio Securities on the terms described in therein;
  - (d) the ways in which, and the extent to which, purchasing and holding the ETF Securities can be expected to be different from directly purchasing and holding the Portfolio Securities and the factors influencing these differences (such as the use of leverage by each ETF), including in respect of performance, returns and securityholder rights;
  - (e) that the ETF’s investment in the Portfolio Securities will be a passive investment;
  - (f) the Filer’s specific policies and procedures for making proxy voting and tender decisions in respect of the Specified Canadian Public Issuer and the expected outcomes for the ETF of such decisions in potential scenarios, such as merger or other restructuring of the Specified Canadian Public Issuer, a sale of part or all of its business, or bankruptcy of the Specified Canadian Public Issuer and other scenarios; and
  - (g) prominently a statement substantially similar to the following:

*Investors investing, or considering investment, in an ETF (which invests in a single underlying corporate issuer) should consider their ongoing obligations with respect to insider trading, insider reporting, and take-over bids under the Ontario Securities Act (the Act) or other relevant securities legislation and national instruments and as explained in national policies. Securities regulators may take the view that these provisions extend to the purchase and sale of securities of ETFs that invest in securities of a single issuer, including on a look-through basis. For example:*

- *Under section 76(1) of the Act, individuals or entities in a special relationship with an issuer are prohibited from purchasing or selling securities of that issuer with knowledge of a material fact or material change that has not been generally disclosed. Securities regulators may take the view that this prohibition extends to the purchase and sale of securities of ETFs that invest in securities of a single issuer;*



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- *Securities regulators may take the view that the insider reporting requirements in section 107 of the Act apply in respect of purchases of securities of ETFs that invest in securities of a single issuer; and*
- *Where ETF securities are redeemable for securities of the ETF's single underlying issuer, securities regulators may consider those ETF securities convertible securities under section 1.7 of National Instrument 62-104 Take-Over Bids and Issuer Bids (NI 62-104) that count, on a post conversion-basis in respect of the underlying issuer, towards the early warning reporting thresholds in Part 5 of NI 62-104.*

*Investors are strongly encouraged to seek legal advice or consult with their compliance officers to fully understand their insider trading, insider reporting, and take-over bids obligations and how they relate to investment in these ETFs. Failure to comply with these obligations may result in regulatory scrutiny and enforcement actions. Purchasing a single-issuer ETF is not equivalent to holding the securities of the underlying issuer directly; investors may not have the same rights and may be subject to additional risks, as further referenced in this prospectus.*

23. The Prospectus will provide only abbreviated disclosure in respect of the Portfolio Securities and the Specified Canadian Public Issuer based on publicly available information.
24. The Filer intends to meet the full, true and plain disclosure requirement of the Legislation in connection with the ETF Securities without having responsibility for the accuracy of disclosure issued by the Specified Canadian Public Issuer in respect of the Portfolio Securities. The Prospectus will direct investors to public disclosure made available by the Specified Canadian Public Issuer in respect of the Portfolio Securities in accordance with applicable Canadian securities legislation. The Prospectus will also clarify that such disclosure and other information made publicly available about the Portfolio Securities and the Specified Canadian Public Issuer on the Filer's website and otherwise cannot be expected to contemplate the Distribution. The Prospectus will clearly state that the Filer is not the source of disclosure relating to the Portfolio Securities and the Specified Canadian Public Issuer and will clearly disclaim the Filer's responsibility both for verifying the accuracy of such disclosure and for updating such disclosure.
25. To meet the full, true and plain disclosure requirement, the Prospectus will disclose that the Specified Canadian Public Issuer will not receive a direct or indirect financing benefit from the Distribution.

## **Analysis**

26. The ETFs cannot pursue their fundamental investment objectives without the Exemption Sought.

## **Submissions**

27. The Filer submits that each ETF's strategy to acquire Portfolio Securities will be transparent, passive and fully disclosed to investors. An ETF will not invest in securities other than Portfolio Securities. Investors will be aware that each ETF utilizes leverage through the inclusion of language to identify the Target Leverage applicable to the ETFs in its name.
28. The Filer submits that an ETF that relies on the Exemption Sought would be analogous to an investment fund that relies on the exception to the Concentration Restriction in subsection 2.1(2) of NI 81-102 for purchases of equity securities by a "fixed portfolio investment fund", as defined



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in NI 81-102, in accordance with its investment objectives. The Filer submits that the only difference would be that the ETFs are in continuous distribution and the ETF Securities are redeemable on each trading day, accordingly, the ETFs will buy and sell Portfolio Securities as may be required in connection with subscription and redemption requests received by the ETFs. However, the Filer submits that the existence of the ETF's Designated Broker should mean that the ETF Securities (which are listed on an Exchange) will not trade at a discount to the net asset value per ETF Security which may more likely be the case for a "fixed portfolio investment fund".

29. The Specified Canadian Public Issuers will be among the largest public issuers in Canada. The Portfolio Securities will be some of the most liquid equity securities listed on the TSX and will be less likely to be subject to liquidity concerns than the securities of other issuers.
30. The Filer believes that any risks associated with an investment in only a single Specified Canadian Public Issuer in reliance on the Exemption Sought will be mitigated by the fact that the Portfolio Securities are highly liquid and that there is a robust liquid options market for these securities.
31. The Filer submits that, given the market price per publicly listed security of certain of the Specified Canadian Public Issuers, many investors would be unable to achieve meaningful exposure to such Specified Canadian Public Issuers through direct investment. The ETFs also will meet a need for those investors seeking up to two times investment exposure in a Specified Canadian Public Issuer.
32. But for the fact that ETF Securities may be subscribed for or redeemed on each trading day (i.e. the ETFs being in continuous distribution), the ETF otherwise meets the definition of "fixed portfolio investment fund" in NI 81-102.
33. Any purchase by the ETF of the Portfolio Securities is in accordance with the investment objectives of the ETF.
34. At the time that the ETF Securities are listed on an Exchange, the Specified Canadian Public Issuer and its Portfolio Securities satisfy the Canadian Public Issuer Requirements.
35. The ETF will not purchase Portfolio Securities if the ETF would, as a result of such purchase, become an insider of the Specified Canadian Public Issuer.
36. The ETF's Prospectus contains the disclosure referred to in representations 16 through 19 above;
37. The Filer will not permit the ETFs to be used as a financing vehicle by a Specified Canadian Public Issuer or to permit an indirect offering of Portfolio Securities into a jurisdiction of Canada.
38. No ETF will inter-list in the United States of America or any other foreign Marketplace.
39. No ETF will purchase securities of the Specified Canadian Public Issuer if, immediately following such purchase, the ETF would hold securities of the Specified Canadian Public Issuer in an amount exceeding 1% of the Specified Canadian Public Issuer's total market capitalization.

## **General**

40. Accompanying this Application are:
  - (a) a verification statement by the Filer authorizing us to make this Application on its behalf and confirming the truth of the facts contained herein;



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- (b) a draft decision document; and
- (c) the applicable filing fees for this Application.

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We thank you for your consideration of this Application.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*“John Kruk”*

John Kruk

JK/  
Encl.

Copy: Steven J. Hawkins, LongPoint Asset Management Inc.  
Garth Foster, Fasken Martineau DuMoulin LLP



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## **SCHEDULE A LIST OF PROPOSED ETFS**

SavvyLong (X) Barrick ETF  
SavvyLong (2X) Cameco ETF  
SavvyLong (2X) Cdn Natural Resources ETF  
SavvyLong (2X) CIBC ETF  
SavvyLong (2X) Constellation Software ETF  
SavvyLong (2X) National Bank ETF  
SavvyLong (2X) Royal Bank ETF  
SavvyLong (2X) Shopify ETF  
SavvyLong (2X) TD Bank ETF  
SavvyShort (-2X) Shopify ETF