

December 24th, 2021

In the Matter of
the Securities Legislation of
Saskatchewan and Ontario
(the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
the Saskatchewan Pension Plan
(**SPP** or the **Filer**)

Decision

Background

The securities regulatory authority or regulator (the **Decision Maker**) in the Jurisdictions has received an application from the Filer:

- (a) for a decision under the securities legislation of the Jurisdictions (the **Legislation**), pursuant to clause 83(1)(a) of *The Securities Act, 1988* (Saskatchewan) (the **Saskatchewan Act**) and section 74 of the *Securities Act* (Ontario) (the **Ontario Act**), granting the Filer an exemption from:
 - (i) the dealer registration requirement (clause 27(2)(a) of the Saskatchewan Act and subsections 25(1) and 25(2) of the Ontario Act) with respect to its trades in SPP securities, and
 - (ii) the prospectus requirement (section 58 of the Saskatchewan Act and section 53 of the Ontario Act);(collectively, the **Dealer and Prospectus Request**); and
- (b) for a decision by the Decision Maker of Saskatchewan pursuant to section 158(4) of the Saskatchewan Act revoking the Order dated September 30, 2020 entitled *In the Matter of the Saskatchewan Pension Plan* (the **Prior Order**) (the **Revocation Request**).

The Dealer and Prospectus Request and the Revocation Request are collectively referred to as the **Exemption Sought**.

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

- (a) the Financial and Consumer Affairs Authority of Saskatchewan 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* is intended to be relied upon in each of British Columbia, Alberta, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut; and
- (c) the 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 the Saskatchewan Act and accompanying Regulations, the Ontario Act and accompanying Regulations, National Instrument 14-101 *Definitions*, National Instrument 45-106 *Prospectus Exemptions*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* 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. SPP was created and is governed by *The Saskatchewan Pension Plan Act* (the **SPP Act**) and *The Saskatchewan Pension Plan Regulations* (the **SPP Regulations**).
2. SPP is not subject to the provisions of *The Pension Benefits Act, 1992* (Saskatchewan), the *Pension Benefits Act* (Ontario), the *Employment Pension Plans Act* (Alberta), the *Pension Benefits Standards Act* (British Columbia), *The Pension Benefits Act* (Manitoba), the *Pension Benefits Act* (Newfoundland and Labrador), the *Pension Benefits Act* (Nova Scotia), the *Pension Benefits Act* (New Brunswick), the *Act respecting the Québec Pension Plan* (Quebec), the *Supplemental Pension Plans Act* (Quebec), the *Pension Benefits Standards Act* (Canada) (applicable in Nunavut, Northwest Territories, and Yukon), or the regulations under any of them. There is no similar legislation in force at this time in Prince Edward Island.

3. SPP is intended to be a low cost provider of pension plans to provide supplementary income to individuals with little or no access to employer-sponsored plans.
4. SPP receives moneys from, or on behalf of participants (**SPP Members**) and from earnings accruing from the investment of moneys (collectively, the **SPP Fund**).
5. Moneys paid by, or on behalf of SPP Members into the SPP Fund and related accrued earnings are invested in a balanced fund or a diversified income fund (together, the **Funds**). Notwithstanding paragraph 2 above, the SPP Act requires such investments be in such securities as those authorized pursuant to *The Pension Benefits Act, 1992* (Saskatchewan). Section 44 of *The Pension Benefits Act, 1992* requires such investments comply with *The Pension Benefits Regulations, 1993* (Saskatchewan). Section 38 of those regulations requires investments be made in accordance with the *Pension Benefits Standards Act, 1985* (Canada).
6. SPP is administered by a Board of Trustees (the **Board**) appointed by the Lieutenant Governor in Council for Saskatchewan.
7. The Board administers the SPP Fund and acts as the trustee of the SPP Fund.
8. The Board oversees the functions of SPP including the employees of SPP.
9. Questions that arise regarding SPP, the SPP Fund and the Funds are determined by the Board and its decision is final.
10. The Board has adopted a governance manual which includes a code of conduct and conflict of interest rules and has also adopted a statement of investment policy and goals.
11. The Board is subject to the Government of Saskatchewan's financial administration manual which includes a dual signature requirement for the control of and access to SPP bank accounts.
12. SPP employees are bonded under the policy of the Government of Saskatchewan. The coverage for each position is a maximum of \$1,000,000 with a \$100,000 deductible.
13. SPP annually has its internal controls tested by an independent auditor. This includes a review of SPP financial statements, SPP accounts, the SPP Fund, the Funds and the report of the Board on its business. These are also reviewed by the Provincial Auditor of Saskatchewan.
14. SPP is required to have audited financial statements, a report of the Board on its business and an annual report which must all be submitted annually to the Minister responsible for SPP and then presented to the Legislative Assembly of Saskatchewan.

15. The Funds are managed by registered portfolio managers that follow the statement of investment policy and goals as adopted by the Board.
16. All SPP Fund assets are held by a custodian who is appointed by, and reports directly to the Board.
17. SPP is self-funded which means its operating expenses and costs of administration are paid from the SPP Fund and are allocated on a monthly basis to SPP Members.
18. SPP does not have a conventional sales force and no commission is paid to brokers, SPP staff, or any other person.
19. SPP does speak with employers within Saskatchewan, advertises within Saskatchewan and maintains a website.
20. SPP does not solicit members or employers outside of Saskatchewan, and does not actively advertise outside Saskatchewan.
21. The SPP Act does not limit membership in SPP to Saskatchewan residents. Under the SPP Act, membership is open to all individuals regardless of residency who are between the ages of 18 and 71.
22. While the majority of SPP Members who reside outside Saskatchewan joined the SPP while they were resident in Saskatchewan, a small number of them may not have been resident in Saskatchewan when they joined the SPP.
23. The SPP discovered that it may have inadvertently become in default of securities law requirements outside Saskatchewan in relation to prospectus requirements and dealer registration requirements.
24. The SPP promptly and voluntarily alerted the Decision Maker. The SPP requests the Exemption Sought, in part, to address such defaults.
25. SPP maintains records, called participant's accounts, of the amount standing to the credit of a SPP Member in the SPP Fund.
26. As of June 30, 2021, there are over 24,000 SPP Members that are not yet retired and remain eligible to contribute to the Funds (**Active SPP Member**), and when retired annuity SPP Members are included, the total is over 32,000 SPP Members. The majority of SPP Members reside in Saskatchewan.

27. As of December 31, 2020, the total value of the SPP Fund for Active SPP Members was approximately \$529 million and the average Active SPP Member account size was \$21,750. In 2020, the average Active SPP Member account contribution was \$2,417.
28. Active SPP Member contributions to SPP are voluntary and an Active SPP Member's employer can contribute on behalf of an Active SPP Member, at the employer's option. Regardless of the origin of the contribution, SPP Members own their Active SPP Member account and receive tax deductible receipts in accordance with the *Income Tax Act* (Canada) (the **ITA**) for all contributions. An employer who voluntarily contributes to SPP on behalf of a SPP Member cannot acquire any rights or interest in that Active SPP Member account: the contribution is simply a monetary contribution made on behalf of that SPP Member.
29. The maximum allowable annual contribution to an Active SPP Member account (comprising a combination of a SPP Member's contribution and their employer's optional contribution on their behalf, if applicable) was \$6,000 in 2018 and has been automatically increasing, starting in 2019, by the rate of growth of the Year's Maximum Pensionable Earnings as defined in the *Canada Pension Plan*, rounded to the nearest \$100. The limit as of January 1, 2021 is \$6,600. This is subject to an Active SPP Member's available Registered Retirement Savings Plan (**RRSP**) contribution room and the maximum allowable RRSP transfer into an Active SPP Member account per calendar year is \$10,000.
30. Active SPP Members are offered a choice between the Funds. Currently, the default is the balanced fund; however, Active SPP Members can allocate their contributions between the Funds.
31. SPP does not provide any investment or retirement planning advice.
32. SPP Members sign a SPP Membership Application Form and as part of the form SPP Members also sign an investment instruction declaration that states SPP Members are responsible for their investment choices.
33. Under the SPP Act, as recently amended, a SPP Member may elect to withdraw from SPP within sixty (60) days from the later of the date the SPP Member's application is made or the date on which a SPP Member makes their first contribution, and the SPP Member will receive a refund of the amount standing to the SPP Member's credit together with interest.
34. Active SPP Members receive documentation including:
 - (a) a welcome letter upon enrolment;

- (b) account statements, provided twice a year as of June 30 and December 31; and
 - (c) tax receipts for their contributions and confirmation for inter-Funds transfers or transfers from a RRSP into an Active SPP Member account if applicable.
35. Active SPP Members can transfer existing contributions between the Funds on a monthly basis. SPP provides for two (2) free inter-Funds transfers per calendar year. All other inter-Funds transfers are subject to a fee.
 36. The Active SPP Member accounts are locked-in until age 55 at SPP and are governed by the SPP Act and the SPP Regulations and cannot be withdrawn from SPP except to provide a pension benefit at retirement.
 37. Section 19(1) of the SPP Act generally prohibits a SPP Member's interest from being transferred or assigned (subject to narrow exceptions relating to division of family property and maintenance orders).
 38. SPP provides retirement options for SPP Members between ages 55 and 71. A SPP Member has the option of accessing the balance in their participant account by selecting a SPP annuity option or by transferring their participant account to a Locked-In Registered Retirement Account (**LIRA**), prescribed Registered Retirement Income Fund (**RRIF**), outside life annuity or combination of these options. The ITA dictates it is mandatory that by age 71 a SPP Member must decide on their retirement option(s).
 39. In Saskatchewan only, SPP offers Active SPP Members between ages 55 and 71 a variable pension benefit (**VB**) retirement option (**VB Option**). The VB Option is a retirement income option with no maximum withdrawal restriction and the option to withdraw part or all of the balance at any time.
 40. Active SPP Members who choose the VB Option (**VB SPP Member**) will be offered the choice to invest in the balanced fund, the diversified income fund, or a combination of both.
 41. The VB Option is restricted to Saskatchewan Residents.
 42. VB SPP Members will not be able to make any further contributions to their Active SPP Member account. However, they may transfer up to \$10,000 per calendar year from their RRSP, unlocked registered pension plan, or RRIF into their VB SPP Member account.
 43. The VB SPP Member account will continue to grow on a tax-sheltered basis. All payments to a VB SPP Member from its VB SPP Member account will be taxable at source.

44. Active SPP Members anticipating retirement will receive the SPP Retirement Guide, the SPP VB Guide, the SPP Investment Choice Guide, a SPP Retirement Application Form and a SPP VB Application Form.
45. In order to participate in the VB Option (if applicable), the Active SPP Member will be required to submit a SPP Retirement Application Form, a SPP VB Application Form, the Active SPP Member's TD1 Personal Tax Credit Return, a spousal waiver (if applicable), a void cheque, and an initial payment schedule. Once all documentation is returned to SPP, the Active SPP Member's application is processed for the VB Option.
46. In addition to the documentation provided to all SPP Members, VB SPP Members will receive, on an annual basis, an account statement, T4A Statement of Pension, Retirement, Annuity, and Other Income, and a letter to elect whether to change withdrawal rates for the following year.
47. At any time after retirement, a VB SPP Member may transfer to a SPP annuity, a LIRA (if under the age of 72), a RRIF, or an outside life annuity. The transfer is permanent. There is no charge for a VB SPP Member to transfer to a SPP annuity.
48. Upon death of a VB SPP Member:
 - (a) if the VB SPP Member's beneficiary is not the VB SPP Member's spouse, upon receipt of all required documentation, payment is made in a single lump sum (less withholding tax);
 - (b) if the VB SPP Member's beneficiary is the VB SPP Member's spouse, the spouse will have the option of transferring the death benefit to the spouse's Active SPP Member account, maintain VB benefit payments (if not a SPP Member), transferring to another RRSP or RRIF, or receiving a single lump sum payment (less withholding tax).
49. Once a VB SPP Member's account is depleted, the VB SPP Member account will be closed and SPP sends the VB SPP Member a closing statement.
50. SPP has information available for SPP Members on its website and in print including: the SPP Membership Guide, SPP annual reports (including previous reports for up to a 10-year period), statement of investment policy and goals, information on the rate of return on the Funds for previous years, a SPP Retirement Guide, a SPP Business Guide, and SPP newsletters.
51. SPP's website includes the SPP VB Guide and SPP Investment Choice Guide.

52. SPP has a system that addresses SPP Members' complaints which includes a complaint log and documented escalation procedures.

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. That is, the decision to grant the Exemption Sought would not be prejudicial to the public interest.

The decision of each Decision Maker under the Legislation is that the Dealer and Prospectus Requirement is granted provided that:

- (a) SPP provides the Executive Director with an undertaking to provide any information or produce specified records upon the Executive Director's request;
- (b) SPP annually delivers to the Executive Director its audited financial statements, report of the Board on its business and annual report at the same time as submitting such documents to the minister responsible for the SPP Act;
- (c) SPP does not solicit members or employers outside of Saskatchewan, and does not actively advertise outside Saskatchewan;
- (d) SPP staff answering SPP Member inquiries on the specifics of the Funds, the VB Option, or presenting on the specifics of the Funds or VB Option have passed at least one of the following: the Canadian Investment Funds Course, the Canadian Securities Course or the Investment Funds In Canada Course or such other course approved by the Executive Director;
- (e) SPP staff do not provide any investment or retirement planning advice;
- (f) The SPP Membership Application Form, the SPP Transfer and Investment Instruction Form, and the SPP VB Application Form include an investment instruction declaration containing information substantially the same as that set out in Schedule A to this decision;
- (g) SPP Members sign and date the applicable investment instruction declaration included in the SPP Membership Application Form, the SPP Transfer and Investment Instruction Form, or the SPP VB Application Form;
- (h) SPP:
 - (i) includes in the SPP Membership Guide, the SPP Business Guide, the SPP Retirement Guide and the SPP VB Guide:

- (A) the specific differences between SPP and RRSPs,
 - (B) the specific differences between the VB Option, a RRSP and a RRIF,
 - (C) a clear statement that VB Option is restricted to Saskatchewan Residents, and
 - (D) the SPP complaint process,
- (ii) prepares a fund facts document using Form 81-101F3 *Contents of Fund Facts Document* (as amended from time to time) excepting Part I subsections 1(c.1), 1(e), 2(0.1), 2(5), 2(6), 3(2), and clause 4(2)(d); Part II subsections 1.1, 1.2(1), 1.2(2), 1.3(4), 1.3(5), 1.3(6), 1.3(7), 3(1), 3(3); and Part II Item 2 for each of the Funds,
 - (iii) for each of the Funds that invests in a pooled fund, prepares a pooled funds table that includes:
 - (A) a title which is the name of that Fund, and
 - (B) for each pooled fund the:
 - (I) pooled fund name,
 - (II) investment fund manager name,
 - (III) investment objectives, and
 - (IV) investment approach;
- (i) At the time of providing the SPP Membership Application Form, SPP provides the following disclosure:
 - (i) the SPP Membership Guide,
 - (ii) the fund facts document for each of the Funds, and
 - (iii) the pooled funds table for the Funds, if applicable;
 - (j) At the time of providing the SPP Retirement Application Form, the SPP VB Application Form, SPP provides the following disclosure:
 - (i) the SPP Retirement Guide,

- (ii) the SPP VB Guide,
 - (iii) the fund facts document for each of the Funds, and
 - (iv) pooled funds table for the Funds, if applicable;
- (k) At the time of providing the SPP Transfer and Investment Instruction Form, SPP provides the following disclosure:
 - (i) the fund facts document for each of the Funds, and
 - (ii) the pooled funds table for the Funds, if applicable;
- (l) SPP maintains on its website the current:
 - (i) SPP Membership Guide,
 - (ii) SPP Membership Application Form,
 - (iii) SPP Retirement Guide,
 - (iv) SPP VB Guide,
 - (v) SPP Investment Choice Guide,
 - (vi) fund facts document for each of the Funds,
 - (vii) pooled funds table for the Funds, if applicable, and
 - (viii) notice informing SPP Members and potential members that the fund facts document or pooled funds table for the Funds have been amended, in the case of an amendment;
- (m) SPP maintains on its website:
 - (i) on each link, a statement that the VB Option is restricted to Saskatchewan Residents,
 - (ii) the SPP statement of investment policy and goals,
 - (iii) information on the rate of return on the Funds for previous years, and
 - (iv) SPP annual reports (including previous reports for up to a 10-year period);
and

- (n) SPP informs its members of the Funds that members will be able to invest in.
- (o) SPP establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision.
- (p) In addition to any other information that the SPP believes is reasonably necessary for a member to make an investment decision within the SPP, and unless that information has previously been provided, the SPP provides the member with the following information about each Fund the member may invest in:
 - (i) the name of the Fund,
 - (ii) the name of the manager of the Fund,
 - (iii) the fundamental investment objective of the Fund,
 - (iv) the investment strategies of the Fund or the types of investments the Fund may hold,
 - (v) a description of the risks associated with investing in the Fund,
 - (vi) upon request by a member, more information about each Fund's portfolio holdings,
 - (vii) where a member can obtain more information generally about each Fund, and
 - (viii) whether the Fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that Fund,
- (q) SPP provides members with a description and amount of any fees, expenses and penalties relating to the SPP that are borne by the members, including:
 - (i) any costs that must be paid when the Fund is bought or sold,
 - (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the SPP,
 - (iii) Fund management fees,
 - (iv) Fund operating expenses,

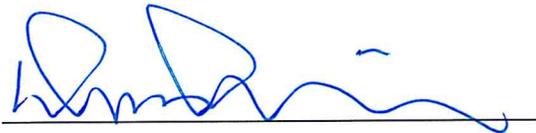
- (v) record keeping fees,
- (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
- (vii) account fees, and
- (viii) fees for services provided by service providers,

provided that the SPP may disclose the fees, penalties and expenses on an aggregate basis, if the SPP discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

- (r) SPP has within the past year, provided the members with performance information about each Fund the members may invest in, including,
 - (i) the name of the Fund for which the performance is being reported,
 - (ii) the performance of the Fund, including historical performance for one, five and 10 years, if available,
 - (iii) a performance calculation that is net of investment management fees and Fund expenses,
 - (iv) upon request by a member, the method used to calculate the Fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
 - (v) the name and description of a broad-based securities market index for the Fund and corresponding performance information for that index, and
 - (vi) a statement that past performance of the Fund is not necessarily an indication of future performance.
- (s) SPP has, within the past year, informed members if there were any changes in the choice of Funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment.
- (t) SPP provides members with investment decision-making tools that the SPP reasonably believes are sufficient to assist them in making an investment decision within the SPP.

- (u) SPP must provide the information required by paragraphs (o), (p), (q) and (t) prior to the member making an investment decision in SPP.
- (v) The first trade of SPP securities issued in reliance on the Requested Relief will be subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.
- (w) SPP immediately advises the Executive Director of any material changes to its operations and this exemption terminates 30 days following any material change to SPP operations unless the Executive Director indicates otherwise.

The decision of the Decision Maker in Saskatchewan under the Saskatchewan Act is that the Revocation Request is granted as the Prior Order is hereby replaced by this decision.



Dean Murrison
Executive Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan

Schedule A

1. SPP does not provide any investment or retirement planning advice.
2. SPP does not take responsibility as to the suitability of a SPP Member's Funds choice.
3. SPP does not consider a SPP Members' financial situation, investment knowledge, investment objectives or risk tolerance.
4. A SPP Member may elect to withdraw from SPP within sixty (60) days from the later of the date the SPP Member's application is made or the date on which a SPP Member makes their first contribution, and the SPP Member will receive a refund of the amount standing to the SPP Member's credit together with interest.
5. SPP Member accounts are locked-in until age 55 at SPP, governed by the SPP Act and the SPP Regulations and cannot be withdrawn from SPP except to provide a pension benefit at retirement.
6. Between ages 55 and 71, a SPP Member has the option of accessing the balance in their participant account by selecting a SPP annuity option, the VB Option, or by transferring their participant account to a LIRA, RRIF, outside life annuity or combination of these options.
7. The VB Option is restricted to Saskatchewan Residents;
8. The ITA dictates it is mandatory that by age 71 a SPP Member must decide on their retirement option(s).
9. SPP Members acknowledge that:
 - (a) they are responsible for:
 - (i) their choice of Funds,
 - (ii) their choice of options (SPP annuity option or VB Option), and
 - (iii) obtaining their own financial advice for making investment decisions;
 - (b) they understand the:
 - (i) differences between SPP and RRSPs,
 - (ii) differences between the VB Option, a RRSP and a RRIF,
 - (iii) VB Option is restricted to Saskatchewan Residents, and

- (iv) SPP complaint process; and
- (c) they have received the:
 - (i) SPP Membership Guide, the SPP Business Guide, the SPP Retirement Guide and the SPP VB Guide (as applicable),
 - (ii) fund facts document for each of the Funds,
 - (iii) pooled funds table for the Funds, if applicable, and
 - (iv) if applicable, a notice informing SPP Members and potential members that the fund facts document or pooled funds table for the Funds have been amended, in the case of an amendment.