



## Stage 1 Interview Summary: Caroline Simard and Carmen Boucher

Caroline J. Simard, Commissioner of Canada Elections, and Carmen Boucher, Executive Director – Enforcement, were interviewed by Commission counsel on March 6, 2024.

### Notes to reader

- Commission Counsel have provided explanatory notes in square brackets to assist the reader.
- This summary contains information that relates to the Commission's mandate under clauses (a)(i)(A) and (B) of its Terms of Reference. Information provided during the interviews that relates to other aspects of the Commission's Terms of Reference has been omitted from this summary, but may be adduced by the Commission at a later stage of its proceedings.

## 1. Professional Background

### 1.1 Caroline Simard

[1] Caroline Simard has held the position of **Commissioner of Canada Elections (CCE)** since August 2022. Prior to her appointment, Commissioner Simard was Vice-Chairperson, Broadcasting, at the **Canadian Radio-television and Telecommunications Commission (CRTC)**. A lawyer by profession, Commissioner Simard has worked for many years in the public sector at the provincial, national (Justice Canada), and international levels, and in the private sector.

[2] Commissioner Simard holds a top-secret security clearance.

### 1.2 Carmen Boucher

[3] Ms. Boucher has worked with the Government of Canada since 2000 in various security, regulatory and enforcement positions. She joined the Office of the Commissioner of Canada Elections (OCCE) approximately 6 months ago as Executive Director,

Enforcement, where she oversees all investigations. This is a newly created position to fill certain gaps in strategy, transformation and change management that were identified following a strategic review undertaken in May 2023.

[4] Ms. Boucher holds a top-secret security clearance.

## 2. The Office of the Commissioner of Canada Elections

### 2.1 Investigation and Enforcement

- [5] The mandate of the Commissioner of Canada Elections is to ensure that the *Canada Elections Act* (CEA/LEC) is complied with and enforced. Conducting reviews and investigations in response to complaints and referrals from a variety of sources is therefore at the core of the **Office of the Commissioner of Canada Elections' (OCCE)** mandate. The OCCE receives complaints directly from the public or in the form of referrals from another government agency, primarily **Elections Canada (EC)**. The majority of complaints are political financing referrals from EC. It is very rare for a complaint to come from a government agency other than EC.
- [6] Ms. Boucher explained that the Complaint intake group at the OCCE is the primary point of contact for complaints from the public. These complaints can be made through a webform, phone calls or letters, but not through social media. In addition, some public complaints falling to the OCCE's mandate are erroneously submitted to EC and are redirected by EC to the OCCE.
- [7] When a complaint is received, an initial triage is carried out to determine whether it falls within the OCCE's mandate. If it does, the complaint is forwarded either to the investigation team or the compliance team. If the complaint does not fall within the OCCE's mandate, the matter is generally closed with no action taken other than responding to the complainant. If the complaint relates to an offence outside the CEA, the RCMP or police of local jurisdiction may be engaged.
- [8] Commissioner Simard explained that complaints can be handled under either the criminal process or the administrative process, depending on the nature of the alleged violation. While some contraventions of the CEA are subject to administrative monetary penalties

(AMPs) under the administrative process, the criminal process allows the Commissioner to lay criminal charges against the person or entity under investigation if she has reasonable grounds to believe that an offence under the CEA has been committed.

- [9] Each complaint is reviewed to decide whether an investigation is warranted. The key factor in this decision is whether there is sufficient evidence to meet the required evidentiary threshold: 1) to launch an administrative or criminal investigation, if there is reason to suspect that the CEA has been breached; 2) to lay charges under the criminal process, if there are reasonable grounds to believe that an offence has been committed; 3) the Commissioner may issue a Notice of Violation to a person under the administrative process if she has reasonable grounds to believe that the person has committed a violation of the CEA. If a request for review is filed challenging a Notice of Violation, the Commissioner (or the Chief Electoral Officer, as the case may be) decides, based on a balance of probabilities, whether or not the person is liable for the violation.
- [10] Routine files may be closed by a team leader based on enumerated criteria. Non-routine or complex factors elevate the internal oversight and require the involvement of senior managers, which may include Ms. Boucher in her role as Executive Director. Decisions on appropriate investigative avenues or enforcement measures are made by the enforcement team, whereas recommendations on administrative compliance measures are made by the compliance team.
- [11] When a decision requires the Commissioner's involvement, she receives a briefing or a written recommendation containing an analysis of the situation according to the applicable criteria to facilitate decision-making.
- [12] Complex files may also be brought before the **Strategic Enforcement and Compliance Initiative Committee (SECIC) (Comité stratégique d'observation, de contrôle et d'application (CISOCA))**. During the 2019 and 2021 general elections, the SECIC committee was comprised of the Commissioner, Senior Director of Investigations and Operations (Ms. Gigou), the Deputy Commissioner and the Senior Advisor to the Commissioner that focuses on making recommendations to the Commissioner on complex files.

## 2.2 Complaints Involving Foreign Interference

- [13] Commissioner Simard explained that although there is no specific contravention for foreign interference, several sections of the CEA do pertain to this issue, such as the prohibition against undue influence by foreigners [s. 282.4].
- [14] Ms. Boucher noted that for ease of access, the public can choose one of three options on the OCCE intake form when submitting a complaint under the category of foreign interference: undue influence, foreign broadcasting and foreign funding.
- [15] When a complaint is identified as potentially involving a foreign actor or use of foreign funds, it is assigned to an investigator and treated as non-routine, which ensures additional supervisory and briefing requirements apply. Files submitted to the inquiry as falling under potential foreign interference included complaints identified as such by members of the public who submitted under that category either in the OCCE intake form or in the EC complaint form.
- [16] Commissioner Simard pointed out that foreign interference makes up a very small amount of the complaints involving foreign interference – about 2% of the complaints filed for the 2019 federal election and about .5% for the 2021 federal election.
- [17] More broadly, Ms. Boucher noted that the OCCE's role with respect to disinformation is extremely narrow, and would generally involve impersonation or false statements. Certain areas of the CEA require that a false statement – as defined by the law – be made, and that there be an elector impacted by and an identified perpetrator of the false statement. Disinformation in the form of amplification would most likely fall under the mandate of a partner agency.

## 2.3 The OCCE's Independence

- [18] The OCCE's mandate requires that it carry out its work independently and confidentially. As required by the CEA, no information related to a complaint or investigation can be disclosed without the Commissioner's approval. When considered alongside the protections of the Privacy Act and the privacy rights of all those involved in an

investigation, it is therefore rare for the OCCE to share with other partner agencies information collected in the course of an investigation.

- [19] This principle of independence applies with respect to the government, political parties, and even Elections Canada. Independence from Elections Canada is necessary for many reasons, including that, in certain cases, the Commissioner could take compliance or enforcement action against an EC employee if they were to contravene the CEA. Commissioner Simard emphasized that independence is at the heart of the OCCE's mandate. The confidentiality of the OCCE's work strengthens this principle and enables the OCCE to protect the presumption of innocence and protects the OCCE from being used for partisan aims.
- [20] As such, it is extremely rare for the OCCE to disclose information about its files. One rare example was the Commissioner's decision, in the fall of 2022, to publicly disclose the Office's review of allegations of foreign interference. More broadly, disclosure may be made in the public interest – for example, to maintain public confidence in the electoral process.
- [21] Under section 510.1 of the CEA, the CCE must consider three criteria before disclosing information in the public interest: privacy rights, the presumption of innocence, and public confidence in the fairness of the electoral process.

## 2.4 Partner Agencies

- [22] Consistent with the independence and confidentiality principles mentioned above, the OCCE's mandate does not have an information-sharing component. The OCCE is generally the recipient of information from partner agencies.
- [23] That said, the OCCE has established relationships and accompanying protocols in place in the event information-sharing is required, likely to be used in a very narrow set of circumstances. The Commissioner can approve sharing information with external partners in a variety of circumstances, per the disclosure provisions of the CEA.
- [24] For example, if the OCCE receives a complaint alleging foreign interference that is not found to engage the CEA, the OCCE would likely close the file and inform the complainant that that their complaint does not fall within the jurisdiction of the OCCE. However, should

the contents of the complaint warrant further discussion, senior management would consider on a case-by-case basis whether to refer the complainant to a partner or recommend the sharing of information respecting the complaint with other agencies. The small size of the OCCE enables rapid circulation of information and the various teams work closely together.

[25] Ms. Boucher described the OCCE's relationship with each of the following security agencies:

- a. RCMP – There is a robust working relationship and regular exchanges between the OCCE and the RCMP, including deconfliction and cooperation on parallel or joint investigations. Given their corresponding mandates, during election periods, the OCCE coordinates with RCMP, including the RCMP tip line. The RCMP provides the OCCE with investigative support including technical expertise, and logistical support which may include linguistic services.
- b. CSE – There is little overlap in mandates between the CSE and the OCCE. Coordination with the CSE on cyber threats and infrastructure is undertaken by EC, as the OCCE uses EC IT infrastructure. There is no established relationship or Memorandum of Understanding (MOU) between CSE and OCCE.
- c. CSIS – There is ongoing but infrequent interaction with CSIS. In addition to interactions at senior level committees, a working level relationship was established in 2018. The OCCE's staff have limited knowledge and experience in dealing with intelligence and the OCCE does not have necessary technical infrastructure for the transfer of classified information nor the appropriate facilities to store high level classified information. Some senior staff, including the Commissioner, Ms. Gigou and Ms. Boucher, do receive classified briefings. In keeping with best practices for intelligence to evidence, investigators do not receive tactical intelligence. To date, the OCCE has only received two classified use letters from CSIS between 2019 to 2024. Multiple classified briefings and reading sessions occurred related to both the 2019 and 2021 general elections.

## 2.5 Investigative Techniques

- [26] The OCCE does not have an intelligence department, nor does it use electronic surveillance techniques, informants or human sources. OCCE investigators rely on open-source intelligence, interviews, and other law enforcement tools including judicial authorizations.
- [27] OCCE analysts collect open-source intelligence, which may be relied upon by investigators.<sup>1</sup> The OCCE currently only engages in passive collection of open-source intelligence. It does not actively engage with individuals online, does not use cover identities, and does not access closed platforms such as WeChat.
- [28] The OCCE participates in initiatives in the government open-source community to ensure best practices for passive open-source collection of information.
- [29] When necessary, the OCCE can rely on its partners for tradecraft, technical tools and training. For example, if a false statement is posted on a closed forum, the RCMP may be in a position to assist the OCCE in obtaining that evidence. However, to be actionable, the OCCE still requires that there be someone who witnessed the statement, was impacted by it or is willing to attest to its attempt to influence an elector during an election period.

## 3. The OCCE's Mandate Over Foreign Interference Issues

- [30] According to Commissioner Simard, the OCCE deals with foreign interference issues within the limits of its mandate, which is to ensure compliance with and enforcement of the CEA. The scope of the Act regarding foreign interference, and by extension the OCCE's mandate, is much narrower than the public's perception. For the OCCE to act, an allegation of foreign interference must fall under at least one provision of the CEA.
- [31] Ms. Boucher noted that certain contraventions of the CEA that are not inherently foreign interference can nonetheless become so when carried out by a foreigner. For example,

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<sup>1</sup> For example, see CEF0000018\_R2. References to "OCCE Intel" refers open-source research conducted by the analytical team.

false statements or impersonation, can include an element of foreign interference when carried out by a foreigner. This can have a bearing on the seriousness of the offence but does not change the scope of the applicable CEA provisions.

### 3.1 Challenges related to Foreign Interference Investigations

[32] Commissioner Simard and Ms. Boucher both described several challenges that arise in the OCCE's ability to address complaints and issues relating to foreign interference:

- a. Educational challenge – There is a discrepancy and gap between the scope of the CEA regarding foreign interference – including the OCCE's mandate – and public perception of these items.
- b. Lack of resources – The OCCE operates with limited resources. The current funding model limits the number of indeterminate positions to approximately 35, which has always posed a significant challenge in recruiting and retaining the resources necessary to fulfill the OCCE's mandate in a viable and sustainable manner. The additional workload related to allegations of foreign interference, which are currently the subject of a public inquiry, has put enormous pressure on the OCCE team to continue to fulfill its mandate with the same available resources. The increasing focus of foreign interference issues has exacerbated these resource problems, as the OCCE must continue to carry out its day-to-day operations while also handling complex foreign interference cases, without the possibility of additional indeterminate resources, resulting in work overload for the staff.
- c. Novelty – Foreign interference presents new issues that the OCCE is working to build internal knowledge and familiarity. The OCCE faces a steep learning curve with each new country that engages in foreign interference. Building and maintaining internal expertise on all potential hostile foreign actors is not feasible, given the size of the OCCE and its current employee complement. The work of the last year has built internal knowledge on foreign interference emanating from the People's Republic of China, yet there is little to no internal expertise on other countries' methodology. For these reasons, when faced with



- investigations with no precedence and limited internal knowledge, OCCE generally relies on contractor expertise and information sharing from partner agencies.
- d. Degrees of separation – In any potential prosecution, including those related to foreign interference, the OCCE is often required to collect evidence of historical activity, which becomes more challenging with the passage of time. In addition, these investigations require looking at proxies and other persons of interest several degrees removed from a state actor itself. Layering of fund transfers and comingling of funds present challenges in identifying the origin of funds beyond the financial declarations to EC. Moreover, like other investigative bodies, the OCCE has limited ability to pursue investigations beyond Canada. A Mutual Legal Assistance Treaty (MLAT) may be leveraged to collect evidence outside of Canada, but this is of limited use in country with minimal or strained relations with Canada or when no cooperation agreements are in place.
  - e. Lack of witness protection – The OCCE has a limited ability to offer witnesses confidentiality as, in order to achieve a successful prosecution, witnesses may be required to testify in a legal proceeding. The OCCE does not have an informant or human source program and as such other agencies may be in a better position to protect the origin of information.
  - f. Tracking funds – The OCCE has limited ability to ascertain the sources of funds for expenditures, particularly in the context of foreign interference investigations. It cannot compel the production of documents when it is dealing with a matter under its administrative track [as opposed to its prosecution track]. The OCCE is not a designated recipient of information from FINTRAC, and as such does not receive direct disclosures.
  - g. The “intent” requirement – Several provisions of the CEA which are or may be related to foreign interference require a proof of intent (i.e., “knowingly”) which presents a higher evidentiary threshold for any prosecution. In addition, the CEA specifies that the Commissioner shall give written notice of the investigation to the person whose conduct is being investigated, unless to do

so might compromise or hinder the investigation or any other investigation. Foreign interference-related contraventions may also be addressed using the CEA's administrative regime, however, there are currently limitations – including limited powers and inadequate amounts for monetary penalties.

### 3.2 Examples of CEA Provisions Relating to Foreign Interference

- [33] Commission counsel then asked Commissioner Simard and Ms. Boucher on how the OCCE interprets certain CEA provisions that may be relevant for issues of foreign interference.
- [34] Section 282.8 CEA prohibits any attempt to influence a person to vote or refrain from voting “by any pretense or contrivance”. Ms. Boucher explained that this provision has a high bar requiring i) pretense or contrivance; ii) to influence or attempt to influence an elector's vote; and iii) an elector versus general influence on a community.
- [35] The offence therefore requires that a specific perpetrator be identified, and prosecution of a foreign state as an entity would be challenging (ex. China). Moreover, whether a statement is false can be difficult to assess in the context of political commentary, where an individual can hold firm on a belief which may be inaccurate or perceived as inaccurate by others.
- [36] Section 282.4 prohibits foreign persons or entities from unduly influencing an elector to vote or refrain from voting in a certain way during an election period. This provision defines “undue influence” as (1) knowingly incurring an expense to directly promote or oppose in an election a candidate or registered party or leader of such a party or (2) if one of the acts committed by the foreign person or entity to influence the elector is an offence under an Act of Parliament. There are specific exceptions in the Section 282.4 for freedom of expression.
- [37] Ms. Boucher indicated that the OCCE would be required to show a directive was issued for use of funds by a foreign entity to influence an elector, as unpaid and undirected political discourse by employees for foreign states in Canada is not otherwise prohibited under the CEA.

[38] As such, an employee of a foreign state amplifying a post without direction and without incurring an expenditure is not in contravention of the CEA.

[39] Section 349.02 prohibits the use of foreign-sourced funds for partisan activity, election advertising, election survey and advertising. It can be difficult to determine whether funds used for partisan activities are foreign or domestically sourced. Ms. Boucher explained that one aspect of this problem arises from the concept of “comingling”, where an entity receives both foreign and domestic funding. Another challenge is that funds may originate from abroad but are hidden through proxies that obscure their foreign source.

#### 4. Digital Platforms

[40] Most primary platforms have signed the Canada Declaration on Electoral Integrity Online (CDEIO) which allows government agencies to have faster communication and response with the platforms. TikTok and WeChat are not signatories of the CDEIO, although TikTok has had some interaction with the OCCE.

[41] The OCCE engages with certain platforms to allow for faster compliance with electoral laws during an election period (with potential investigations to follow). The OCCE can seek and serve preservation and production orders to digital platforms as part of a criminal investigation. In addition, Elections Canada, the RCMP, Global Affairs Canada and CSIS all have communication channels with the platforms during election period, which the OCCE can leverage. There is significant coordination between these agencies during an electoral period.

[42] If content is in contravention with the CEA, the OCCE can request the removal of the content, including when the content is in violation of a platform’s rules and regulations, or as a law enforcement request. When issuing such takedown requests, it is important for the OCCE to coordinate with other government partners both to ensure that any relevant information is first captured and to undergo the appropriate deconflicting required as partner agencies may be conducting parallel activities on the platforms.

## 4.1 WeChat

- [43] The OCCE has not requested a production order with respect to WeChat, and any engagement on Chinese foreign interference would be preceded by significant due diligence given WeChat's ownership structure.
- [44] The OCCE recognizes that dealing with alleged mis- and disinformation on WeChat can be challenging. First and foremost, given that the OCCE does not have a prevention mandate and is not conducting online monitoring or surveillance allegations would need to be brought to the OCCE's attention and ideally the complainant would provide a copy of the posts. Another challenge would be determining whether any post constituted a contravention under the CEA, or whether it constituted political commentary or discourse, which is not prohibited.
- [45] The OCCE has received complaints related to content on WeChat, including related to statements related to Kenny Chiu. To date, following fulsome reviews the OCCE has not identified any contravention. One specific file involving WeChat was reviewed by SECIC where it was decided that further investigative efforts on that file was not warranted.

## 5. Allegations of Foreign Interference during Commissioner Simard's Tenure

- [46] When Commissioner Simard took office as Commissioner, foreign interference issues received little attention. Following media reports of allegations of foreign interference in the fall of 2022, Commissioner Simard called for a review of all closed files from the 2019 and 2021 federal elections involving allegations of foreign interference to ensure that nothing was missed. Two files were identified as warranting further work. This work was carried out but did not reveal any new information to alter the original conclusion.

### 5.1 Timeline

- [47] Commission counsel was provided with the following timeline of key events relating to foreign interference since the 44<sup>th</sup> General Election, held on September 20, 2021:

- a. September 2021: 3 different sets of complaints were received on September 11, 2021, September 19, 2021, and from September 19 to 28, 2021.
- b. March 23, 2022: A SECIC meeting was held to discuss the 3 sets of complaints, all of which were subsequently closed based on insufficient evidence to support an investigation. The former Commissioner [Yves Côté] made the decision to close these three files with no further investigative steps.
- c. July-November 2022: Media reporting on allegations of foreign interference gained prominence. At the time of Commissioner Simard's appointment as CCE [in August 2022], the only open files with allegations of foreign interference connected to China were a matter involving a single improperly obtained special ballot by a foreign national, and a matter involving a luncheon in which a political candidate sought to meet with members of the local Chinese Canadian community.<sup>2</sup>
- d. November 2022: Further media reporting on allegations of foreign interference occurred. On November 10, 2022, the Bloc Québécois submitted a complaint on foreign interference. Over the following days and weeks, the CCE communicated with partner agencies such as CSIS on information available relating to foreign interference.
- e. December 2022:
  - i. On December 1, the CCE was briefed on the results of a review of prior files with allegations of foreign interference related to China.
  - ii. On December 2, the Commissioner decided to open a review on the basis of complaints, including the Bloc Québécois one. The OCCE has publicly disclosed the existence of this review.
- f. December 2022 – March 2023: There was ongoing engagement between the OCCE, the RCMP's Foreign Actors Interference Team, and CSIS. Discussions included how intelligence could migrate across agencies; the "One Vision"

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<sup>2</sup> CEF0000156.

framework [a framework that relates to how CSIS and law enforcement interact to permit intelligence to be used in investigations]; access to intelligence; and deconfliction procedures with the RCMP.

- g. March - April 2023: Further to Kenny Chiu's statements to media in this regard, the OCCE confirms having interviewed Kenny Chiu, candidate for the Conservative Party of Canada in Steveston-Richmond East during the 44<sup>th</sup> General Election, as part of its review emanating from the Bloc Québécois complaint. Mr. Chiu was publicly reported to have been the target of foreign interference. This review remains ongoing.

[48] Ms. Boucher noted that while the OCCE has reviewed CSIS intelligence products, including regarding the 2019 and 2021 elections, intelligence has not been provided to investigators. This is to protect the integrity of their investigations. The OCCE has only done one major disclosure of information to CSIS regarding the ongoing review. This was done in the public interest to ensure due diligence by the OCCE in a particular file. To date, the intelligence received has been useful for context and global understanding but has not provided leads or evidence of contravention with the CEA.

## 5.2 Certain Files of Interest

[49] Commission Counsel asked questions related to a number of reviews and investigations<sup>3</sup> that included allegations of foreign interference, which were addressed in whole or in part during Commissioner Simard's time as CCE.

### 5.2.1 Lunch Organized for a Political Campaign

[50] The OCCE investigated a complaint that the Liberal Party candidate in Vancouver East attended a lunch organized and paid for by an individual connected to a prominent Chinese community organization. There was an allegation in the complaint that the community organization was supportive of the PRC regime. The investigation identified a

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<sup>3</sup> The distinction between a review and an investigation is addressed in the OCCE Institutional Report.

CEA violation related to the failure of the candidate's campaign to declare expenses related to the lunch.

- [51] The CCE determined that the organizing individual was not required to register as a third-party under the CEA. In addition, the OCCE's investigation revealed that the lunch was organized at the behest of the candidate, not the community organization nor the individual who paid for the lunch.
- [52] The candidate's official agent failed to report the lunch as a non-monetary contribution, which was a contravention of the CEA. The official agent received an administrative monetary penalty (AMP).
- [53] When asked whether the events in question could constitute foreign interference given the alleged influence by China over the organizing individual's association, the witnesses stated that other agencies are better placed to make this determination in the broader context. In the context of the CEA however, given the event was held at the request of the candidate, it did not appear to have been a proactive effort by China, and there were no indications of a direct contribution of foreign funds. As such it does not constitute undue foreign influence under the CEA.
- [54] Ms. Boucher noted that this matter was a good example of the difference between what constitutes foreign interference under the OCCE's mandate versus potential public perception of foreign interference.

#### 5.2.2 Threatening Text Messages to a Candidate

- [55] The OCCE investigated allegations of intimidation against a Conservative Party candidate by a Chinese consular official. This review was initiated by Commissioner Simard following public statements by a member of parliament, rather than pursuant to a complaint from the candidate or member of the public.
- [56] The OCCE concluded that it lacked sufficient evidence of an offence. Relevant factors that led to this conclusion was the reported content of the text message itself (which did not appear to contain a direct threat as originally reported), and the lack of direct access to the cell phone on which the text was received. Despite the limited cooperation of the

candidate in participating in the OCCE'S review, it was also felt that more cooperation would not have changed the result in this file.

[57] The witnesses noted that intimidation of candidates falls within the RCMP's jurisdiction. The OCCE's review centred on potential intimidation of electors, and the impact of the alleged conduct on electors (i.e., whether a foreign state had unduly influenced the vote of an elector.

#### 5.2.3 Greater Vancouver Area

[58] The OCCE is engaged in an ongoing review of an electoral contest in the Greater Vancouver Area. The information that can be publicly disclosed by the OCCE is therefore limited.<sup>4</sup>

#### 5.2.4 Don Valley North

[59] The OCCE is engaged in an ongoing review of allegations related to the 2019 Liberal Party nomination contest in the Don Valley North riding. The mandate of the OCCE in a nomination contest is limited to compliance with and enforcement of the CEA's political financing regime. The review is ongoing, and the information that can be publicly disclosed by the OCCE is therefore limited.<sup>5</sup>

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<sup>4</sup> See CEF0000152\_R2.

<sup>5</sup> See CEF0000150\_R2.